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Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–25 of September 7, 2009

Eligibility of the Maldives to Receive Defense Articles and Defense Services Under the Foreign Assistance Act of 1961, as Amended, and the Arms Export Control Act, as Amended

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and the laws of the United States, including section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, as amended, I hereby find that the furnishing of defense articles and defense services to the Maldives will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination to the Congress and to arrange for its publication in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 7, 2009.

[FR Doc. E9–23084
Filed 9–22–09; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2009–26 of September 7, 2009

Eligibility of the Economic Community of Central African States to Receive Defense Articles and Defense Services Under the Foreign Assistance Act of 1961, as Amended, and the Arms Export Control Act, as Amended

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and the laws of the United States, including section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, as amended, I hereby find that the furnishing of defense articles and defense services to the Economic Community of Central African States will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination to the Congress and to arrange for the publication of this determination in the *Federal Register.*

THE WHITE HOUSE,
Washington, September 7, 2009.

[FR Doc. E9–23086
Filed 9–22–09; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2009–29 of September 14, 2009

Presidential Determination With Respect To Foreign Governments' Efforts Regarding Trafficking In Persons

Memorandum for the Secretary of State

Consistent with section 110 of the Trafficking Victims Protection Act of 2000 (Division A of Public Law 106–386), as amended, (the ''Act''), I hereby:

Make the determination provided in section 110(d)(1)(A)(i) of the Act, with respect to Burma, the Democratic People's Republic of North Korea (DPRK), and Zimbabwe, not to provide certain funding for those countries' governments for fiscal year 2010, until such government complies with the minimum standards or makes significant efforts to bring itself into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;

Make the determination provided in section 110(d)(1)(A)(ii) of the Act, with respect to Cuba, Eritrea, Fiji, Iran, and Syria, not to provide certain funding for those countries' governments for fiscal year 2010, until such government complies with the minimum standards or makes significant efforts to bring itself into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;

Make the determination provided in section 110(d)(3) of the Act, concerning the determination of the Secretary of State with respect to Swaziland;

Determine, consistent with section 110(d)(4) of the Act, with respect to Chad, Kuwait, Malaysia, Mauritania, Niger, Papua New Guinea, Saudi Arabia, and Sudan, that provision to these countries' governments of all programs, projects, or activities of assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Burma, that a partial waiver to allow funding for programs described in section 110(d)(1)(A)(i) of the Act to combat infectious disease would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Eritrea, that a partial waiver to allow funding for participation by government officials and employees in educational and cultural exchange programs described in section 110(d)(1)(A)(ii) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Fiji, that a partial waiver to allow funding for participation by government officials and employees in educational and cultural exchange programs described in section 110(d)(1)(A)(ii) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Iran, that a partial waiver to allow funding for participation by government officials and employees in educational and cultural exchange programs described in section 110(d)(1)(A)(ii) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Syria, that a partial waiver to allow funding for participation by government officials and employees in educational and cultural exchange programs described in section 110(d)(1)(A)(ii) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Zimbabwe, that a partial waiver to allow funding for programs described in section 110(d)(1)(A)(i) of the Act for assistance for victims of trafficking in persons or to combat such trafficking, the promotion of health, good governance, education, agriculture, poverty reduction, livelihoods, or family planning, or which would have a significant adverse effect on vulnerable populations if suspended, would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, that assistance to Eritrea, Fiji, and Zimbabwe, described in section 110(d)(1)(B) of the Act:

(1) is a regional program, project, or activity under which the total benefit to Eritrea, Fiji, or Zimbabwe does not exceed 10 percent of the total value of such program, project, or activity; or

(2) has as its primary objective the addressing of basic human needs, as defined by the Department of the Treasury with respect to other, existing legislative mandates concerning U.S. participation in the multilateral development banks; or

(3) is complementary to or has similar policy objectives to programs being implemented bilaterally by the United States Government; or

(4) has as its primary objective the improvement of the country's legal system, including in areas that impact the country's ability to investigate and prosecute trafficking cases or otherwise improve implementation of a country's anti-trafficking policy, regulations, or legislation; or

(5) is engaging a government, international organization, or civil society organization, and seeks as its primary objective(s) to:

(a) increase efforts to investigate and prosecute trafficking in persons crimes;

(b) increase protection for victims of trafficking through better screening, identification, rescue/removal, aftercare (shelter, counseling), training, and reintegration; or

(c) expand prevention efforts through education and awareness campaigns highlighting the dangers of trafficking or training and economic empowerment of populations clearly at risk of falling victim to trafficking would promote the purposes of the Act or is otherwise in the national interest of the United States.

The certification required by section 110(e) of the Act is provided herewith.

You are hereby authorized and directed to submit this determination to the Congress, and to publish it in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 14, 2009.

[FR Doc. E9–23092
Filed 9–22–09; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2009–30 of September 15, 2009

Presidential Determination on Major Illicit Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2010

Memorandum for the Secretary of State

Pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228)(FRAA), I hereby identify the following countries as major drug transit or major illicit drug producing countries: Afghanistan, The Bahamas, Bolivia, Brazil, Burma, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, and Venezuela.

A country's presence on the Majors List is not necessarily an adverse reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or drug producing country set forth in section 481(e)(2) and (5) of the Foreign Assistance Act of 1961, as amended (FAA), one of the reasons that major drug transit or illicit drug producing countries are placed on the list is the combination of geographic, commercial, and economic factors that allow drugs to transit or be produced despite the concerned government's most assiduous enforcement measures.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Bolivia, Burma, and Venezuela as countries that have failed demonstrably during the previous 12 months to adhere to their obligations under international counternarcotics agreements and take the measures set forth in section 489(a)(1) of the FAA. Attached to this report are justifications for the determinations on Bolivia, Burma, and Venezuela, as required by section 706(2)(B).

I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that support for programs to aid Venezuela's democratic institutions and continued support for bilateral programs in Bolivia are vital to the national interests of the United States.

Afghanistan continues to be the world's largest producer of opium poppy and a major source of heroin. The Government of Afghanistan, under the leadership of President Karzai and key governors in the provinces, has demonstrated its ongoing commitment to combating narcotics and has made notable improvements in this regard over the past year.

The connection between opium production, the resulting narcotics trade, corruption, and the insurgency continues to grow more evident in Afghanistan. Poppy cultivation remains largely confined to five contiguous provinces in the south where security problems greatly impede counternarcotics efforts, and nearly all significant poppy cultivation occurs in insecure areas with active insurgent elements. Counternarcotics efforts have shown greater impact where security exists, where public information messages can be conveyed, alternative development delivered, interdiction performed, and justice carried out. While the Government of Afghanistan made some progress during the past year, the country must dedicate far greater political will and programmatic effort to combat opium trafficking and production nationwide.

Pakistan is a major transit country for opiates and hashish for markets around the world, as well as for precursor chemicals moving into neighboring Afghanistan where they are used for processing heroin. Opium poppy cultivation in Pakistan is also a primary concern.

In 2008 and 2009, religious extremist groups controlled major portions of the Federally Administered Tribal Areas, where most of Pakistan's poppy is grown. These extremist groups also pushed into settled areas of the country's Northwest Frontier Province, such as the Peshawar Valley and the Swat Valley. The Government of Pakistan was compelled to divert manpower and equipment resources from poppy eradication efforts to contest these incursions.

The joint Narcotics Affairs Section and Pakistan's Narcotics Control Cell indicated that 1,909 hectares of poppy were cultivated in 2008 (approximately one percent of the cultivation in Afghanistan). This is down from the 2,315 hectares cultivated in 2007. In 2007, when the insurgent problem was not as widespread, 614 hectares were eradicated, bringing harvested poppy down to 1,701 hectares. During 2008, there were significant narcotics and precursor chemical seizures in Pakistan. United States counternarcotics and border security assistance programs continue to build the counternarcotics capacity of law enforcement agencies, especially in Baluchistan and along the Makran coast.

As Mexico and Colombia continue to apply pressure on drug traffickers, the countries of Central America are increasingly targeted for trafficking, which is creating serious challenges for the region. In 2008, approximately 42 percent of the cocaine destined for the United States transited Central America directly from South America. Often unimpeded due to the region's limited capabilities and resources, traffickers use land routes and Central America's coastal waters for illegal drug movements. The Merida Initiative, which provides Central American countries $165 million for FY 2008 and FY 2009, offers the opportunity to boost the capabilities of the region's rule of law institutions and promote greater regional law enforcement cooperation.

Within the Central America region, Guatemala has been listed as a major drug transit country since 1990. Guatemala continues to be challenged by increasing violence related to narcotics trafficking. Corruption and inadequate law enforcement efforts contributed to low interdiction levels during the past several years. The United States continues to support the Government of Guatemala to improve its counternarcotics efforts.

In Honduras, drug traffickers have capitalized on the country's lack of resources, corruption, and ungoverned spaces. Despite the current political instability, Honduran security forces have been conducting counternarcotic operations and have already seized more illegal drugs than in all of 2008. Honduras has also agreed to a bilateral integrated strategy with the United States to strengthen the operational counternarcotics capabilities of its security and law enforcement forces.

Panama is a major drug transit country that seized 51 metric tons of cocaine in 2008 while working in partnership with the United States. El Salvador is not a primary transit country, but in 2008 the Salvadoran government seized 1.4 metric tons of cocaine, 300 kilograms of marijuana, and nine kilograms of heroin. El Salvador may see an increase in drug activity corresponding with rising drug trafficking levels in the eastern Pacific. The United States is increasingly concerned with the large amount of drugs trafficked through Costa Rica and Nicaragua. Interdiction efforts in these two countries in 2008 resulted in the seizure of 21.7 and 19.5 metric tons of cocaine seizures, respectively.

The trafficking of South American cocaine through Nigeria and other West African countries en route to Europe continues. Though the cocaine does not come to the United States, the proceeds of the trafficking flow back to the same organizations that move cocaine to the United States, reinforcing their financial strength. Drug trafficking is a destabilizing force in the region and undermines good governance. Initially focused on Guinea and Guinea-Bissau, drug trafficking is now a serious issue facing nearly all West African countries. There is limited capacity in many West African law enforcement and judicial sectors to investigate and prosecute the organizers of cocaine

trafficking. Despite this, there have been some important counternarcotics victories, most notably in the arrest and successful prosecution of traffickers in Sierra Leone.

Nigeria, which remains a significant transit point for narcotics destined for the United States, made demonstrable progress in 2008 by combating narcotics through increased budgetary support of key counternarcotics and corruption agencies, continued evaluation of suspicious transaction reports, and acceptable progress in the arrests of drug kingpins, with one kingpin arrested in 2008 and another in early 2009. Drug seizures were down slightly from a high in 2007. However, this development is likely attributable to a decrease in the use of Nigeria's international airports as a transshipment point after the successful deployment of narcotics scanning machines by the Nigerian Drug Law Enforcement Agency (NDLEA). At the same time, there was little progress in reform to expedite Nigerian extradition procedures, or to amend its Money Laundering Act to bring it in line with international standards. Cooperation between the NDLEA and U.S. law enforcement agencies remains robust.

International donors and organizations are working to assist West African governments in their counternarcotics efforts. The United States supports these efforts to preserve and protect stability and positive growth in this region.

The United States continues to maintain a strong and productive law enforcement relationship with Canada. Both countries are making significant efforts to disrupt the two-way flow of drugs, bulk currency, and other contraband. Canada remains a significant producer of MDMA (ecstasy) and high-potency marijuana that is trafficked to the United States. While Canada's passage of several additional regulations in recent years has reduced the large scale diversion and smuggling of bulk precursor chemicals across the border, the increasing diversion of these chemicals to the production of methamphetamine within Canada could lead to greater methamphetamine availability in the United States. The frequent mixing of methamphetamine and other illegal drugs into pills that are marketed as MDMA by Canada-based criminal groups poses a particularly significant public health risk in the United States. The United States Government is appreciative of Canada's efforts to address these and other drug-related challenges, including through bilateral initiatives and multilateral forums.

The Government of India maintains a credible record of regulating its licit opium grown for the production of pharmaceutical products through licensed opium farmers and monitoring of poppy cultivation sites. Diversion of licit opium crops into illegal markets continues despite India's determined efforts to control such activity. Illicit opium poppy production has also been observed in certain areas of the country, such as West Bengal and the State of Uttaranchal. Enforcement agencies continue to eradicate illicit opium poppy crops although the actual number of hectares destroyed has declined in recent years. Indian authorities have made marked efforts to control the illicit drug trade as opium and heroin smuggled from Afghanistan and Pakistan enters India across the India-Pakistan border and is trafficked to destinations outside of India.

Indian authorities continue to pursue precursor chemical trafficking organizations operating in the country and to cooperate with international law enforcement counterparts to interdict the flow of narcotics. The Government of India has made noteworthy international efforts to target the misuse of internet pharmacies for trafficking controlled and non-controlled pharmaceuticals. Law enforcement undertakings in this area have resulted in numerous arrests and asset seizures in both the United States and India.

You are hereby authorized and directed to submit this report under section 706 of the FRAA, transmit it to the Congress, and publish it in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 15, 2009.

[FR Doc. E9–23100
Filed 9–22–09; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register

Vol. 74, No. 183

Wednesday, September 23, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 249

RIN 0584–AD92

Senior Farmers' Market Nutrition Program Regulations, Nondiscretionary Provisions of Public Law 110–246, the Food, Conservation, and Energy Act of 2008

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

ACTION: Final rule.

SUMMARY: This final rule incorporates into the Senior Farmers' Market Nutrition Program regulations, statutory provisions set forth in Section 4231 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, also known as the Farm Bill of 2008). The three provisions include adding honey as an eligible food for purchase with Senior Farmers' Market Nutrition Program (SFMNP) benefits, prohibiting the value of SFMNP benefits from consideration as income or resources when determining eligibility for other programs under any Federal, State or local law, and prohibiting the collection of State or local tax on a purchase of food with a benefit distributed under the SFMNP.

DATES: *Effective Date:* October 23, 2009.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302; (703) 305–2746; e-mail *Debbie.Whitford@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Public Law 110–246, the Food, Conservation, and Energy Act of 2008 (also known as the Farm Bill, hereinafter referred to as ''the Act''), includes three nondiscretionary provisions regarding the SFMNP. The three provisions add honey as an eligible food; prohibit the value of SFMNP benefits from consideration as income when determining eligibility for other programs under any Federal, State or local law; and prohibit the collection of State or local tax on a purchase of food with SFMNP benefits. This final rule implements these nondiscretionary SFMNP provisions verbatim as reflected in Section 4231 of the Act. No discretion has been exercised by the Department in the implementation of these provisions.

1. Honey as an Eligible Food

Section 4231 of the Act amends Section 4402(b)(1) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) to add honey as an eligible food for purchase with SFMNP benefits. This provision of the law was effective October 1, 2008.

Previously, State agencies were only permitted to authorize fresh fruits, vegetables and herbs as eligible foods. This provision gives State agencies the flexibility to add honey to their eligible-foods lists for the SFMNP. The SFMNP regulations have been revised to reflect the addition of honey as an eligible SFMNP food.

2. No Aid Reduction

Section 4231 of the Act amends Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) to include a provision that excludes SFMNP benefits from consideration as income or resources for any purposes under any Federal, State or local law. This provision would exclude SFMNP benefits from the determination of eligibility for other means tested programs, bringing the SFMNP in line with other Department of Agriculture nutrition assistance programs such as the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and the WIC Farmers Market Nutrition Program (FMNP). Section 249.25 of the SFMNP regulations has been amended to include this provision.

3. Prohibition on Collecting Sales Tax

Section 4231 of the Act further amends Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) to include a provision that prohibits the collection of State or local tax on the purchase of foods purchased with SFMNP benefits. This provision also brings SFMNP in line with other Department of Agriculture nutrition assistance programs such as SNAP, WIC and FMNP. Section 249.10 of the SFMNP regulations has been amended to include this provision.

Notice and Comment

In accordance with the Secretary's Statement of Policy (36 FR 13804), it is found and determined upon good cause that it is unnecessary to engage in the Notice and Comment provisions of 5 U.S.C. 553 normally required before the adoption of final regulations in an FNS-sponsored program. As indicated earlier, the three provisions of Section 4231 of the Act adopted as final rules in the SFMNP in this rulemaking are nondiscretionary. These provisions are being incorporated as regulations in language verbatim from the Act. The nondiscretionary nature of Section 4231 means that notice and comment would serve no useful purpose in the promulgation of these regulations.

Executive Order 12866

The Office of Management and Budget designated this rule as not significant under Executive Order 12866 therefore no OMB review is required.

Regulatory Flexibility Act

The Food, Nutrition, and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities. The provisions of this rulemaking are applicable to all State and local agencies, farmers, farmers' markets, roadside stands, and community supported agriculture programs, regardless of their size or of the volume of SFMNP business they conduct.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget; therefore, a Regulatory Impact Analysis (RIA) is not necessary.

Need for Action

The final rule amends the SFMNP regulations to implement three provisions mandated in Public Law

110–234, the Food, Conservation, and Energy Act of 2008 (also known as the Farm Bill of 2008). One provision adds honey as an eligible food for purchase with SFMNP benefits; another provision prohibits the consideration of the value of SFMNP benefits as income or resources when determining eligibility for other programs under any Federal, State or local law; and the third provision prohibits the collection of State or local tax on a purchase of food with SFMNP benefits.

Benefits

The benefit of these provisions is twofold. It provides State agencies with the flexibility to add honey as an authorized food, and it brings the SFMNP into conformance with other nutrition assistance programs administered by USDA's Food and Nutrition Service (FNS).

Costs

The provisions of this final rule are not expected to increase significantly the administrative burden to the Department or to State agencies, nor will they affect overall program costs since the SFMNP is funded by an annual appropriation.

Public Law 104–4

Title II of the UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

The SFMNP is listed in the Catalog of Federal Domestic Assistance under No. 10.576. For the reasons set forth in the final rule at 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph of the preamble to the final rule. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

In the SFMNP, the administrative procedures are as follows: (1) Local agencies, farmers, farmers' markets, roadside stands, and community supported agriculture programs—State agency hearing procedures issued pursuant to 7 CFR 249.16; (2) Applicants and participants—State agency hearing procedures pursuant to 7 CFR 249.16; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 249.17—administrative appeal in accordance with 7 CFR 249.16, and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section 6(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with FNS Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of SFMNP participants, FNS has determined that none of the provisions in this rule have a discernible impact on minorities, women, or persons with disabilities that are likely to result in inequitable treatment. FNS specifically prohibits State agencies that administer the SFMNP, and their cooperators, from engaging in actions that discriminate against any individual in any of the protected classes (*see* 7 CFR 249.7 for the nondiscrimination policy in the SFMNP). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the SFMNP regulations set forth at § 249.7.

Paperwork Reduction Act

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

FNS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities to provide for citizen access to government information and services, and for other purposes. State plan amendments regarding the implementation of the provisions contained in this rule, as is the case with the entire State Plan, may be transmitted electronically by the State agency to FNS. Also, State agencies may provide SFMNP information, as well as their financial reports, to FNS electronically.

List of Subjects in 7 CFR Part 249

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Aging, Nutrition education, Public assistance programs, WIC, Senior citizens.

■ For reasons discussed above, 7 CFR Part 249 is amended as follows:

PART 249—SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP)

■ 1. The authority citation for part 249 continues to read as follows:

Authority: 7 U.S.C. 3007.

■ 2. In Part 249:

■ a. Add the word ''honey,'' after ''vegetables,'' wherever the phrase ''fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs'' appears; and

■ b. Remove the word ''honey,'' wherever the phrase ''wild, rice, nuts of any kind (even raw), honey, maple syrup,'' appears.

§ 249.4 [Amended]

■ 3. In § 249.4, amend paragraph (a)(14)(vii) and the first sentence in paragraph (a)(18) by adding the word ''honey,'' after ''vegetables,''.

■ 4. In § 249.10, amend paragraph (b)(2)(ii) by removing the period and adding ''; nor'' at the end of the sentence and add a new paragraph (b)(2)(iii) to read as follows:

§ 249.10 Coupon, market, and CSA program management.

* * * * *

(b)* * *

(2)* * *

(iii) Collect tax on SFMNP coupon purchases.

* * * * *

■ 5. In § 249.25, add a new paragraph (c) to read as follows:

§ 249.25 Other provisions.

* * * * *

(c) *Exclusion of benefits in determining eligibility for other programs.* The value of any benefit provided to any eligible SFMNP recipient shall not be considered to be income or resources for any purposes under any Federal, State or local law.

Dated: September 4, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–22861 Filed 9–22–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS–2008–0124]

Tuberculosis in Cattle and Bison; State and Zone Designations; New Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the bovine tuberculosis regulations by establishing two separate zones with different tuberculosis risk classifications for the State of New Mexico. Prior to the interim rule, the entire State of New Mexico had been classified as modified accredited advanced; however, all its affected herds were located in Curry and Roosevelt Counties, NM, along the State's eastern border. The interim rule was necessary to relieve restrictions on the interstate movement of cattle and bison from areas of New Mexico outside those two counties.

DATES: Effective on September 23, 2009, we are adopting as a final rule the interim rule published at 74 FR 12055–12058 on March 23, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. C. William Hench, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Veterinary Services, APHIS, 2150 Centre Ave, Bldg B, MSC 3E20, Ft. Collins, CO 80526; (970) 494–7378.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis.* Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis,* the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment in the United States of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock.

In carrying out the national eradication program, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations. The regulations require the testing of cattle and bison for tuberculosis, define the Federal tuberculosis status levels for States or zones (accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited), provide the criteria for attaining and maintaining those status levels, and contain testing and movement requirements for cattle and bison leaving States or zones of a particular status level. These regulations are contained in 9 CFR part 77 (referred to below as the regulations) and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999, which is incorporated by reference into the regulations.

According to the regulations, if bovine tuberculosis is detected in a portion of a State, the State may request split-State status via partitioning into specific geographic regions or zones with differential status designations. With regard to cattle and bison, State animal health officials in New Mexico demonstrated to APHIS that New Mexico, excluding Curry and Roosevelt Counties, meets the criteria for accredited-free status set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations.

Therefore, we amended the regulations in an interim rule [1] effective and published in the **Federal Register** on March 23, 2009 (74 FR 12055–12058, Docket No. APHIS–2008–0124), by removing New Mexico from the list of modified accredited States in § 77.9(a), adding an area consisting of Curry and Roosevelt Counties, NM, to the list of modified accredited advanced zones in § 77.9(b), and adding the remainder of the State to the list of accredited-free zones in § 77.7(b).

Comments on the interim rule were required to be received on or before May 22, 2009. We did not receive any comments by that date. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

We note that the indefinite delay [2] in compliance with certain identification and certification requirements in § 77.10 of the regulations will continue to apply with respect to Curry and Roosevelt Counties, NM, which continue to hold modified accredited advanced status. The specific provisions of § 77.10 for which we delayed the compliance date were as follows:

- The identification of sexually intact heifers moving to approved feedlots and steers and spayed heifers moving to any destination (§ 77.10(b));
- The identification requirements for sexually intact heifers moving to feedlots that are not approved feedlots (§ 77.10(d)); and
- Because identification is required for certification, the certification requirements for sexually intact heifers moving to unapproved feedlots (§ 77.10(d)).

This action also affirms the information contained in the interim

[1] To view the interim rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0124.*

[2] The delay was put into place in an interim rule published in the **Federal Register** on September 11, 2008 (73 FR 52775–52777, Docket No. APHIS–2008–0068). The interim rule may be viewed on the Internet at *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0068.*

rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 74 FR 12055–12058 on March 23, 2009.

Done in Washington, DC, this 18th day of September 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–22960 Filed 9–22–09; 8:45 am]

BILLING CODE 3410–34–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–28903; File No. S7–20–09]

RIN 3235–AK33

Disclosure of Certain Money Market Fund Portfolio Holdings

AGENCY: Securities and Exchange Commission.

ACTION: Interim final temporary rule; request for comment.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is adopting an interim final temporary rule under the Investment Company Act of 1940 to require a money market fund to report its portfolio holdings and valuation information to the Commission under certain circumstances. The new reporting requirement is designed to provide information substantially similar to that submitted by certain money market funds under the Temporary Guarantee Program for Money Market Funds established by the Department of the Treasury (''Treasury Department''), which will expire on September 18, 2009.

DATES: *Effective Date:* September 18, 2009 through September 17, 2010.

Comment Date: Comments should be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/final.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–20–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–20–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/final.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: If you have questions about the rule, please contact one of the following members of the staff in the Division of Investment Management, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549: Adam B. Glazer, Senior Counsel, or Hunter Jones, Assistant Director at (202) 551–6792; for technical questions related to the submission of portfolio information to the Commission, in the Office of Information Technology, Rick Heroux, at (202) 551–8168.

SUPPLEMENTARY INFORMATION: The Commission is adopting new rule 30b1–6T under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act'') [1] as an interim final temporary rule. We are soliciting comments on all aspects of the interim final temporary rule. We will carefully consider the comments that we receive and intend to respond to them in a subsequent release.

I. Background

Money market funds are open-end management investment companies that invest in short-term obligations and have a principal investment objective of maintaining a net asset value of $1.00 per share.[2] Since October 2008, most money market funds have participated in the Treasury Department's Temporary Guarantee Program for Money Market Funds (''Guarantee Program''), which has guaranteed the $1.00 share value of accounts held by investors as of September 19, 2008 in participating money market funds.[3] The Guarantee Program was established to help stabilize money market funds following a period of substantial redemptions that threatened the ability of some money market funds to maintain the $1.00 share value.[4] The program will expire on September 18, 2009.[5]

Money market funds participating in the Guarantee Program have been required, in certain circumstances, to submit their portfolio schedules and related information each week to the Treasury Department and the Commission.[6] The Commission has

[1] 15 U.S.C. 80a. Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act, including rule 2a–7, will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

[2] *See generally* Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)]. Most money market funds seek to maintain a stable net asset value per share of $1.00, but a few seek to maintain a stable net asset value per share of a different amount, *e.g.*, $10.00. For convenience, throughout this release, the discussion will simply refer to the stable net asset value of $1.00 per share.

[3] Our staff estimates that approximately 79 percent of money market funds participated in the Guarantee Program, and that the money market funds that did not participate in the program were mostly funds that invest predominately in U.S. Treasury and U.S. Government securities.

[4] *See* Press Release, U.S. Department of the Treasury, Treasury Announces Guaranty Program for Money Market Funds (Sept. 19, 2008), *available at http://www.treas.gov/press/releases/hp1147.htm.*

[5] *See* Press Release, U.S. Department of the Treasury, Treasury Announces Extension of Temporary Guarantee Program for Money Market Funds (Nov. 24, 2008), *available at http://www.treas.gov/press/releases/hp1290.htm*; Press Release, U.S. Department of the Treasury, Treasury Announces Extension of Temporary Guarantee Program for Money Market Funds (Mar. 31, 2009), *available at http://www.treas.gov/press/releases/tg76.htm.*

[6] *See* section 5(b) of the Guarantee Agreement that money market funds participating in the Treasury's Guarantee Program were required to sign (''Guarantee Agreement''), *available at http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Guarantee-Agreement_form.pdf* (requiring a fund to submit reports when their market-based net asset value is less than $.9975).

found these reports very useful in monitoring money market funds, and we believe that continuing to receive this information will further our mission to protect investors. When the program expires, however, money market funds will no longer be required to submit such portfolio information, and we will not receive current information about money market fund holdings.

In June 2009, the Commission proposed new rules and rule amendments to reform the regulation of money market funds.[7] The proposal included a new rule and a new form N–MFP, on which money market funds would report to the Commission detailed information about their portfolio holdings, which we would use to monitor the funds.[8] We proposed to require that all money market funds submit more detailed information than we currently receive under the Guarantee Program, and we proposed that the information be filed in a format that would permit us to create a searchable database of money market fund information.[9] The proposed requirement that money market funds report detailed portfolio information to the Commission was designed to improve our ability to oversee those funds.[10]

We have received more than 125 comments on the money market fund amendments we proposed in June 2009. Of the approximately 40 commenters who addressed the proposals to require the reporting of portfolio holdings to the Commission, 33 generally supported such reporting.[11] Some commenters, however, expressed concerns about the specific information required,[12] the timing of the disclosure,[13] and our intent to make the information publicly available.[14]

We will continue to review these comment letters, and any additional comments we receive in response to our additional request for comment in this Release below. These comments will help us to determine whether, and if so how, to construct a permanent reporting regime that best meets our regulatory needs in protecting investors, while imposing no more regulatory burdens than are necessary. In the meantime, however, because of the importance of the information about money market fund portfolios, we are adopting an interim final temporary rule, rule 30b1–6T, that requires the reporting of basic securities portfolio information to the Commission in certain limited circumstances, as described below. The interim final temporary rule is designed to maintain our ability, as it currently exists under the Guarantee Program, to monitor money market funds while we consider whether to adopt the amendments we proposed in June 2009.

II. Discussion

A. Rule 30b1–6T

Rule 30(b)1–6T requires money market funds to provide the Commission weekly portfolio and valuation information substantially similar to what money market funds participating in the Guarantee Program provided to us and the Treasury Department under the program, if their market-based net asset value per share was below $.9975. Each money market fund that is required to report must provide a portfolio schedule as of the last business day of each week that includes, with respect to the fund: (A) The name of the money market fund; (B) the fund's SEC file number; (C) the net asset value per share used to effect shareholder transactions; (D) the most recent market-based net asset value (including the value of any capital support agreement); (E) the most recent market-based net asset value (excluding the value of any capital support agreement); (F) the date as of which the most recent market-based net asset value was calculated; (G) the total assets of the fund; (H) the total net assets of the fund; and (I) the number of shares outstanding. The portfolio schedule also must include, with respect to each security held: (A) The name of the security; (B) CUSIP number (if any); (C) principal amount; (D) maturity date; (E) final maturity date, if different from the maturity date as determined under rule 2a-7; (F) categorization of the security's status as a ''First Tier Security,'' ''Second Tier Security'' or a security that is no longer an ''Eligible Security'' under rule 2a–7; (G) the most recent market-based price (including the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute; (H) the most recent market-based price (excluding the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute; (I) the amortized cost value of the security; and (J) in the case of a tax-exempt security, whether there is a demand feature.[15]

As was the case under the Guarantee Program, only a money market fund with market-based net asset value per share (''market-based NAV'') below $.9975 must report information under the rule.[16] Such a fund must notify the Commission by electronic mail and provide a portfolio schedule to the Commission promptly, but in no event later than the next business day.[17] Subsequently, the fund must report its portfolio schedule as of the last business day of the week, and submit it no later than the second day of the following week, until the fund's market-based NAV at the end of the week is $.9975 or greater.[18] This information will

[7] Money Market Fund Reform, Investment Company Act Release No. 28807 (June 30, 2009) [74 FR 32688 (July 8, 2009)] (''2009 Proposing Release''). The 2009 Proposing Release includes an extensive discussion of the market developments leading to the Commission's proposals. *See id.* at Section I.

[8] *Id.* (proposing new rule 30b1–6 and Form N–MFP).

[9] *Id.* at Section II.F.2.

[10] *Id.* at text preceding n.81.

[11] *See, e.g.,* American Institute of Certified Public Accountants Comment Letter (Sept. 8, 2009); Bankers Trust Company, N.A. Comment Letter (Aug. 28, 2009); BlackRock Inc. Comment Letter (Sept. 4, 2009). Five commenters who addressed the reporting of portfolio holdings to the Commission did not generally support or oppose the proposal. One commenter expressed strong support for the Commission's efforts and offered specific comments on the proposed reporting of portfolio securities to the Commission. *See* Data Communiqué Comment Letter (Sept. 8, 2009). Two commenters opposed the reporting of portfolio holdings to the Commission. *See* The Dreyfus Corporation Comment Letter (Sept. 8, 2009); Vera B. Lichtenberger Comment Letter (Sept. 3, 2009). *See also* American Benefits Council Comment Letter (Sept. 8, 2009) (expressing general support for the Commission's proposals); AARP Comment Letter (Sept. 8, 2009) (expressing general support for Commission's efforts to step up oversight of money market funds).

[12] *See, e.g.,* Federated Investors, Inc. Comment Letter (Sept. 8, 2009); Fidelity Investments Comment Letter (Aug. 24, 2009); Fifth Third Asset Management, Inc. Comment Letter (Sept. 8, 2009); Investment Company Institute Comment Letter (Sept. 8, 2009).

[13] *See, e.g.,* Investment Company Institute Comment Letter (Sept. 8, 2009); T. Rowe Price Associates, Inc. Comment Letter (Sept. 8, 2009); The Vanguard Group, Inc. Comment Letter (Aug. 19, 2009).

[14] *See, e.g.,* BlackRock Inc. Comment Letter (Sept. 4, 2009); Federated Investors, Inc. Comment Letter (Sept. 8, 2009); T. Rowe Price Associates, Inc. Comment Letter (Sept. 8, 2009).

[15] *See* rule 30b1–6T(b)(3). Some items of information that money market funds report under the Guarantee Program are not included in rule 30b1–6T. These items, such as the identity of the fund's subadviser, are items to which we have access through other means.

[16] Rule 30b1–6T(a). In the Proposing Release, we requested comment on whether we should also require funds to provide us market-based portfolio value information on a nonpublic basis. In addition, we asked for comment on whether a certain price level of NAV (*e.g.,* $.9975) should trigger such disclosure, and how frequently money market funds should be required to provide this information (*e.g.,* weekly or daily). *See* 2009 Proposing Release, *supra* note 7, at text accompanying and following n.253.

[17] Rule 30b1–6T(a)(1).

[18] Rule 30b1–6T(a)(2).

enable us to identify funds that present a greater risk that they will be unable to maintain their primary investment objectives.

The portfolio information would be provided to the Commission as an attachment in Microsoft Excel format.[19] Excel format is the format that money market funds have been required to use for submissions under the Guarantee Program.[20]

B. Nonpublic Nature of Information Reported

The information provided to the Commission may be sent by secure encrypted electronic mail [21] to the address we have established for this purpose.[22] In light of the nature of the information that will be provided to the Commission under rule 30b1–6T and the purposes for which the Commission is requiring the information, we have determined to maintain the confidentiality of the information submitted to the Commission,[23] and the rule states that the information will be nonpublic to the extent permitted by law.[24]

C. Effective Date and Expiration of the Rule

Rule 30b1–6T will be effective as of September 18, 2009, so that the Commission will continue to receive the information that it has received in the past year under the Guarantee Program. The rule, by its terms, will expire on September 17, 2010.[25] Setting a termination date of one year for the rule will necessitate further Commission action no later than the end of that period if the Commission determines to continue the same, or similar, requirements contained in the temporary rule.

III. Request for Comment

The Commission requests comment on interim final temporary rule 30b1–6T. We will carefully consider the comments that we receive and intend to respond to them in a subsequent release. We may revise the rule in a number of ways, including (i) making the rule permanent, (ii) revising the circumstances that trigger a reporting obligation, (iii) revising the information that a fund must report under the rule, and (iv) revising the method of reporting the information to the Commission.

We seek comment generally on all aspects of the temporary rule, including the following:

Expiration. Rule 30b1–6T is a temporary rule and is set to expire on September 17, 2010. Should we remove the expiration provision of the rule and make the rule permanent? Should we extend the expiration date of the rule? If so, for how long? Should we allow the rule to expire?

Timing. The rule requires the submission of portfolio and valuation information to the Commission on a weekly basis. Should funds be required to provide the information more frequently (*e.g.,* daily) or less frequently (*e.g.,* monthly or biweekly)? The information must be provided within two business days after the end of the week, and we understand that funds that have submitted this information under the Guarantee Program have not encountered difficulties meeting the two-day deadline. Has the deadline imposed hardships in the past? Do money market funds anticipate future difficulties in meeting this deadline if they become subject to the reporting requirement? Should the rule allow a longer delay in submitting the information (*e.g.,* three days or five days)? Should it require a shorter delay in submitting the information (*e.g.,* one day)?

Reporting Threshold. The rule requires a money market fund to submit portfolio and valuation information to the Commission if its market-based NAV declines below $.9975. Is this an appropriate threshold to trigger reporting? Should the threshold be lower (*e.g.,* $.9970) or higher (*e.g.,* $.9980 or $.9985)?

Reporting Items. Should we omit any of the disclosure requirements of rule 30b1–6T? If so, what information should be omitted from the proposed requirement, and why? Should we require additional or alternative information, such as the money market fund's client concentration levels, the percentage of the issue held by the fund, or last trade price and trade volume for each security?

Regulatory Alternatives. We request comment on feasible alternatives that would minimize the reporting burdens on money market funds.[26] We also request comment on the utility of the reports to the Commission in relation to the costs to money market funds of providing the reports.[27] In addition, we request comment on whether funds should be permitted to submit a hard copy of their portfolio schedule information to satisfy the initial or weekly reporting requirement.

IV. Other Matters

The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[28] This requirement does not apply, however, if the agency ''for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [29] The APA also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[30] This requirement also does not apply, however, if the agency finds good cause for making the rule effective sooner.[31]

For the reasons discussed in this release, we believe that we have good cause to act immediately to adopt this rule on an interim final temporary basis. We believe it is important for the Commission to continue to receive information from money market funds in certain circumstances so that we can monitor these funds. Adoption of the rule with an immediate effectiveness will minimize any disruption to the normal reporting schedule of money

[19] Rule 30b1–6T(b)(3).

[20] Section 1(q) of the Guarantee Agreement, *supra* note 6.

[21] The reports may be sent through secure encrypted electronic mail by registering for an account at the following URL: *https://web1.zixmail.net/s/login?b=sec.* The Guarantee Program similarly allows for submission of encrypted information by electronic mail.

[22] The address we have established is *mmfweeklyholdings@sec.gov.* A money market fund providing information under rule 30b1–6T should not submit a confidential treatment request to the Commission, but must label its submission to the Commission as non-public.

[23] In the 2009 Proposing Release, we requested comment on whether portfolio holdings information filed with the Commission on proposed Form N–MFP should be submitted in nonpublic reports to the Commission, and we continue to consider comments on that rulemaking. *See* 2009 Proposing Release, *supra* note 7, at paragraph following n.251 and at text accompanying and following n.253.

[24] *See* rule 30b1–6T(c). The Freedom of Information Act (''FOIA'') provides at least two pertinent exemptions under which the Commission has authority to withhold certain information. FOIA Exemption 4 provides an exemption for ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. 552(b)(4). FOIA Exemption 8 provides an exemption for matters that are ''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.'' 5 U.S.C. 552(b)(8).

[25] Rule 30b1–6T(d).

[26] *See* section 30(c)(2)(A) of the Investment Company Act (requiring Commission to consider and seek public comment on feasible alternatives to the required filing of information that minimize reporting burdens on funds).

[27] *See* section 30(c)(2)(B) of the Investment Company Act (requiring Commission to consider and seek public comment on the utility of information, documents and reports to the Commission in relation to the associated costs).

[28] 5 U.S.C. 553(b).

[29] *Id.*

[30] 5 U.S.C. 553(d).

[31] 5 U.S.C. 553(d)(3).

market funds that meet the reporting threshold. Avoiding such disruption should obviate the need for those funds to stop and restart their reporting procedures, and will allow us uninterrupted access to the information in the reports. This information will permit us to identify funds that present a greater risk that they will be unable to maintain their primary investment objectives.

The temporary rule takes effect on September 18, 2009 and will expire on September 17, 2010. For the reasons discussed above, we have acted on an interim final basis. We emphasize that we are requesting comment on the temporary rule. We will carefully consider the comments we receive, and we intend to respond to them in a subsequent release.

We find that there is good cause to have the temporary rule take effect on September 18, 2009, and that notice and public procedure in advance of effectiveness of the rule are impracticable, unnecessary, and contrary to the public interest.

V. Paperwork Reduction Act Analysis

Interim final rule 30b1–6T under the Investment Company Act contains a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[32] The title for the new collection of information is ''Rule 30b1–6T under the Investment Company Act of 1940, Weekly portfolio report for certain money market funds.'' We submitted burden estimates to the Office of Management and Budget (''OMB'') for review and approval in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13. Separately, we submitted the burden estimates to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB has approved the burden estimates related to our adoption of rule 30b1–6T on an emergency basis. Our new rule is designed to improve our ability to oversee money market funds with a greater risk that they will be unable to maintain their primary investment objectives. 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.

Rule 30b1–6T requires a money market fund whose market-based net asset value is less than $.9975 to electronically (i) notify the Commission promptly and submit a portfolio schedule within one business day, and (ii) submit a portfolio schedule within two business days after the end of each week until such time as the fund's market-based net asset value equals or exceeds $.9975. The rule is intended to facilitate our oversight of money market funds. The respondents to rule 30b1–6T are investment companies that are regulated as money market funds under rule 2a–7. Compliance with the rule is mandatory for any money market fund whose market-based NAV is less than $.9975. Responses to the disclosure requirements will be kept confidential.

We estimate, based on past experience under the Guarantee Program, that at any given time 10 money market funds will be required by rule 30b1–6T to provide weekly reports disclosing certain information regarding the fund's portfolio holdings. We estimate that money market funds would require an average of approximately 6 burden hours to compile and electronically submit the initial required portfolio holdings information, and an average of approximately 4 burden hours in subsequent reports.[33] Based on these estimates, we estimate the annual burden will be 210 hours per money market fund that is required to provide the information.[34] Based on an estimate of 10 money market funds submitting information under the rule, we estimate that, in the aggregate, rule 30b1–6T would result in 2100 hours, for all money market funds required to submit portfolio schedules.

VI. Cost Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. We have identified certain costs and benefits of rule 30b1–6T and request comment on all aspects of this cost benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. Where possible, we request that commenters provide empirical data to support any positions advanced.

A. Benefits

We are adopting rule 30b1–6T to enable the Commission staff to continue to have effective oversight of money market funds. The rule would also improve the efficiency and effectiveness of the Commission's oversight by providing useful information about money market funds that report under the rule, and by enabling the staff to manage and analyze money market fund portfolio information more quickly and at a lower cost than is possible without electronic submissions of portfolio schedules.

B. Costs

Rule 30b1–6T will impose some costs on funds. For the purposes of the PRA, we estimated that the rule will result in an increase of 2100 burden hours per year. We estimate that these burden hours will cost a total of $590,100.[35] We do not believe that rule 30b1–6T will impose other significant costs, especially given the nonpublic nature of the reports required under the rule.

In the 2009 Proposing Release, we requested comment on the costs and benefits of requiring money market funds to report certain portfolio holdings information to the Commission.[36] Commenters generally supported the proposed reporting obligation, but some expressed concerns about the costs associated with specific disclosure items, the timing and frequency of the reports (particularly in view of the amount of disclosure required), and the public availability of the reports.[37] We believe that these concerns are not applicable to rule 30b1–6T because the rule's reporting requirement will be triggered only on the relatively rare occasion that a fund's net asset value fell below $.9975. In addition, the reports themselves will require less information and will remain nonpublic.

C. Request for Comment

We request comment on all aspects of this cost-benefit analysis. Commenters should address in particular whether rule 30b1–6T will generate the anticipated benefits or impose any other costs on money market funds or other market participants. We also request

[32] 44 U.S.C. 3501–3521.

[33] We understand that the required information is currently maintained by money market funds pursuant to other regulatory requirements or in the ordinary course of business. Accordingly, for the purposes of our analysis, we do not ascribe any time to gathering the required information.

[34] Because one report is required each week, a fund would submit 52 reports in one year. The first report would require 6 hours and subsequent reports would require 4 hours each. The difference between the hours is due to the fact that funds generally would not incur the additional start-up time applicable to the first report. The annual burden of the reporting requirement would be 210 hours (1 report × 6 hours = 6 hours, 51 reports × 4 hours = 204 hours, and 6 hours + 204 hours = 210 hours).

[35] This estimate is based on the following calculation: 2100 hours × $281/hour (senior database administrator) = $590,100. This hourly wage estimate is from the Securities Industry and Financial Markets Association Report on Management & Professional Salaries Data (Sept. 2008), modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[36] *See* 2009 Proposing Release, *supra* note 7, at Section V.

[37] *See, e.g.,* Committee of Annuity Insurers Comment Letter (Sept. 8, 2009); Data Communiqué Comment Letter (Sept. 8, 2009); The Dreyfus Corporation Comment Letter (Sept. 8, 2009); Fidelity Investments Comment Letter (Aug. 24, 2009).

comment as to any costs or benefits associated with rule 30b1–6T that we may not have considered here, including whether the rule will have a disproportionate effect on any particular types of fund complexes. Commenters are specifically invited to share quantified costs and benefits.

VII. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[38] We requested comment on whether the proposed reporting requirement, if adopted, would promote efficiency, competition, or capital formation. One commenter on the 2009 Proposing Release asserted that the extensive reporting requirements under proposed rule 30b1–6 would have an adverse effect on competition for sub-advised funds.[39] As noted above, however, rule 30b1–6T requires less disclosure than rule 30b1–6, which we are continuing to consider. In addition, although rule 30b1–6T requires more frequent (*i.e.,* weekly) disclosure, it applies to far fewer funds, because only funds whose market-based net asset value is less than $.9975 would be required to submit reports. Thus, we believe that the concerns expressed by the commenter are less applicable to rule 30b1–6T.

Rule 30b1–6T is intended to facilitate oversight of money market funds that present a greater risk that they will be unable to maintain their primary investment objectives. As noted above, the nonpublic reports are designed to improve the efficiency and effectiveness of the Commission's oversight of such money market funds, which may also provide reassurance to investors, which may in turn promote capital formation. We do not believe that the rule will have any effect on competition.

[38] 15 U.S.C. 80a–2(c).

[39] Committee of Annuity Insurers Comment Letter (Sept. 8, 2009) (''Some of these Committee members believe that preparation of Form N–MFP on a monthly basis would place an undue burden on sub-advised underlying money market funds. This is because a number of the information items required by proposed Form N–MFP require information that typically is in the possession of the sub-adviser that actually manages the portfolio.'').

VIII. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980 (''RFA'')[40] requires the Commission to undertake an initial regulatory flexibility analysis of the effect of its rules on small entities unless the Commission certifies that the rules do not have a significant economic impact on a substantial number of small entities.[41] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that Investment Company Act rule 30b1–6T does not have a significant impact on a substantial number of small entities.[42]

Rule 0–10 of the Investment Company Act defines a ''small entity'' for purposes of the Act as an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. Rule 30b1–6T applies only to money market funds, and none of these funds meet the definition of a small entity under the Act.[43]

We solicit comment on the certification. Commenters are asked to describe the nature of any impact on small entities and provide any empirical data.

IX. Statutory Authority

The Commission is adopting new rule 30b1–6T pursuant to authority set forth in Sections 8(b), 30(b), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–29(b), 80a–30(a), and 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule

■ For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

[40] 5 U.S.C. 603(a).

[41] 5 U.S.C. 605(b).

[42] Although the requirements of the RFA do not apply to rules adopted under the APA's ''good cause'' exception, *see* 5 U.S.C. 601(2) (defining ''rule'' and notice requirement under the APA), we have nevertheless provided this certification.

[43] We note that we included a certification under the RFA in the 2009 Proposing Release on the grounds that none of the money market funds met the definition of a small entity under the Act, and we encouraged written comment regarding this certification. *See* 2009 Proposing Release, *supra* note 7, at Section VII. No commenters on that rulemaking have addressed the Regulatory Flexibility Act certification.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

■ 2. Section 270.30b1–6T is added to read as follows:

§ 270.30b1–6T Weekly portfolio report for certain money market funds.

(a) *Notice and portfolio reports.* If the market-based NAV of a money market fund on any business day (''report date'') is less than 99.75 percent of the fund's stable net asset value per share or stable price per share pursuant to § 270.2a–7(c)(1) (''stable NAV''), the fund must, by electronic mail sent to the electronic address *mmfweeklyholdings@sec.gov*:

(1) Notify the Commission that its NAV is less than 99.75 percent of its stable NAV, and provide the Commission with a portfolio schedule as of the report date, promptly but in no event later than the next business day after the report date (unless the fund is currently submitting reports pursuant to this section); and

(2) Provide the Commission a portfolio schedule as of the last business day of each week, no later than the second business day of the following week, until the fund's market-based NAV as of such day is 99.75 percent of its stable NAV or greater.

(b) *Definitions.* For purposes of this section:

(1) *Market-based NAV* means a money market fund's net asset value per share calculated using available market quotations or an appropriate substitute approved by the fund's board of directors as specified in the procedures that the fund has adopted in accordance with § 270.2a–7(c)(7) or, if the fund does not value securities using the amortized cost method, the fund's current net asset value per share calculated in accordance with § 270.2a–4 (without regard to § 270.2a–7).

(2) *Money market fund* means an open-end management investment company or series thereof that is registered under the Investment Company Act and is regulated as a money market fund under § 270.2a–7.

(3) *Portfolio schedule* means a document prepared in Microsoft Excel format that contains the following information:

(i) With respect to each money market fund and class thereof,

(A) Name of the money market fund and class;

(B) SEC file number of the money market fund;

(C) Net asset value per share used to effect shareholder transactions;

(D) Most recent market-based net asset value (including the value of any capital support agreement);

(E) Most recent market-based net asset value (excluding the value of any capital support agreement);

(F) Date as of which the most recent market-based net asset value was calculated;

(G) Total assets of the fund;

(H) Total net assets of the fund; and

(I) Number of shares outstanding; and

(ii) With respect to each security held by the money market fund:

(A) Name of the security;

(B) CUSIP number (if any);

(C) Principal amount;

(D) Maturity date as determined under § 270.2a–7;

(E) Final maturity date, if different from the maturity date as determined under § 270.2a–7;

(F) Categorization of the security's status as a ''First Tier Security,'' ''Second Tier Security'' or a security that is no longer an ''Eligible Security'' under § 270.2a–7;

(G) The most recent market-based price (including the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute;

(H) The most recent market-based price (excluding the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute;

(I) The amortized cost value; and

(J) In the case of a tax-exempt security, whether there is a demand feature, as defined in § 270.2a–7(a)(8).

(c) *Nonpublic information.* Information provided to the Commission pursuant to this section shall be nonpublic to the extent permitted by law.

(d) *Expiration.* This section will expire on September 17, 2010.

By the Commission.

Dated: September 18, 2009

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–22900 Filed 9–18–09; 4:15 pm]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2008–0030]

RIN 0960–AG82

Authorization of Representative Fees

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising our rules to allow representatives, in certain instances, to charge and receive a fee from third-party entities without requiring our authorization. We are also eliminating the requirement that we authorize fees for legal guardians or court-appointed representatives who represent claimants before us if a court has already authorized the fees. We are revising our rules to reflect changes in representatives' business practices and in the ways claimants obtain representation, and to improve the efficiency of our representative fee process.

DATES: This final rule is effective on October 23, 2009.

FOR FURTHER INFORMATION CONTACT: Joann S. Anderson, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–6716. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Explanation of Changes

Authority

We may issue regulations to administer the Social Security Act (Act). 42 U.S.C. 405(a), 902(a)(5), and 1383(d)(1). We also have authority to issue regulations allowing attorneys and non-attorneys to represent claimants before us and to set the maximum fees for those services. 42 U.S.C. 406(a)(1) and 1383(d)(2). Based on this authority, we are revising our current regulations on fees paid to claimant representatives found in part 404 subpart R and part 416 subpart O.

Background

Generally, representatives must obtain our authorization before charging or receiving a fee for representing claimants before us. 20 CFR 404.1720 and 416.1520. We also prohibit representatives from charging or receiving fees that are more than the amount we authorize regardless of whether the fee is charged to, or received from, the claimants or someone else. 20 CFR 404.1720(b)(3) and 416.1520(b)(3). However, if certain criteria are met, we do not need to authorize a fee if a nonprofit organization or a government agency pays the fee out of funds provided or administered by a government entity. Social Security Ruling (SSR) 85–3.

Changes

This final rule allows representatives, in certain cases, to be paid fees for representing claimants before us without requiring our authorization. The primary reason that we set maximum fees is to protect claimants and auxiliary beneficiaries. Nevertheless, when certain third parties are responsible for paying the representative for his or her services, there is no risk that the claimant or auxiliary beneficiaries will be charged an unreasonable fee. Third-party entities, such as insurance companies, often provide representation to claimants and pay the representatives' fees at no cost to the claimants or auxiliary beneficiaries. We do not believe that we need to authorize fee arrangements between representatives and third-party entities if claimants and auxiliary beneficiaries are not responsible for paying fees or expenses directly or indirectly.

Similarly, there is no reason to require legal guardians or court-appointed representatives to obtain our authorization for their fees if a court has already authorized the fees. In our experience, we have found court-authorized fees reasonable. Before it authorizes a fee, a court considers an individual's best interests when it reviews and approves a legal guardian's or representative's accounting. Therefore, when a court authorizes a fee, we do not need to duplicate the court's analysis.

In the notice of proposed rulemaking (NPRM) that we published on August 26, 2008, we stated that we did not need to authorize fees if ''a business entity independent of your representative'' paid the fees. 73 FR 50260. However, we did not define that phrase in the NPRM. For clarity and in response to public comments, we are using only the term ''entity'' and are defining ''entity'' to include ''any business, firm, or other association, including but not limited to partnerships, corporations, for-profit

organizations, and not-for-profit organizations'' in final sections 404.1703 and 416.1503.[1] We also expressly state that we do not need to authorize a fee if an ''entity or a Federal, State, county, or city government agency uses its funds to pay the representative fees and expenses'' and certain other criteria are met. We revised the language in final sections 404.1720(e)(1) and 416.1520(e)(1) to reflect these changes.

We are also clarifying the proposed definition of the phrase ''legal guardian or court-appointed representative'' in final sections 404.1703 and 416.1503. We define the phrase as ''a court-appointed person, committee, or conservator who is lawfully responsible for taking care of and managing the property and rights of an individual who is considered incapable of managing his or her own affairs.''

To ensure that we continue to protect claimants and auxiliary beneficiaries, we will waive the requirement that we review fee arrangements only when the following criteria are met: (1) The fees are paid by an entity or a Federal, State, county, or city government agency; (2) neither the claimant nor any auxiliary beneficiaries are liable for fees or expenses; and, (3) the representative waives the right to charge and collect a fee from the claimant or any auxiliary beneficiary. Final sections 404.1720(e) and 416.1520(e). As previously noted, we do not need to authorize the fee of a legal guardian or court-appointed representative when a court has already authorized the fee. Based on our experience, we believe that these criteria protect claimants and auxiliary beneficiaries from unreasonable representative fees.

This change will allow us to better serve the public by freeing resources for other workloads. It should also give representatives more time to devote to claimants because they will not need to file fee petitions with us in these instances.

We are making minor conforming changes to 20 CFR 404.1720(b)(3) and 416.1520(b)(3). For clarity, we are making nonsubstantive changes to the paragraph headings we proposed in sections 20 CFR 404.1720(e) and 416.1520(e), the language about auxiliary beneficiaries we proposed in 20 CFR 404.1720(e)(1)(i) and (ii) and 416.1520(e)(1)(ii), and the language about court authorization we proposed in 20 CFR 404.1720(e)(2) and 416.1520(e)(2). We are also using the term ''authorize'' instead of ''approve'' in final sections 404.1720(b)(3) and 416.1520(b)(3) for clarity and consistency with our other rules. We are also rescinding SSR 85–3 today in a separate notice in the **Federal Register** because we are codifying the policies from SSR 85–3 into this final rule.

Public Comments

We published an NPRM in the **Federal Register** on August 26, 2008, and we gave the public 60 days to comment. 73 FR 50260. We received five public comments, and we carefully considered all of them. Because some of the comment letters were quite detailed, we have condensed, summarized, and paraphrased them in our responses below.

Comment: Two commenters wanted us to clarify what we meant by ''a business entity independent of your representative'' in proposed 20 CFR 404.1720(e) and 416.1520(e).

Response: We agree with these commenters that the proposed term was unclear, and we made two changes to the final rule. First, we now state that we do not need to authorize a fee if ''[a]n entity or a Federal, State, county, or city government agency pays from its funds the representative fees and expenses'' and certain other conditions apply. Final sections 404.1720(e)(1) and 416.1520(e)(1). Second, we added a definition for ''entity'' to final sections 404.1703 and 416.1503. As noted earlier, we used the same definition in our proposed rules on ''Revisions to Rules on Representation of Parties.'' 73 FR 51963.

Comment: Some of the commenters asserted that representatives who are associated with an entity would have an inherent conflict of interest. They expressed concern that a representative would be incapable of advising and advocating for a claimant in certain situations when the advice would be against the interest of the entity paying the representative's fee. One commenter asserted that we should not rely upon entities to protect claimants' interests because of ''multiple'' lawsuits against long-term disability insurance carriers for bad faith or lack of compliance with their standards of conduct.

Response: For many years, entities have employed or contracted with representatives to represent claimants before us. We have no evidence that these kinds of representatives advocate for their clients less effectively than other representatives, and we do not expect these representatives to act differently in the future. We hold all representatives to the same rules of conduct and standards of responsibility regardless of who pays their fees. For example, our current rules already require that representatives acting on behalf of a party faithfully execute their duties as agents and fiduciaries of that party. 20 CFR 404.1740(a) and 416.1540(a). Our current rules also state that ''[a] representative shall not knowingly charge, collect or retain, or make any arrangement to charge, collect or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation.'' 20 CFR 404.1740(c)(2) and 416.1540(c)(2). We will continue to expect representatives to adhere to our rules of conduct and standards of responsibility when they represent claimants before us, and we will continue to take appropriate action when they do not.

Moreover, we proposed additional changes to strengthen our rules of conduct and standards of responsibility for representatives in our proposed rules on ''Revisions to Rules on Representation of Parties.'' We will rely upon our rules to protect claimants' interests. We believe the changes we are making to our regulations will benefit claimants, representatives, and us.

Comment: One commenter noted that language in the preamble of the NPRM was unclear as to whether a third-party could be an individual.

Response: We resolved this issue by using the term ''entities'' and by defining that term to exclude individuals. We will still need to authorize any representative's fee paid by a third-party individual.

We distinguish between fees paid by an entity and those paid by an individual to provide additional safeguards to claimants and auxiliary beneficiaries. We believe that allowing individuals, such as relatives or friends of a claimant, to pay representative fees without our prior authorization would make it easier to circumvent the requirement that the claimant or auxiliary beneficiary not be responsible ''directly or indirectly'' for the payment of the fees. For example, if a claimant believes that we will process his or her disability claim more quickly if we do not need to authorize a representative's fee, the claimant might ask a relative to pay the representative an excessive fee, which the claimant would then repay to the relative after we approve the claim. We must continue to authorize a fee in this type of situation to prevent the possibility that a claimant may be charged an unreasonable fee.

Comment: Some commenters were concerned that our proposed rules would permit claimants to pay fees in certain cases. Two commenters

[1] This definition is identical to the definition of the term ''entity'' that we used in the proposed rules on ''Revisions to Rules on Representation of Parties,'' which we published on September 8, 2008. 73 FR 51963.

expressed concern that our proposed rules would allow representatives or entities, such as long-term disability insurance companies, to execute contracts with claimants that would require claimants to pay certain fees, such as time spent on an unsuccessful claim or for retainer fees. One commenter stated that our proposed rules would allow an entity, such as a long-term disability insurance company, to require that an insured claimant repay benefits that the company paid while the claimant awaited our final decision on his or her application for disability benefits. The other commenter was concerned that an entity could circumvent our proposed rules by defining a ''fee'' paid to a representative as a ''benefit'' that the insured claimant would need to repay if we approved his application for disability benefits.

Response: This final rule prohibits a representative from recovering any fee, whether directly or indirectly, from a claimant or an auxiliary beneficiary for the representative's services in a claim before us without our prior authorization or a court's prior authorization. This prohibition applies regardless of any contractual language between a claimant and an entity. For example, our rules allow a representative to collect a retainer fee for his or her time spent on a claim without our authorization only if the criteria in this final rule are met. If it comes to our attention that a representative is attempting to circumvent our rules, we may investigate the situation and sanction the representative as appropriate.

Comment: One commenter wanted to know how representatives would notify us that we would not need to authorize a representative's fee. The commenter also wanted us to change our current forms that allow representatives to waive charging and receiving fees from claimants. The commenter suggested that we provide an electronic means to allow representatives to waive a fee.

Response: In the proposed rules on ''Revisions to Rules on Representation of Parties'' published on September 8, 2008, we proposed to require that a representative use a form that we prescribe to waive a fee or direct payment of a fee. We are currently considering comments received in response to that NPRM and are reviewing potential changes that we can make to this process. However, we have modified final sections 404.1720(e)(1)(i) and 416.1520(e)(1)(i) to change the word ''form'' to a ''writing in a form and manner that we prescribe'' because we anticipate expanding our electronic process in the future.

Comment: One commenter suggested we not add the words ''fee petition'' in the paragraph headings for 20 CFR 404.1720(b) and 416.1520(b). The commenter asserted that the paragraphs should apply to both fee agreements and fee petitions and that this change limited the scope of the paragraphs.

Response: We agree with this comment and are not changing the paragraph headings in these sections. We proposed several changes about fee petitions in our proposed rules, ''Revisions to Rules on Representation of Parties.'' We will address these specific language changes as part of that rulemaking proceeding.

Comment: One commenter wanted us to amend our proposed definition of ''legal guardian or court-appointed representative'' to incorporate States' definitions of these terms, instead of using the definition of the terms that we proposed.

Response: The definition of ''legal guardian or court-appointed representative'' that we proposed applies only to matters relating to representative fees in part 404 subpart R and part 416 subpart O. 20 CFR 404.1703 and 416.1503. Given the scope of our programs and our need to administer our programs on a uniform national basis, we believe that it is more appropriate to adopt a single definition of the term for purposes of this rule, rather than relying on a definition that may vary on a State-by-State basis. Adopting the commenter's suggestion would make the final rule significantly more difficult to administer.

Comment: One commenter said that we should not rely upon courts to determine the reasonableness of fees charged by legal guardians who are acting as a claimant's representative because judges in some courts are not attorneys and may not have the expertise to make informed decisions about our rules.

Response: We disagree with this comment. In the years since we issued SSR 85–3, we have not found that courts authorize excessive fees for representatives, regardless of whether the judge is an attorney. Courts are mindful of the best interests of a claimant and exercise diligence and due care. Our experience does not support the commenter's concern.

Comment: One commenter suggested that we not adopt this rule because regulation of fees is our method of ensuring that representatives are diligent, competent, and ethical in their representation.

Response: We are not relinquishing our authority or oversight over representatives who practice before us. Our rules of conduct and standards of responsibility for representatives ensure that representatives are diligent, competent, and ethical. Much of the policy that we have codified in this final rule has been in effect for over twenty years. During that time, we have found that representatives are generally principled and competent. We do not expect that this final rule will affect representatives' conduct. As stated above, the necessary rules are in place to allow us to take appropriate action against representatives who violate our rules.

Implementation of This Final Rule

We will apply these new rules to all relevant fee authorization requests that we have not yet authorized as of the effective date, regardless of the date on which representatives filed the requests. We will notify representatives whose requests are affected by this final rule.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866. Therefore, it was reviewed by OMB.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule does not place significant costs on a substantial number of small entities because it will relieve some small entities of the need to obtain our authorization to charge a fee. We anticipate that the cost to small entities will either be minimal, or the result will be some cost savings from increased efficiency. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and, therefore, does not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits;

Old-Age, Survivors, and Disability insurance; Penalties; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Penalties; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: September 16, 2009.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending 20 CFR parts 404 and 416 as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart R—[Amended]

■ 1. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6); sec. 303, Public Law 108–203, 118 Stat. 493.

■ 2. Amend § 404.1703 by adding two definitions in alphabetical order to read as follows:

§ 404.1703 Definitions.

* * * * *

Entity means any business, firm, or other association, including but not limited to partnerships, corporations, for-profit organizations, and not-for-profit organizations.

Legal guardian or court-appointed representative means a court-appointed person, committee, or conservator who is responsible for taking care of and managing the property and rights of an individual who is considered incapable of managing his or her own affairs.

* * * * *

■ 3. Amend § 404.1720 by revising paragraph (b)(3) and by adding paragraph (e) to read as follows:

§ 404.1720 Fee for a representative's services.

* * * * *

(b) * * *

(3) Subject to paragraph (e) of this section, a representative must not charge or receive any fee unless we have authorized it, and a representative must not charge or receive any fee that is more than the amount we authorize.

* * * * *

(e) *When we do not need to authorize a fee.* We do not need to authorize a fee when:

(1) An entity or a Federal, State, county, or city government agency pays from its funds the representative fees and expenses and both of the following conditions apply:

(i) You and your auxiliary beneficiaries, if any, are not liable to pay a fee or any expenses, or any part thereof, directly or indirectly, to the representative or someone else; and

(ii) The representative submits to us a writing in the form and manner that we prescribe waiving the right to charge and collect a fee and any expenses from you and your auxiliary beneficiaries, if any, directly or indirectly, in whole or in part; or

(2) A court authorizes a fee for your representative based on the representative's actions as your legal guardian or a court-appointed representative.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart O—[Amended]

■ 4. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1127 and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–6 and 1383(d)); sec. 303, Public Law 108–203, 118 Stat. 493.

■ 5. Amend § 416.1503 by adding two definitions in alphabetical order to read as follows:

§ 416.1503 Definitions.

* * * * *

Entity means any business, firm, or other association, including but not limited to partnerships, corporations, for-profit organizations, and not-for-profit organizations.

Legal guardian or court-appointed representative means a court-appointed person, committee, or conservator who is responsible for taking care of and managing the property and rights of an individual who is considered incapable of managing his or her own affairs.

* * * * *

■ 6. Amend § 416.1520 by revising paragraph (b)(3) and by adding paragraph (e) to read as follows:

§ 416.1520 Fee for a representative's services.

* * * * *

(b) * * *

(3) Subject to paragraph (e) of this section, a representative must not charge or receive any fee unless we have authorized it, and a representative must not charge or receive any fee that is more than the amount we authorize.

* * * * *

(e) *When we do not need to authorize a fee.* We do not need to authorize a fee when:

(1) An entity or a Federal, State, county, or city government agency pays from its funds the representative fees and expenses and both of the following conditions apply:

(i) You are not liable to pay a fee or any expenses, or any part thereof, directly or indirectly, to the representative or someone else; and

(ii) The representative submits to us a writing in the form and manner we prescribe waiving the right to charge and collect a fee and any expenses from you directly or indirectly, in whole or in part; or

(2) A court authorizes a fee for your representative based on the representative's actions as your legal guardian or a court-appointed representative.

[FR Doc. E9–22842 Filed 9–22–09; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0359–200915(c); FRL–8960–1]

Approval and Promulgation of Implementation Plans; Revisions to the Alabama State Implementation Plan; Birmingham and Jackson County; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: On March 26, 2009 (71 FR 13118), EPA published a document approving a revision to the Birmingham and Jackson County portions of the Alabama State Implementation Plan (SIP). This action adds Table (c), which was inadvertently omitted, to Alabama's Identification of Plan section of the Code of Federal Regulations (CFR).

DATES: This action is effective September 23, 2009.

ADDRESSES: Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Amanetta Somerville, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Somerville's telephone number is 404–562–9025. She can also be reached via electronic mail at *Somerville.amanetta@epa.gov*.

SUPPLEMENTARY INFORMATION: This action adds Table (c) for a regulation that appears in Alabama's Identification of Plan section at 40 CFR 52.50(c). The regulation, Alabama Chapter 335–3–17–.01 ''Transportation Conformity,'' was approved by EPA on March 26, 2009 (71 FR 13170). However, EPA inadvertently omitted Table (c) in the regulatory text of the Direct Final Rule. EPA is correcting this inadvertent error by inserting Table (c) into Alabama's Identification of Plan section of the Code of Federal Regulations at 40 CFR 52.50(c).

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action are unnecessary because today's action to identify, in the CFR, the state effective date of Alabama's regulation has no substantive impact on EPA's March 26, 2009, approval of this regulation. The omission of Table (c) in the regulatory text of EPA's final rule published on March 26, 2009, makes no substantive difference to EPA's analysis as set out in that rule because EPA was aware at the time of our approval that the state regulation at issue was effective on May 26, 2009. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction of this omission, or in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the meaning of the regulation at issue or otherwise change EPA's analysis of Alabama's submittal (71 FR 13118). EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule merely corrects an inadvertent error of omission in the regulatory text of a prior rule by adding Table (c) for the Alabama regulation which EPA approved on March 26, 2009. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), 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 CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 23, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 10, 2009.

J. Scott Gordon,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 2. In § 52.50(c) the table is amended by revising the entry for ''Section 335–3–17.01'' to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 335–3–17 Conformity of Federal Actions to State Implementation Plans				
Section 335–3–17.01	Transportation Conformity	04/03/07	09/23/09 [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. E9–22814 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0020; FRL–8431–9]

Thiram; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of thiram, (tetramethyl thiuram disulfide) in or on banana, import. Taminco Incorporated requested a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 23, 2009. Objections and requests for hearings must be received on or before November 23, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0020. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bryant Crowe, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0025; e-mail address: *crowe.bryant@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0020 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before November 23, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not

contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0020, by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of June 27, 2007 (72 FR 35237) (FRL–8133–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP) 6E7144 by Taminco, Inc. (inadvertently listed as Tamico, Inc. in the notice of filing), 1950 Lake Park Drive, Smyrna, GA 30080. The petition requested that 40 CFR 180.132 be amended by establishing an import tolerance for residues of the fungicide thiram, (tetramethyl thiuram disulfide), in or on banana, whole at 0.5 parts per million (ppm); and banana, pulp at 0.3 ppm. The notice referenced a summary of the petition prepared by Taminco, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined an increase in the tolerance for banana, whole at 0.80 ppm, formerly proposed at 0.5 ppm; and the removal of banana, pulp, formerly proposed at 0.3 ppm. The Agency has also identified the correct commodity expression for banana, whole as banana. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of thiram in or on banana at 0.80 ppm. EPA's assessment of exposures and risks associated with establishing this tolerance follows.

A. Toxicological Profile

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

The available toxicological database for thiram suggests that this chemical has a low to moderate acute-toxicity profile. Thiram has been shown to cause neurotoxicity following acute and subchronic exposures. In the acute and subchronic neurotoxicity studies submitted to the Agency, neurotoxicity is characterized as lethargy, reduced and/or tail pinch response, changes in the functional-observation battery (FOB) parameters, increased hyperactivity, changes in motor activity, and increased occurrences of rearing events. No treatment-related changes were observed in brain weights or in the histopathology of the nervous system. In a non-OPPTS Harmonized Test Guidlines study published in the open literature (which means no more than literature that is considered a non-compensable reference/citation which offers scientific data intended for the support of the registrant's action), chronic feeding of thiram to rats caused neurotoxicity, with onset of ataxia in some animals 5–19 months after beginning of treatment. However, no evidence of neurotoxicity was seen following chronic exposures in mice or rats in guideline studies submitted to the Agency. In addition, no adverse effects on the developing fetal nervous system were seen in a developmental neurotoxicity study (DNT). The chronic toxicity profile for thiram indicates that the liver, blood, and urinary system are the target organs for this chemical in mice, rats, and dogs. There is no evidence for increased susceptibility following *in utero* exposures to rats or rabbits and following prenatal and postnatal exposures to rats for two generations. There is low concern for the increased susceptibility seen in the developmental toxicity study since the dose response is well defined and this endpoint is used for assessing the acute dietary risk for the most sensitive population. Thiram is classified as ''not likely to be a human carcinogen'' based on lack of evidence for carcinogenicity in mice or rats. There are no mutagenic/genotoxic concerns with thiram.

Specific information on the studies received and the nature of the adverse effects caused by thiram as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Thiram in/on Imported Bananas. Revised Human-Health Risk Assessment*, pages 39–42 in docket ID number EPA–HQ–OPP–2007–0020.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction

with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*; *http://www.epa.gov/oppfead1/trac/science*; and *http://www.epa.gov/pesticides/trac/science/aggregate.pdf*.

A summary of the toxicological endpoints for thiram used for human risk assessment can be found at *http://www.regulations.gov* in the document *Thiram in/on Imported Bananas. Revised Human-Health Risk Assessment*, pages 27–28 in docket ID number EPA–HQ–OPP–2007–0020.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to thiram, EPA considered exposure under the petitioned-for tolerances as well as all existing thiram tolerances in 40 CFR 180.132. EPA assessed dietary exposures from thiram in food as follows:

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

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA performed a refined probabilistic acute dietary-exposure assessment using percent crop treated (PCT), distributions of field-trial residue values, and empirical processing factors.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA performed a conservative chronic dietary-exposure assessment performed using 100 PCT, average field-trial residues, and empirical processing factors.

iii. *Cancer*. Thiram is considered as ''Not Likely to be Carcinogenic to Humans'' based on the results (no increase in tumor incidence) in the rat chronic toxicity/carcinogenicity study, and the mouse carcinogenicity study. Thus, an exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

• *Condition a*: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.

• *Condition b*: The exposure estimate does not underestimate exposure for any significant subpopulation group.

• *Condition c*: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

+Caneberries <2.5%; Cherries <2.5%; Cotton <2.5%; Peaches < 2.5%; Prunes <2.5%; Soybeans <2.5%; Pears 5%; Apples 7%; and Strawberries 55%

+ = Crops not known to be listed on active end-use products registrations when BEAD SLUA report was run (data years 2001 to 2007).

In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

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

Because monitoring data are unavailable, estimates of thiram concentrations were made with only mathematical models. The modeling was based on turf application (the highest application rate) for this assessment.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of thiram for acute exposures are estimated to be 47.8 parts per billion (ppb) for surface water and 0.84 ppb for ground water. For chronic, exposures for non-cancer assessments are estimated to be 2.5 ppb for surface water and 0.84 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 0.0478 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 0.0025 ppb was used to assess the contribution to drinking water.

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

Thiram is not available for sale or use by homeowner applicators. However, there is potential residential exposure to thiram from treated golf courses and tees. All thiram turf uses that would conceivably lead to children's exposure on treated turf have been cancelled by the registrant. Therefore, EPA assessed residential exposure and risk only for the following scenario: Post-application (dermal contact) with thiram treated turf assessed during short-term and intermediate-term exposure.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. No quantitative or qualitative sensitivity was seen in a rat developmental toxicity study, three rabbit developmental toxicity study, and two 2–generation reproduction studies in the rat. Quantitative sensitivity was seen in the DNT in rats. In the DNT study, the maternal NOAEL (3.7 milligrams/kilogram/day (mg/kg/day)) is based on decreased body weight, body weight gain, and food consumption, clinical signs of toxicity, and FOB, while the developmental NOAEL (1.4 mg/kg/day) is based on increased locomotor activity seen in postnatal day (PND) 17 females. These data indicate that PND 17 females experienced an adverse effect at a dose level that failed to elicit a response in adult animals. Quantitative susceptibility was also reported in an unacceptable/OPPTS Harmonized Test Guideline prenatal developmental toxicity study in rats. However, this finding was determined to be unreliable due to numerous technical deficiencies in the conduct of the study and because the results of that study were not replicated in a guideline study that was conducted in accordance with the Agency's Good Laboratory Practice (GLP) regulations. There is low concern for the enhanced susceptibility seen in the DNT study since clear NOAELs/LOAELs have been identified for the effects of concern, and the dose-response relationships for the effects of concern are well-characterized.

3. *Conclusion*. The existing data are sufficient for endpoint selection for exposure/risk assessment scenarios and for evaluation of the requirements under FQPA. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for thiram is complete, except for the requirements for an immunotoxicity study and cholinesterase activity assessment screening assay. EPA began requiring neurotoxicity testing and functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. Acceptable acute, subchronic and developmental neurotoxicity studies are available for thiram. However, since this requirement went into effect well after the tolerance petition was submitted, immunotoxicity studies are not yet available for thiram. In the absence of specific immunotoxicity studies, EPA evaluated the available thiram toxicity data to determine whether an additional database uncertainty factor (UF) is needed to account for potential immunotoxicity and determined that an additional UF is not required to account for potential immunotoxicity. No evidence of immunotoxicity was found in the thiram database. Due to the lack of evidence of immunotoxicity for thiram, EPA does not believe that conducting immunotoxicity testing will result in a NOAEL that are lower than the current regulatory endpoints and an additional factor for database uncertainties (UFDB) is not needed to account for potential immunotoxicity. Thiram is a dithiocarbamate pesticide. Unlike organophosphates and *N*-methyl carbamates pesticides, dithiocarbamates generally have little or no cholinesterase inhibiting properties and there is no evidence of cholinesterase inhibition in the thiram database. However, subchronic exposure to another dithiocarbamate has been reported to elicit cholinesterase inhibition. Given that this is an isolated finding reported in one study for only one other chemical in the class, the Agency has required the cholinesterase assay for thiram as confirmatory data out of an abundance of caution. EPA believes that the current regulatory endpoints are protective for all potential adverse health effects that this compound may elicit, and no additional factor is needed to account for the lack of the cholinesterase assay.

ii. There is low concern for the enhanced susceptibility seen in the DNT study since clear NOAELs/LOAELs have been identified for the effects of concern, and the dose-response relationships for the effects of concern are well-characterized. No increased sensitivity was seen in the other acceptable guideline studies which examined prenatal and postnatal exposure.

iii. An acceptable/guideline DNT study has been submitted and reviewed by the Agency. The study results have been incorporated into the risk assessment and are the basis for the point of departure for the acute females 13+ dietary assessment and all short-term and intermediate-term (incidental oral, dermal, inhalation, and aggregate) assessments.

iv. There are no residual uncertainties in the hazard or exposure database. The dietary food for the acute exposure

assessment was performed based on the estimated maximum of PCT. The refinements are based on reliable data and will not underestimate the exposure and risk. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to thiram in drinking water. EPA used similarly conservative assumptions in the residential exposure assessment. These assessments will not underestimate the exposure and risks posed by thiram.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to thiram will occupy 96% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to thiram from food and water will utilize 57% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of thiram is not expected.

3. *Short-term and Intermediate-term risks*. Short-term and intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered a background exposure level). Thiram is currently registered for use(s) (i.e., golf courses) that could result in short-term and intermediate-term residential exposures and the Agency has determined that it is appropriate to aggregate chronic exposure to thiram through food and water with short-term and intermediate-term exposures for thiram.

Using the golfer scenario exposure assumption described in this unit for short-term and intermediate-term exposures, EPA has concluded that the total short-term and intermediate-term food, water, and residential exposures results in an aggregate MOE of 580. These MOEs are greater than 100, and therefore does not exceed the Agency's LOC.

4. *Aggregate cancer risk for U.S. population*. The Agency has classified thiram as ''Not Likely to be Carcinogenic to Humans,'' based on the results (no increase in tumor incidence) in the rat chronic toxicity/carcinogenicity study, and the mouse carcinogenicity study. Based on these data, EPA concludes that thiram poses no greater than a negligible cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography (HPLC), Method A7193) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Canadian or Mexican maximum residue limits (MRLs) for thiram. The Codex Alimentarius has established MRLs, for ''total dithiocarbamates, determined and expressed as mg carbon disulfide per kg'' in banana of 2 mg/kg. As U.S. tolerances are established on the individual dithiocarbamates, compatibility is not possible with the proposed tolerance.

C. Revisions to Petitioned-For Tolerances

EPA determined the tolerance for banana, to be established at 0.80 ppm based on the rounding procedure outlined in the *Guidance for Setting Pesticide Tolerances Based on Field Trial Data Standard of Operating Procedures (SOP)*. Also rather than setting tolerances on ''banana, whole'' and ''banana, pulp'' as requested by the petitioner, EPA has set a tolerance on ''banana'' which is the standardized term EPA uses for tolerances on bananas as per Table 1 of OPPTS Harmonized Test Guideline 860.1000.

V. Conclusion

Therefore, tolerances are established for residues of thiram, tetramethylthiuram disulfide, in or on banana at 0.80 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the

various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.132 paragraph (a) is revised to read as follows:

§ 180.132 Thiram; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide thiram (tetramethyl thiuram disulfide) in or on raw agricultural commodities as follows:

Commodity	Parts per million	Expiration/revocation date
Apple	7.0	None
Banana[1]	0.80	3/31/14
Peach	7.0	None
Strawberry	7.0	None

[1] No U.S. registrations as of September 23, 2009.

* * * * *

[FR Doc. E9–22520 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0854; FRL–8429–7]

Meptyldinocap; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes import tolerances for combined residues of meptyldinocap, 2-(1-methylheptyl)-4,6-dinitrophenyl (2*E*)-2-butenoate and 2,4-DNOP, 2,4-dinitro-6-(1-methylheptyl)phenol expressed as meptyldinocap in or on grape. Dow AgroSciences LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 23, 2009. Objections and requests for hearings must be received on or before November 23, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0854. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0854 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before November 23, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0854, by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of April 13, 2009 (74 FR 16866) (FRL–8396–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7294) by Dow AgroSciences LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. The petition requested that 40 CFR part 180 be amended by establishing import tolerances for residues of the fungicide meptyldinocap, as the parent 2,4-dinitro-6-(1-methylheptyl) phenyl crotonate and the 2,4-dinitro-6-(1-methylheptyl) phenol metabolite, in or on grape; grape, juice; and grape, wine at 0.3 parts per million (ppm). That notice referenced a summary of the petition prepared by Dow AgroSciences LLC, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that tolerances are not needed for grape, wine and grape, juice. The reason for these changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for import tolerances for combined residues of meptyldinocap, 2-(1-methylheptyl)-4, 6-dinitrophenyl (2*E*)-2-butenoate and 2,4-DNOP, 2,4-dinitro-6-(1-methylheptyl)phenol expressed as meptyldinocap on grape at 0.20 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

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

Meptyldinocap is one of the six isomers found in the older fungicide dinocap (dinocap is 22% meptyldinocap and 77% remaining five isomers). Based on a comparison of the toxicological databases, EPA has determined that meptyldinocap and dinocap are toxicologically different, with meptyldinocap being less toxic. Unlike dinocap, which was teratogenic in mice and rabbits, meptyldinocap caused no developmental toxicity in any species tested. In addition, a comparison of subchronic studies in the mouse for dinocap with similar studies for meptyldinocap indicated that dinocap caused liver toxicity and death (JMPR 1998), whereas toxicity was absent with meptyldinocap following treatment for 28 days at a higher dose. Finally, the most sensitive endpoint for dinocap was ocular effects in the dog. No ocular effects were evident with meptyldinocap in a subchronic study in dogs which was extended from 90 days to 1 year specifically to determine if ocular effects were elicited.

Meptyldinocap caused no deaths following acute oral (LD_{50} >2,000 milgrams/kilograms body weight (mg/kg/bw)) or dermal (LD_{50} >5,000 (mg/kg bw)) exposures. No abnormal clinical observations were recorded following dermal exposure other than erythema/edema at the dose site at 5,000 mg/kg bw beginning on day 1 and persisting through days 4–9. Meptyldinocap is minimally irritating to the eye and slightly irritating to the skin and exhibited a skin sensitization potential under the conditions of the local lymph node assay. Short-term (90–day)

exposure of rats to meptyldinocap led to decreased body weight, body weight gain, and food consumption in both sexes at the highest dose tested (113 mg/kg bw/day). Dogs treated with low doses of meptyldinocap (approximately 4 mg/kg bw/day) for the same length of time showed evidence of hepatic toxicity, specifically as significantly increased ALT (alanine aminotransferase) and AST (aspartate aminotransferase) levels that were sustained throughout the treatment period. However, unlike the parent mixture dinocap, there was no evidence of ocular toxicity in dogs with meptyldinocap during the 90–day treatment period, or when treatment of these dogs was extended to 1 year. No adverse effects were observed in mice treated with meptyldinocap for 28 days. Meptyldinocap was tested in a number of developmental toxicity studies in several species. Unlike dinocap, which was teratogenic in mice and rabbits, meptyldinocap caused no developmental toxicity in any species tested. Meptyldinocap was negative in two *in vitro* mutagenicity studies, as well as in one *in vivo* and one *in vitro* clastogenicity assay.

Long-term toxicity studies in rodents, including carcinogenicity studies, and studies designed to assess male and female fertility were not performed with meptyldinocap. However, the hazard database for meptyldinocap, in conjunction with the dinocap hazard database, is adequate for the purposes of this action on imported grapes.

Specific information on the studies received and the nature of the adverse effects caused by meptyldinocap as well as the no-observed-adverse-effect-level and the lowest-observed-adverse-effect-level from the toxicity studies can be found at *http://www.regulations.gov* in document *Meptyldinocap (DE-126/Dinocap II): PP#7E7294. Tolerances on Fresh and Processed Imported Grapes. Human-Health Risk Assessment* at pp. 22–35 in docket ID number EPA–HQ–OPP–2008–0854.

B. Toxicological Endpoints

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

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

A summary of the toxicological endpoints for meptyldinocap can be found at *http://www.regulations.gov* in document *Meptyldinocap (DE-126/DinocappII): PP# 7E7294. Tolerances on Fresh and Process Imported Grapes. Human-Health Risk Assessment* at pp. 11 in docket ID number EPA–HQ–OPP–2008–0854.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to meptyldinocap, EPA considered exposure under the petitioned-for tolerances as well as all existing dinocap tolerances in (40 CFR 180.341). EPA assessed dietary exposures from meptyldinocap in food as follows:

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

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

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the (USDA) 1994–1996 and 1998 (CSFII). As to residue levels in food, EPA assumed tolerance level residues and 100 percent crop treated (PCT) for all potential sources of meptyldinocap from the proposed use on imported grapes and meptyldinocap exposure from use of dinocap on imported apples and grapes. Since 22% of technical dinocap is meptyldinocap and since the proportion of meptyldinocap in dinocap residues is unknown, the chronic analysis assumed that 100% of the dinocap residues on imported apples and grapes were meptyldinocap. Based on dinocap processing studies, the default grape juice and wine processing factors were reduced to 1. For raisin, apple juice, and dried apple, default processing factors were retained. Anticipated residue and/or PCT were not used.

iii. *Cancer*. The carcinogenic potential of meptyldinocap has not been tested. However, the parent mixture dinocap was previously classified as ''Group E, Evidence of non-carcinogenicity in humans.'' The Agency concluded that given the lack of developmental, ocular, and genetic toxicities with meptyldinocap, dinocap toxicity represents a ''worst case'' scenario relative to meptyldinocap. Therefore, the Agency concluded an exposure assessment was not necessary.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for meptyldinocap. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. There is no expectation that meptyldinocap residues would occur in surface water or ground water sources of drinking water. Meptyldinocap is proposed for use only on imported grapes, and established tolerances for dinocap are for imported grapes and apples only. The sole exposure route for the U.S. population is via food exposure. There are no registered uses of meptyldinocap or dinocap in the United States.

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

Neither meptyldinocap nor dinocap are registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*.

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

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

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act of 1996 (FQPA) safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There was no evidence of increased susceptibility of offspring following prenatal exposure of mice, rats, or rabbits. In both the rat and rabbit developmental toxicity studies, toxicity to offspring was not observed, whereas maternal toxicity was observed at the highest dose tested in both studies. In the non-guideline developmental toxicity studies in the mouse, meptyldinocap failed to cause either offspring or maternal toxicity in either study. One of these studies also assessed postnatal toxicity to offspring. No evidence of postnatal toxicity was observed. These results contrast with those for dinocap, which was used as a positive control in the study and caused developmental toxicity as well as adverse postnatal effects.

3. *Conclusion*. EPA has determined that an FQPA SF of 3X is necessary to protect the safety of infants and children given that the POD for estimating chronic human risk was chosen from a subchronic study. Use of a 3X SF, in the form of an uncertainty factor for subchronic-to-chronic extrapolation, with the NOAEL of 1.5 mg/kg bw/day from the 90–day toxicity study in dogs yields an effective NOAEL of 0.5 mg/kg bw/day for meptyldinocap. EPA concludes that reliable data support this FQPA SF based upon the following considerations:

i. The adjusted NOAEL for meptyldinocap is virtually identical to the NOAEL used for the (cRfD) for dinocap (0.4 mg/kg bw/day). Use of a larger SF for meptyldinocap would yield a lower point of departure than that for dinocap, which would be inappropriate, given that meptyldinocap is a significantly less toxic chemical than dinocap. Evidence showing the lower toxicity of meptyldinocap include:

Meptyldinocap is one of six isomers contained in dinocap. Toxicological studies have isolated the teratogenic isomer in dinocap, and it is not meptyldinocap.

Meptyldinocap is considered less toxic than dinocap based on the lack of developmental and ocular toxicities with meptyldinocap at approximately 5X the doses contained in dinocap.

A comparison of subchronic studies in the mouse for dinocap with similar studies for meptyldinocap indicated that dinocap caused liver toxicity and death (JMPR 1998), whereas toxicity was absent with meptyldinocap following treatment for 28 days at a higher dose.

Unlike dinocap, there is no evidence of offspring susceptibility with meptyldinocap in any of four developmental toxicity studies across three species tested. Unlike dinocap, there was no evidence of neurotoxicity or neuropathology in any of the submitted studies for meptyldinocap.

Unlike dinocap, there was no effect of treatment on mortality, clinical signs, ophthalmological examinations, or select gross or microscopic pathology in dogs treated for 1 year with meptyldinocap. The dinocap cRfD was based on a chronic study in dogs.

ii. Evidence from the meptyldinocap dog study indicates that extending exposure from subchronic to chronic would not have produced a lower NOAEL. As indicated above, the extension of the meptyldinocap dog study for an additional 9 months did not result in effects on mortality, clinical signs, ophthalmological examinations, or select gross or microscopic pathology as it did with dinocap. Moreover, while levels of serum hepatic enzymes in dogs in the meptyldinocap study were increased significantly over controls throughout the 90–day exposure period, the serum hepatic enzyme levels did not become more severe over time.

iii. Although EPA does not have toxicology studies conducted with meptyldinocap to fulfill all data requirements, EPA concludes that between the dinocap and meptyldinocap studies it has a complete database. The dinocap database was incomplete due to a lack of a developmental neurotoxicity study but such a study is not needed for meptyldinocap because there was no evidence of neurotoxicity or neuropathology in any of the submitted studies for meptyldinocap. These results contrast with those of dinocap in which minor neuropathology was noted in dogs treated with dinocap as a positive control for 90 days. EPA began requiring acute and subchronic neurotoxicity testing of all food and non-food use pesticides on December 26, 2007. Since this requirement went into effect after the tolerance petition was submitted, these studies are not yet available for meptyldinocap. In the absence of specific neurotoxicity studies, EPA has evaluated the available toxicity data to determine whether an additional database uncertainty factor is needed to account for potential neurotoxicity. Given the lack of neurotoxicity or neuropathology in any meptyldinocap studies, EPA does not believe that conducting acute or subchronic neurotoxicity testing will result in a NOAEL less than 1.5 mg/kg/day already established for the cRfD for meptyldinocap, and an additional uncertainty factor is not needed to account for the lack of these data. Immunotoxicity testing is also required as a result of changes made to the pesticide data requirements in December of 2007. An immunotoxicity study has not been conducted with meptyldinocap. However, an *in vivo* immunotoxicity study with additional *in vitro* measurements (Smialowicz, et al., 1992) has been conducted with dinocap in mice and published in the open literature. Immune function, cellularity, organ weights, and histopathology were measured over several doses in the study. Immunotoxicity was observed at a thirtyfold higher dose than the effective NOAEL used to calculate the cRfD for meptyldinocap. Because a well conducted immunotoxicity study with dinocap was performed previously, and

since meptyldinocap is considered less toxic than dinocap, the requirement for an immunotoxicity study with meptyldinocap has been satisfied by the literature study with dinocap.

iv. There is no evidence of offspring susceptibility with meptyldinocap in any of four developmental toxicity studies across three species tested.

v. There are no residual uncertainties identified in the exposure database for meptyldinocap. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues as well as a very conservative assumption of what meptyldinocap exposure could occur from use of dinocap. No exposure to meptyldinocap in drinking water or from residential use is expected because neither meptyldinocap or dinocap is registered for use in the United States. The exposure assessment will not underestimate the exposure and risks posed by meptyldinocap.

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to meptyldinocap from food will utilize 35% of the cPAD for (children 1 to 2 years old) the population group receiving the greatest exposure. There are no proposed or existing residential uses of meptyldinocap, and exposure through drinking water is not expected. Therefore, dietary risk represents the aggregate risk and does not exceed the Agency's LOC.

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

Meptyldinocap is not registered for any use patterns that would result in residential exposure and exposure through drinking water is not expected. Therefore, the short-term aggregate risk is the sum of the risk from exposure to meptyldinocap in food which does not exceed the Agency's LOC.

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

Meptyldinocap is not registered for any use patterns that would result in intermediate-term residential exposure and exposure through drinking water is not expected. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to meptyldinocap in food which does not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. Based on structural similarities and the demonstrated lower toxicity of meptyldinocap as compared to dinocap, the cancer classification of Group E—Evidence of non-carcinogenicity in humans for dinocap was extended to meptyldinocap.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no currently established Codex, Canadian, or Mexican maximum residue limits for meptyldinocap on grapes. Therefore, harmonization is not an issue.

C. Revisions to Petitioned-For Tolerances

The Agency is not establishing tolerances on grape juice and wine because dinocap grape processing studies indicated that residues are reduced in juice and wine (0.15X). The Agency believes that due to structural similarities, dinocap and meptydinocap will partition in a similar manner during processing. Therefore, separate grape juice and wine tolerances are unnecessary.

V. Conclusion

Therefore, tolerances are established for combined residues of meptyldinocap, 2-(1-methylheptyl)-4,6-dinitrophenyl (2*E*)-2-butenoate and 2,4-DNOP, 2,4-dinitro-6-(1-methylheptyl)phenol expressed as meptyldinocap in or on grapes at 0.20 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the

relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 9, 2009.

Steven Bradbury,

Acting Director, Office of Pesticides Program.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.648 is added to subpart C to read as follows:

§180.648 Meptyldinocap; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide meptyldinocap, 2-(1-methylheptyl)-4,6-dinitrophenyl (2E)-2-butenoate and 2,4-DNOP, 2,4-dinitro-6-(1-methylheptyl)phenol expressed as meptyldinocap in or on the following commodities:

Commodity	Parts Per Million
Grape	0.20

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E9–22523 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0003; FRL–8436–7]

Halosulfuron-methyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of halosulfuron-methyl and its metabolites and degradates, in or on soybean, seed. Canyon Group, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 23, 2009. Objections and requests for hearings must be received on or before November 23, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0003. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet

under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0003 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before November 23, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0003, by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL–8407–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F7424) by Canyon Group, LLC, c/o Gowan Company, 370 South Main St., Yuma, AZ 85364. The petition requested that 40 CFR 180.479 be amended by establishing a tolerance for residues of the herbicide halosulfuron-methyl, methyl 3-chloro-5-(4,6-dimethoxypyrimidin-2-ylcarbamoylsulfamoyl)-1-methylpyrazole-4-carboxylic acid, in or on soybean at 0.05 parts per million (ppm). That notice referenced a summary of the petition prepared by Canyon Group, LLC, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

EPA has revised the proposed commodity term from ''soybean'' to ''soybean, seed'' to agree with the Agency's Food and Feed Commodity Vocabulary. EPA has also revised the tolerance expressions for the existing plant and livestock commodity tolerances and the new tolerance on soybean, seed. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of halosulfuron-methyl and its metabolites and degradates on soybean, seed at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

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

Halosulfuron-methyl has low acute toxicity via the oral, dermal, and inhalation routes of exposure. It is non-irritating to the skin and eyes and is not a dermal sensitizer. With repeated dosing, the available data show that the dog is the most sensitive mammalian species. In the dog, decreased body weight was seen in the chronic oral toxicity study and decreased body weight gain was observed in females in the subchronic oral toxicity study. In the rat and mouse, there was a non-specific decrease in body weight gain at high dose levels in short-term and long-term oral and dermal studies. Halosulfuron-methyl is classified as ''not likely to be carcinogenic to humans'' based on a lack of evidence for carcinogenicity in mice and rats following long-term dietary administration. Halosulfuron-methyl is negative for mutagenicity in a battery of mutagenicity studies. There is no evidence of immunotoxicity or neurotoxicity in the available studies for halosulfuron-methyl.

There was no quantitative evidence for increased susceptibility of fetuses or offspring following prenatal and/or postnatal exposure to halosulfuron-methyl in the developmental and reproductive toxicity studies. However, there was qualitative evidence for increased susceptibility. In the rat developmental toxicity study, increased fetal and litter incidences of soft tissue (dilation of the lateral ventricles) and skeletal variations, and decreased mean fetal body weight and mean litter size were seen at a dose resulting in less severe maternal effects (increased incidence of clinical observations, reduced body weight gains, reduced food consumption and food efficiency). In the rabbit study, increases in resorptions and post-implantation losses and a decrease in mean litter size were seen in the presence of decreases in body weight and food consumption in maternal animals. Thus, in both species,

the developmental effect was considered to be qualitatively more severe than maternal effects. In the reproduction study in rats, parental effects (decreased body weights, body weight gains, and reduced food consumption during the premating period in both sexes) were comparable in severity to offspring effects (decreased body weight in the F1 pups and marginal decreased body weight in F2 pups).

Specific information on the studies received and the nature of the adverse effects caused by halosulfuron-methyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document, *Halosulfuron-methyl: Human Health Risk Assessment for Proposed Uses on Soybean*, page 36 in docket ID number EPA–HQ–OPP–2009–0003.

B. Toxicological Endpoints

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

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

A summary of the toxicological endpoints for halosulfuron-methyl used for human risk assessment can be found at *http://www.regulations.gov* in the document, *Halosulfuron-methyl: Human Health Risk Assessment for Proposed Uses on Soybean*, page 13 in docket ID number EPA–HQ–OPP–2009–0003.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to halosulfuron-methyl, EPA considered exposure under the petitioned-for tolerance as well as all existing halosulfuron-methyl tolerances in 40 CFR 180.479. EPA assessed dietary exposures from halosulfuron-methyl in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. Such effects (decreased mean litter size, increased number of resorptions and increased postimplantation loss, assumed to occur after a single exposure) were identified for the population subgroup females 13 to 49 years old. No such effects were identified for the general population, including infants and children.

In estimating acute dietary exposure of females 13 to 49 years old, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 Nationwide Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues and 100 percent crop treated (PCT) for all existing and new uses of halosulfuron-methyl.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance-level residues and 100 PCT for all existing and new uses of halosulfuron-methyl.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA classified halosulfuron-methyl as ''not likely to be carcinogenic to humans.'' Therefore, an exposure assessment to evaluate cancer risk is unnecessary for this chemical.

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

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

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of halosulfuron-methyl for acute exposures are estimated to be 8.3 parts per billion (ppb) for surface water and 0.065 ppb for ground water. The EDWCs for chronic exposures for non-cancer assessments are estimated to be 1.7 ppb for surface water and 0.065 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute and chronic dietary risk assessment, the water concentration value of 59.2 ppb was used to assess the contribution from drinking water. This value is substantially higher than the modeled EDWCs for acute and chronic exposures (8.3 ppb and 1.7 ppb, respectively) and was derived from preliminary modeling using a different model (a Tier one rice model). This model overestimates levels that would occur in drinking water, because it does not consider the degradation of the pesticide or the dilution of the pesticide as it is transported away from the rice field into the drinking water source. The Agency has concluded that the EDWCs derived using the FIRST model and based on the crop scenarios corn and sugarcane provide a more reasonable high end estimate of expected levels in surface water used for drinking water. However, since acute and chronic exposure estimates using the higher value are below EPA's LOC, EPA did not revise the dietary exposure assessment to incorporate the lower EDWCs.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in

this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Halosulfuron-methyl is currently registered for the following uses that could result in residential exposures: Residential turfgrass and ornamentals. EPA assessed residential exposure using the following assumptions: Residential handlers may receive short-term dermal and inhalation exposure to halosulfuron-methyl when mixing, loading and applying halosulfuron-methyl products. Adults and children may be exposed to halosulfuron-methyl residues through dermal contact with turf during post-application activities. In addition, toddlers may receive short-term and intermediate-term oral exposure from incidental ingestion during post-application activities. EPA assessed short-term dermal and inhalation exposure of residential handlers and the following post-application exposure scenarios:

i. Adult and toddler post-application dermal exposure

ii. Toddlers' incidental ingestion of pesticide residues on lawns from hand-to-mouth transfer.

iii. Toddlers' object-to-mouth transfer from mouthing of pesticide-treated turfgrass.

iv. Toddlers' incidental ingestion of soil from pesticide-treated residential areas.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicity database for halosulfuron-methyl includes rat and rabbit developmental toxicity studies and a 2-generation reproduction toxicity study in rats. As discussed in Unit III.A., there was qualitative evidence of increased susceptibility of fetuses in the rat and rabbit developmental studies. Fetal effects (increased incidences of soft tissue and skeletal variations, decreased mean fetal body weight and mean litter size in the rat study; increases in resorptions and post-implantation losses and a decrease in mean litter size in the rabbit study) occurred at doses resulting in less severe maternal toxicity (increased incidence of clinical observations, reduced body weight gains, reduced food consumption and food efficiency in the rat study; decreases in body weight and food consumption in the rabbit study). The degree of concern for these effects is low, and there are no residual uncertainties for prenatal toxicity in rats and rabbits for the following reasons. In both studies, there are clear NOAELs/LOAELs for developmental and maternal toxicities; developmental effects were seen in the presence of maternal toxicity; and effects were seen only at the high dose. Additionally, in rats, developmental effects were seen at a dose which is approaching the limit-dose.

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

i. The toxicity database for halosulfuron-methyl is adequate to assess prenatal and postnatal toxicity. In accordance with 40 CFR part 158 Toxicology Data requirements, an immunotoxicity study (870.7800) is required for halosulfuron-methyl. In the absence of specific immunotoxicity studies, EPA has evaluated the available halosulfuron-methyl toxicity data to determine whether an additional uncertainty factor is needed to account for potential immunotoxicity. The toxicology database for halosulfuron-methyl does not show any evidence of biologically relevant effects on the immune system following exposure to this chemical. The overall weight-of-evidence suggests that this chemical does not directly target the immune system. Based on these considerations, EPA does not believe that conducting immunotoxicity testing will result in a point of departure lower than those already selected for halosulfuron-methyl risk assessment, and an additional database uncertainty factor is not needed to account for the lack of this study.

ii. There is no indication that halosulfuron-methyl is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. Although there is evidence of increased qualitative susceptibility in *in utero* rats and rabbits in the prenatal developmental studies, the degree of concern for developmental effects is low, and EPA did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of halosulfuron-methyl.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to halosulfuron-methyl in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by halosulfuron-methyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of

additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to halosulfuron-methyl will occupy <1% of the aPAD for females 13 to 49 years old, the only population group for which acute exposure is of toxicological concern.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to halosulfuron-methyl from food and water will utilize 1.6% of the cPAD for the general U.S. population and 4.6% of the cPAD for infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of halosulfuron-methyl is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Halosulfuron-methyl is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to halosulfuron-methyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs ranging from 2,800 (infants less than 1 year old) to 4,800 (females, 13 to 49 years old). The aggregate MOEs for adults include short-term dermal and inhalation exposures for residential handlers and post-application dermal exposures from activities on turfgrass previously treated with halosulfuron-methyl. The aggregate MOEs for children's subgroups include short-term post-application dermal and incidental oral exposures from activities on halosulfuron-methyl-treated turfgrass.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Halosulfuron-methyl is currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure to halosulfuron-methyl through food and water with intermediate-term exposures for halosulfuron-methyl.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs ranging from 500 (U.S. population, females 13 to 49 years old, and adults 50 years and older) to 700 (infants less than 1 year old). The aggregate MOEs for adults include intermediate-term dermal and inhalation exposures for residential handlers and post-application dermal exposures from activities on turfgrass previously treated with halosulfuron-methyl. The inclusion of intermediate-term residential handler exposures in the aggregate MOE is conservative (protective), since intermediate-term exposure of handlers is unlikely. The aggregate MOEs for children's subgroups, including infants, include intermediate-term post-application dermal and incidental oral exposures from activities on halosulfuron-methyl-treated turfgrass.

5. *Aggregate cancer risk for U.S. population*. Based on a lack of evidence for carcinogenicity in mice and rats following long-term dietary administration, halosulfuron-methyl is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography, Monsanto Analytical Method RES-109–97–4) is available to enforce the tolerance. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residues limits (MRLs) for halosulfuron-methyl.

C. Revisions to Petitioned-For Tolerance

EPA has revised the proposed commodity term from ''soybean'' to ''soybean, seed'' to agree with the Agency's Food and Feed Commodity Vocabulary. EPA is also revising the tolerance expression for soybean, seed and the existing plant and livestock commodities to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance expression for plants makes clear that the tolerances cover ''residues of halosulfuron-methyl and its metabolites and degradates'' and that compliance with the tolerance levels will be determined by measuring only halosulfuron-methyl. The revised tolerance expression for livestock commodities makes clear that the tolerances cover residues of halosulfuron-methyl and its metabolites and degradates and that compliance with the tolerance levels will be determined by measuring only those halosulfuron-methyl residues convertible to 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid, expressed as the stoichiometric equivalent of halosulfuron-methyl. EPA is also revising the chemical name for halosulfuron-methyl to conform to the nomenclature recommendations of the Chemical Abstracts Service (CAS): methyl 3-chloro-5-[[[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonyl] amino] sulfonyl]-1-methyl-1*H*-pyrazole-4-carboxylate.

EPA has determined that it is reasonable to make these changes in the tolerance expression final without prior proposal and opportunity for comment, because public comment is not necessary, in that the changes have no substantive effect on the tolerance, but rather are merely intended to clarify the existing tolerance expression.

V. Conclusion

Therefore, a tolerance is established for residues of halosulfuron-methyl and its metabolites and degradates on soybean, seed at 0.05 ppm. Compliance with the tolerance level will be determined by measuring only halosulfuron-methyl, methyl 3-chloro-5-[[[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonyl] amino] sulfonyl]-1-methyl-1*H*-pyrazole-4-carboxylate, in or on the commodity.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 15, 2009.

Rachel C. Holloman,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.479 is amended by revising the introductory text of paragraphs (a)(1) and (a)(2) and alphabetically adding an entry for ''soybean, seed'' to the table in paragraph (a)(2) to read as follows:

§ 180.479 Halosulfuron-methyl; tolerances for residues.

(a)* * * (1) Tolerances are established for residues of the herbicide halosulfuron-methyl, methyl 3-chloro-5-[[[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl] amino] sulfonyl]-1-methyl-1*H*-pyrazole-4-carboxylate, and its metabolites and degradates in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only those halosulfuron-methyl residues convertible to 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid, expressed as the stoichiometric equivalent of halosulfuron-methyl, in or on the commodity.

* * * * *

(2) Tolerances are established for residues of the herbicide halosulfuron-methyl and its metabolites and degradates in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only halosulfuron-methyl, methyl 3-chloro-5-[[[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonyl] amino] sulfonyl]-1-methyl-1*H*-pyrazole-4-carboxylate, in or on the commodity.

Commodity	Parts per million
* * * *	*
Soybean, seed	0.05
* * * *	*

* * * * *

[FR Doc. E9–22915 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0810; FRL–8434–2]

Spinosad; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of spinosad in or on date and pomegranate, and additionally increases established tolerances in or on almond hulls; tree nut, group 14; and pistachio. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 23, 2009. Objections and requests for hearings must be received on or before November 23, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0810. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0810 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before November 23, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0810, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of December 3, 2008 (73 FR 73648) (FRL–8391–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7445) by IR-4, 500 College Rd. East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.495 be amended by establishing tolerances for residues of the insecticide, spinosad, a fermentation product of *Saccharopolyspora spinosa*, consisting of two related active ingredients: Spinosyn A (Factor A; CAS#131929-60-7) or 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione; and Spinosyn D (Factor D; CAS#131929-63-0) or 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-

2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione, in or on pomegranate at 0.3 parts per million (ppm) and date at 0.1 ppm. The petition additionally requested an increase in the existing tolerances for residues of spinosad in or on tree nut, group 14 and pistachio from 0.02 to 0.08 ppm; and almond, hulls from 2.0 to 9.0 ppm. That notice referenced a summary of the petition prepared on behalf of IR-4 by Dow AgroSciences, LLC, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance levels for almond hulls; tree nut, group 14; and pistachio. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of spinosad on almond, hulls at 19 ppm; tree nut, group 14 at 0.10 ppm; pistachio at 0.10 ppm; date at 0.10 ppm; and pomegranate at 0.30 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

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

The existing spinosad data indicate that it possesses low acute toxicity via the oral, dermal, and inhalation routes of exposure. It is not a dermal irritant, dermal sensitizer or eye irritant. No dermal toxicity was seen at the limit dose in a 21–day dermal toxicity study in rabbits.

In mice, rats, and dogs, the target organs appeared to be the liver, kidney, spleen, heart, thyroid, and bone marrow (anemia). In the mouse subchronic toxicity study, increased vacuolation of cells was noted in the lymphoid organs, liver, kidney, stomach, female reproductive tract and epididymis. A similar effect was seen in the heart, lung, pancreas, adrenal cortex, bone marrow, tongue, pituitary gland, and anemia but to a less severe degree. The rat subchronic toxicity study showed evidence of thyroid follicle epithelial cell vacuolation, anemia, multifocal hepatocellular granuloma, cardiomyopathy, and splenic histiocytosis. Microscopic changes in a variety of tissues, anemia and possible liver damage were seen in the dog subchronic toxicity study. Additionally, long-term dietary administration of spinosad resulted in increases in serum alanine aminotransferase, aspartate aminotransferase and triglyceride levels.

Spinosad is classified as ''not likely to be carcinogenic to humans'' based on the lack of evidence for carcinogenicity in mice and rats. No evidence of neurotoxicity was seen in any of the submitted studies, including the acute and subchronic neurotoxicity studies in rats. Spinosad is negative for mutagenicity in various mutagenicity assays.

No developmental effects were seen in the rat and rabbit developmental toxicity studies. In a 2–generation reproduction study in rats, decreased litter size, survival and body weights were observed in the presence of maternal toxicity (deaths) at the highest dose tested (HDT). In addition, male rats exhibited chronic active inflammation of the prostate gland.

Specific information on the studies received and the nature of the adverse effects caused by spinosad as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document ''Spinosad and Spinetoram. Human-Health Risk Assessment for Application of Spinosad to Date and Pomegranate and Spinetoram to Pineapple, Date, Pomegranate, Hops, and Spices (Crop Subgroup 19B, except black pepper)'' at pages 44-48 in docket ID number EPA–HQ–OPP–2008–0810.

B. Toxicological Endpoints

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

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

The Agency has concluded that spinosad should be considered toxicologically identical to another pesticide, spinetoram. This conclusion

is based on the following: (1) Spinetoram and spinosad are large molecules with nearly identical structures; and (2) the toxicological profiles for each are similar (generalized systemic toxicity) with similar doses and endpoints chosen for human health risk assessment. Spinosad and spinetoram should be considered toxicologically identical in the same manner that metabolites are generally considered toxicologically identical to the parent.

Although, as stated above, the doses and endpoints for spinosad and spinetoram are similar, they are not identical due to variations in dosing levels used in the spinetoram and spinosad toxicological studies. EPA compared the spinosad and spinetoram doses and endpoints for each exposure scenario and selected the lower of the two doses for use in human risk assessment.

A summary of the toxicological endpoints for spinosad and spinetoram used for human risk assessment can be found at *http://www.regulations.gov* in the document ''Spinosad and Spinetoram. Human-Health Risk Assessment for Application of Spinosad to Date and Pomegranate and Spinetoram to Pineapple, Date, Pomegranate, Hops, and Spices (Crop Subgroup 19B, except black pepper)'' at pages 8 and 21 in docket ID number EPA–HQ–OPP–2008–0810.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to spinosad and spinetoram, EPA considered exposure under the petitioned-for tolerances as well as all existing spinosad and spinetoram tolerances in 40 CFR 180.495 and 180.635, respectively. EPA assessed dietary exposures from spinosad and spinetoram in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for spinosad and spinetoram; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* Spinosad and spinetoram are considered to be toxicologically equivalent. However, as both products control the same pest species, EPA concluded that it would overstate exposure to assume that residues of both chemicals would appear on the same crop. Therefore, the Agency aggregated exposure from residues of spinosad and spinetoram by assuming that spinosad residues would be present in all commodities, because side-by-side spinosad and spinetoram residue data indicated that spinetoram residues were less than or equal to spinosad residues.

In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Survey of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed 100 percent crop treated (PCT) for all food crop commodities; used average field trial residues for apple, *Brassica* leafy vegetables, citrus, fruiting vegetables, herbs, banana, and strawberry; used tolerance-level residues for the remaining food crop commodities; and used Dietary Exposure Evaluation Model (DEEM) default processing factors for all commodities excluding orange juice, field corn (meal, starch, flour, and oil), grape juice and wheat (flour and germ), where the results from processing studies were used. Residues in livestock were refined through the incorporation of a refined dietary burden (average feed crop residues and combined spinosad and spinetoram PCT estimates) and through the incorporation of average residues from the feeding and dermal magnitude of the residue studies.

iii. *Cancer.* Based on the lack of evidence of carcinogenicity in rats and mice, EPA has classified spinosad as ''not likely to be carcinogenic to humans;'' therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition A: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition B: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition C: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

EPA assumed 100 PCT for all food crop commodities. For certain feed crop commodities, the Agency used combined spinosad and spinetoram projected PCT (PPCT) information to calculate beef and dairy cattle burdens as follows:

Sweet corn forage (39%); leaves of root and tuber vegetables (50%); sorghum grain (5%); and soybean seed meal (5%).

Spinetoram is a recently registered pesticide. EPA estimates an upper bound of PPCT for a new pesticide use by assuming that its actual PCT during the initial 5 years of use on a specific use site will not exceed the recent PCT of the market leader (i.e., the one with the greatest PCT) on that site. EPA calls this the market leader PPCT estimate. In this specific case, the new use to be estimated is the combined use of spinosad together with that of spinetoram, since most new uses of spinetoram will likely replace a previous use of spinosad. An average market leader PCT, based on three recent surveys of pesticide usage, if available, is used for chronic risk assessment. The average market leader PCT may be based on one or two survey years if three are not available. Also, with limited availability of data, the average market leader PCT may be based on a cross-section of state PCTs. Comparisons are only made among pesticides of the same pesticide type (i.e., the leading insecticide on the use site is selected for comparison with the new insecticide), or, for refined estimates, among pesticides targeting the same pests. The market leader PCTs are used to determine the average for the same pesticide or for different pesticides for any year since the same or different pesticides may dominate for each year. Typically, EPA uses U.S. Department of Agriculture/National Agricultural Statistics Service (USDA/NASS) as the

source for raw PCT data because it is publicly available. When a specific use site is not surveyed by USDA/NASS, EPA uses other sources including proprietary data.

An estimated PPCT, based on the average PCT of the market leaders, is appropriate for use in chronic dietary risk assessment. This method of estimating PPCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial 5 years of actual use. Predominant factors that bear on whether the PPCT could be exceeded may include PCTs of similar chemistries, pests controlled by alternatives, pest prevalence in the market and other factors. All relevant information currently available for predominant factors has been considered for the combined use of spinetoram and spinosad on each of these several crops. It is the Agency's opinion that it is unlikely that actual combined PCTs for spinetoram and spinosad will exceed the corresponding estimated PPCTs during the next 5 years.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions B and C, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which spinosad may be applied in a particular area.

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

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of spinosad for surface water are estimated to be 34.5 parts per billion (ppb) for acute exposures, and 10.5 ppb for chronic exposures. For ground water, the estimated drinking water concentration is 1.1 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. As explained above, an acute dietary risk assessment was not conducted for spinosad and spinetoram. For chronic dietary risk assessment, the water concentration of value 10.5 ppb was used to assess the contribution to drinking water.

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

The Agency has concluded that spinosad and spinetoram are toxicologically equivalent; therefore, residential exposure to both spinosad and spinetoram was evaluated. Spinosad is currently registered for homeowner application to turf grass and ornamentals and spinetoram is registered for homeowner applications to gardens, lawns/ornamentals and turf grass.

There is potential for residential handler and postapplication exposures to both spinosad and spinetoram. Since spinosad and spinetoram control the same pests, EPA concluded that these products will not be used in combination with each other and combining the residential exposures is unnecessary. Short-term residential inhalation risks were estimated for adult residential handlers, as well as short-term postapplication incidental oral risks (hand-to-mouth, object-to-mouth and soil ingestion) for toddlers, based on applications to home lawns, home gardens and ornamentals. Dermal exposures were not assessed, since no dermal endpoints of concern were identified in the toxicology studies for spinosad and spinetoram.

In addition, a registered fruit fly bait application scenario permits application to non-crop vegetation, which may result in residential exposures to spinosad. Based on the application rates, EPA concluded that residential exposure resulting from this scenario would be insignificant when compared to the residential exposure resulting from the turf/ornamental application scenarios; therefore, a quantitative analysis of residential exposure resulting from the fruit fly bait application scenario is unnecessary and was not performed.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. The following acceptable studies are available for both spinosad and spinoteram: Developmental toxicity studies in rats and rabbits and a 2–generation reproduction study in rats. There is no evidence of increased susceptibility of rat or rabbit fetuses to

in utero exposure to spinosad or spinetoram. In the spinosad and spinetoram rat and rabbit developmental toxicity studies, no developmental toxicity was observed at dose levels that induced maternal toxicity. In the spinosad 2–generation rat reproduction study, maternal and offspring toxicity were equally severe, indicating no evidence of increased susceptibility. In the spinetoram 2-generation rat reproduction study, no adverse effects were observed in the offspring at dose levels that produced parental toxicity. Therefore, there is no evidence of increased susceptibility and there are no concerns or residual uncertainties for prenatal and/or postnatal toxicity.

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

i. The toxicity database for spinosad is complete, except for immunotoxicity testing. Recent changes to 40 CFR part 158 make immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA.

There was some evidence of adverse effects on the organs of the immune system at the LOAEL in three short-term studies with spinosad or spinetoram. In these studies, anemia was observed in multiple species (rats, mice and dogs) with the presence of histiocytic aggregates of macrophages in various organs and tissues (lymph nodes, spleen, thymus, and bone marrow). Aggregation of macrophages was indicative of immune stimulation in response to insults of the chemical exposure and was considered secondary effects of the toxic effect to the hematopoetic system. Therefore, these effects are not considered to be indicative of frank immunotoxicity. In the spinetoram chronic toxicity study in dogs, areteritis and necrosis of the areterial walls of the thymus was seen in one female dog at the HDT. This finding is attributed to the exacerbation of the spontaneous arteritis present in genetically predisposed Beagle dogs (''Beagle Pain Syndrome''), not immunotoxicity. Further, a clear NOAEL was attained in each of these studies, and the observed histopathologies were generally observed in the presence of other organ toxicity. In addition, spinosad and spinetoram do not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic.

Based on the above considerations, EPA does not believe that conducting a special series OPPTS Guideline 870.7800 immunotoxicity study will result in a POD less than the NOAEL of 2.49 miligrams/kilograms/day (mg/kg/day) already set for spinosad and spinetoram. Consequently, an additional database uncertainty factor does not need to be applied.

ii. There is no indication that spinosad and spinetoram are neurotoxic chemicals and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that spinosad and spinetoram result in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on tolerance-level residues or reliable data from field trial studies and 100 PCT for all registered and proposed commodities except certain feed crop commodities. The PPCT estimates used to refine certain feed crop estimates provide conservative, high-end estimates developed using the market leader approach that are unlikely to be exceeded. Conservative ground and surface water modeling estimates were used to assess exposure to spinosad and spinetoram in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by spinosad and spinetoram.

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk*. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of spinosad and spinetoram are not expected; therefore, the chronic aggregate exposure assessment consists of exposures from food and water only. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to spinosad and spinetoram from food and water will utilize 95% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

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

Spinosad and spinetoram are currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to spinosad and spinetoram. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of greater than or equal to 160 for all population subgroups. As the aggregate MOEs are greater than 100 for all population subgroups, including infants and children, short-term aggregate exposure to spinosad and spinetoram is not of concern to EPA.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Spinosad and spinetoram are not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to spinosad and spinetoram through food and water, which has already been

addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential, spinosad and spinetoram were classified as ''not likely to be carcinogenic to humans,'' and are not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Method RES 94025, GRM 94.02 (a high performance liquid chromatography method with ultraviolet absorption detection (HPLC/UV)) has been adequately validated and determined to be acceptable to enforce the tolerance expression in plant commodities. In addition, the following additional methods (which are essentially similar to GRM 94.02) have been submitted for other crop matrices: GRM 95.17 for leafy vegetables; GRM 96.09 for citrus; GRM 96.14 for tree nuts; GRM 95.04 for fruiting vegetables; and GRM 94.02.S1 for cotton gin byproducts. These methods have been forwarded to the Food and Drug Administration (FDA) for inclusion in Pesticide Analytical Methods Volume II (PAM II). These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no Canadian maximum residue limits (MRLs) established for residues of spinosad in or on the crops associated with this review. Codex MRLs exist for spinosad on almond hull (2 ppm) and almond nutmeat (0.01 ppm). These MRLs are based on field trial data which employed a 14–day pre-harvest interval (PHI), while the U.S. almond hull (19 ppm) and tree nut (0.10 ppm) tolerances are based on a 1–day PHI. Since the U.S. and Codex tolerances are based on different application scenarios and since the U.S. tolerances are significantly greater (10x) than those currently established by Codex, harmonization is not possible.

C. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA revised tolerances for certain proposed commodities as follows: almond, hulls from 9.0 ppm to 19 ppm; nut, tree, group 14 from 0.08 ppm to 0.10 ppm; and pistachio from 0.08 ppm to 0.10 ppm. EPA revised the tolerance levels based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data*.

V. Conclusion

Therefore, tolerances are established for residues of spinosad, consisting of two related active ingredients: Spinosyn A (Factor A; CAS#131929-60-7) or 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione; and Spinosyn D (Factor D; CAS#131929-63-0) or 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione, in or on almond, hulls at 19 ppm; nut, tree, group 14 at 0.10 ppm; pistachio at 0.10 ppm; date at 0.10 ppm; and pomegranate at 0.30 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.495 is amended in paragraph (a) by revising the entries in the table for ''Almond, hulls''; ''Nut, tree, group 14'' and ''Pistachio''; and by alphabetically adding entries for ''Date'' and ''Pomegranate'' to the table to read as follows:

180.495 Spinosad; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Almond, hulls	19
* * * *	*
Date	0.10
* * * *	*
Nut, tree, group 14	0.10
* * * *	*
Pistachio	0.10
Pomegranate	0.30
* * * *	*

* * * * *

[FR Doc. E9–22534 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0239; FRL–8438–9]

Metolachlor, S-Metolachlor, Bifenazate, Buprofezin, and 2,4-D; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying, establishing and revoking certain tolerances for the herbicides metolachlor and S-metolachlor and correcting the tolerance for guava (from guave) on bifenazate and buprofezin and 2,4-D on cranberry. The regulatory actions finalized in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under the Federal Food, Drug, and Cosmetic Act (FFDCA), section 408(q).

DATES: This regulation is effective September 23, 2009. Objections and requests for hearings must be received on or before November 23, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0239. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; e-mail address: *smith.jane-scott@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. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. 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–2009–0239 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 23, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0239, by one of the following methods.

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of (June 26, 2009) (74 FR 30487) (FRL–8411–5), EPA issued a proposal to revoke, modify, and establish specific tolerances for residues of the herbicides metolachlor, S-metolachlor, 2,4-D; and the insecticides bifenazate and buprofezin. Also, the proposal of June 26, 2009, provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards.

In this final rule, EPA is revoking, modifying, and establishing specific tolerances for residues of metolachlor, S-metolahclor, 2,4-D, bifenazate, and buprofezin in or on commodities listed in the regulatory text of this document.

EPA is finalizing these tolerance actions in order to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of FFDCA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each Reregistration Eligibility Decision (RED) and Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications, to reflect current use patterns, to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: 1–800–490–9198; fax number: 1–513–489–8695; Internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 1–800–553–6847 or (703) 605–6000; Internet at *http://www.ntis.gov*. Electronic copies of REDs and TREDs are available on the Internet at http://www.regulations.gov and *http://www.epa.gov/pesticides/reregistration/status.htm*.

In this final rule, EPA is revoking certain tolerances and/or tolerance exemptions because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA in the United States. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide active ingredient. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or legally treated domestic commodities.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a FFDCA section 408(f) order requesting additional data or issuance of a FFDCA section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.
2. EPA independently verifies that the tolerance is no longer needed.
3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of June 26, 2009 (74 FR 30487), EPA received no comments during the 60–day public comment period.

B. What is the Agency's Authority for Taking this Action?

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is establishing, modifying, and revoking tolerances to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes, and as follow-up on canceled uses of pesticides. As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under FFDCA. The safety finding determination is found in detail in each post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of

the REDs and TREDs are available as provided in Unit II.A.

EPA has issued a TRED for metolachlor, whose RED was completed prior to FQPA and made a safety finding which reassessed its tolerances according to FFDCA standard, maintaining them when new tolerances were established as noted in Unit II.A. REDs and TREDs contain the Agency's evaluation of the database for these pesticides, including statements regarding additional data on the active ingredients that may be needed to confirm the potential human health and environmental risk assessments associated with current product uses, and REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FFDCA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are made final in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

These actions become effective on the date of publication of this final rule in the **Federal Register**. For this final rule, the tolerances that were revoked because registered uses did not exist concerned uses which have been canceled, in some cases, for many years. The Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances revoked herein have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, 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.

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 that the pesticide was applied to such food.

III. Are There Any International Trade Issues Raised by this Final Action?

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international Maximum Residue Limits (MRLs) established by the Codex Alimentarius Commission, as required by section 408(b)(4) of FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level in a notice published for public comment. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs, and in the Residue Chemistry document which supports the RED and TRED, as mentioned in the proposed rule cited in Unit II.A. Specific tolerance actions in this final rule and how they compare to Codex MRLs (if any) is discussed in Unit II.A.

IV. Statutory and Executive Order Reviews

In this final rule, EPA establishes tolerances under FFDCA section 408(e), and also modifies and revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (e.g., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) 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 due to its lack of significance, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). 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); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December

17, 1997 (62 FR 66020) (FRL–5753–1), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this final rule, the Agency hereby certifies that this final rule will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this final rule). Furthermore, for the pesticide named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present action that would change EPA's previous analysis. 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). Executive Order 13132 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 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 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 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' 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.

V. 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 final rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the ''**Federal Register**.'' This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 16, 2009.

Debra Edwards,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.142 is amended by adding alphabetically the following commodity to the table in paragraph (a) to read as follows:

§ 180.142 2,4-D; tolerances for residues.

(a) General. * * *

Commodity	Parts per million
* * * *	*
Cranberry	0.5
* * * *	*

* * * * *

■ 3. Section 180.368 is amended by revising the table in paragraph (a)(1), (a)(2), (d)(1) and (d)(2) to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Almond, hulls	0.30
Animal feed, nongrass, group 18	1.0
Cattle, fat	0.02
Cattle, kidney	0.20
Cattle, liver	0.05
Cattle, meat	0.02
Cattle, meat byproducts, except kidney and liver	0.04
Corn, field, forage	6.0
Corn, field, grain	0.10
Corn, field, stover	6.0
Corn, sweet, forage	6.0
Corn, sweet, kernel plus cob with husks removed	0.10
Corn, sweet, stover	6.0
Cotton, gin byproducts	4.0
Cotton, undelinted seed	0.10
Dillweed	0.50
Egg	0.02
Goat, fat	0.02
Goat, kidney	0.20
Goat, liver	0.05
Goat, meat	0.02
Goat, meat byproducts, except kidney and liver	0.04
Grass, forage	10
Grass, hay	0.20
Horse, fat	0.02
Horse, kidney	0.20
Horse, liver	0.05
Horse, meat	0.02
Horse, meat byproducts, except kidney and liver	0.04
Milk	0.02
Nut, tree, group 14	0.10
Okra	0.50
Peanut	0.20
Peanut, hay	20
Peanut, meal	0.40
Potato	0.20
Poultry, fat	0.02
Poultry, meat	0.02
Poultry, meat byproducts	0.05
Safflower, seed	0.10
Sheep, fat	0.02
Sheep, kidney	0.20
Sheep, liver	0.05
Sheep, meat	0.02
Sheep, meat byproducts, except kidney and liver	0.04
Sorghum, grain, forage	1.0
Sorghum, grain, grain	0.30
Sorghum, grain, stover	4.0
Soybean, forage	5.0

Commodity	Parts per million
Soybean, hay	8.0
Soybean, seed	0.20
Tomato	0.10
Vegetable, foliage of legume, subgroup 7A, except soybean	15.0
Vegetable, legume, group 6	0.30

(2) * * *

Commodity	Parts per million
Asparagus	0.10
Beet, sugar, molasses	2.0
Beet, sugar, roots	0.5
Beet, sugar, tops	15.0
Brassica, head and stem, subgroup 5A	0.60
Cattle, fat	0.02
Cattle, kidney	0.20
Cattle, liver	0.05
Cattle, meat	0.02
Cattle, meat byproducts, except kidney and liver	0.04
Corn, field, grain	0.10
Corn, field, forage	6.0
Corn, field, stover	6.0
Corn, pop, grain	0.10
Corn, pop, stover	6.0
Corn, sweet, forage	6.0
Corn, sweet, kernel plus cob with husks removed	0.10
Corn, sweet, stover	6.0
Cotton, gin byproducts	4.0
Cotton, undelinted seed	0.10
Egg	0.02
Garlic, bulb	0.10
Grain, aspirated fractions	0.70
Goat, fat	0.02
Goat, kidney	0.20
Goat, liver	0.05
Goat, meat	0.02
Goat, meat byproducts, except kidney and liver	0.04
Grass, forage	10.0
Grass, hay	0.20
Horse, fat	0.02
Horse, kidney	0.20
Horse, liver	0.05
Horse, meat	0.02
Horse, meat byproducts, except kidney and liver	0.04
Leaf petioles, subgroup 4B	0.10
Milk	0.02
Onion, bulb	0.10
Onion, green	2.0
Peanut	0.20
Peanut, hay	20.0
Peanut, meal	0.40
Poultry, fat	0.02
Poultry, meat	0.02
Poultry, meat byproducts	0.05
Pumpkin	0.10
Safflower, seed	0.10
Shallot, bulb	0.10
Sheep, fat	0.02
Sheep, kidney	0.20
Sheep, liver	0.05
Sheep, meat	0.02
Sheep, meat byproducts, except kidney and liver	0.04
Sorghum, grain, forage	1.0
Sorghum, grain, grain	0.3
Sorghum, grain, stover	4.0
Soybean, forage	5.0
Soybean, hay	8.0
Soybean, seed	0.20
Spinach	0.50
Squash, winter	0.10
Sunflower, seed	0.50
Sunflower, meal	1.0
Tomato, paste	0.30
Vegetable, foliage of legume, except soybean, subgroup 7A	15.0
Vegetable, fruiting, group 8, except tabasco pepper	0.10
Vegetable, legume, group 6	0.30
Vegetable, root, except sugar beet, subgroup 1B	0.30
Vegetable, tuberous and corm, subgroup 1C	0.20

* * * * *

(d) *Indirect or inadvertent residues.*

(1) * * *

Commodity	Parts per million
Animal feed, nongrass, group 18	1.0
Barley, grain	0.10
Barley, hay	0.80
Barley, straw	0.80
Buckwheat, grain	0.10
Millet, forage	0.50
Millet, grain	0.10
Millet, hay	0.80
Millet, straw	0.80
Oat, forage	0.50
Oat, grain	0.10
Oat, hay	0.80
Oat, straw	0.80
Rice, grain	0.10
Rye, forage	0.50
Rye, grain	0.10
Rye, straw	0.80
Wheat, forage	0.50
Wheat, grain	0.10
Wheat, hay	0.80
Wheat, straw	0.80

(2) * * *

Commodity	Parts per million
Animal feed, nongrass, group 18	1.0
Barley, grain	0.10
Barley, hay	0.50
Barley, straw	0.50
Buckwheat, grain	0.10
Millet, forage	0.50
Millet, grain	0.10
Millet, hay	0.50
Millet, straw	0.50
Oat, forage	0.50
Oat, grain	0.10
Oat, hay	0.50
Oat, straw	0.50
Rice, grain	0.10
Rye, forage	0.50
Rye, grain	0.10
Rye, straw	0.50
Wheat, forage	0.50
Wheat, grain	0.10
Wheat, hay	0.50
Wheat, straw	0.50

* * * * *

■ 4. Section 180.511 is amended by removing the entry for ''Guave'' and adding the following commodity to the table in paragraph (a) to read as follows:

§ 180.511 Buprofezin; tolerances for residues.

(a) General. * * *

Commodity	Parts per million
* * * *	*
Guava	0.3
* * * *	*

* * * * *

■ 5. Section 180.572 is amended by removing the entry for ''Guave'' and adding the following commodity to the table in paragraph (a) to read as follows:

§ 180.572 Bifenazate; tolerances for residues.

(a) General. * * *

Commodity	Parts per million
* * * *	*
Guava	0.9
* * * *	*

* * * * *

[FR Doc. E9–22919 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2008–0574, EPA–HQ–SFUND–2009–0071, EPA–HQ–SFUND–2009–0074, EPA–HQ–SFUND–2009–0075, EPA–HQ–SFUND–2009–0068, EPA–HQ–SFUND–2009–0069, EPA–HQ–SFUND–2008–0579, EPA–HQ–SFUND–2009–0072, EPA–HQ–SFUND–2009–0064, EPA–HQ–SFUND–2009–0073, EPA–HQ–SFUND–1997–0009; FRL–8961–3]

RIN 2050–AD75

National Priorities List, Final Rule No. 47

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response,

Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 11 sites to the NPL, all to the General Superfund Section.

DATES: *Effective Date:* The effective date for this amendment to the NCP is October 23, 2009.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, *see* section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, *phone:* (703) 603–8852, *e-mail: jeng.terry@epa.gov*, Site Assessment and Remedy Decisions Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204P); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq*.

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and

requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known

boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What Is the Sitewide Ready for Anticipated Use Measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality while ensuring protectiveness for current and future land users. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Availability of Information to the Public

A. May I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through *www.regulations.gov* (*see* table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

Site name	City/county, state	FDMS Docket ID No.
B.F. Goodrich	Rialto, CA	EPA–HQ–SFUND–2008–0574
Lane Street Ground Water Contamination	Elkhart, IN	EPA–HQ–SFUND–2009–0071
Southwest Jefferson County Mining	Jefferson County, MO	EPA–HQ–SFUND–2009–0074
Flat Creek IMM	Superior, MT	EPA–HQ–SFUND–2009–0075
Ore Knob Mine	Ashe County, NC	EPA–HQ–SFUND–2009–0068
GMH Electronics	Roxboro, NC	EPA–HQ–SFUND–2009–0069
Curtis Specialty Papers, Inc.	Milford, NJ	EPA–HQ–SFUND–2008–0579
Little Scioto River	Marion County, OH	EPA–HQ–SFUND–2009–0072
Salford Quarry	Lower Salford Township, PA	EPA–HQ–SFUND–1997–0009
Papelera Puertorriquena, Inc.	Utuado, PR	EPA–HQ–SFUND–2009–0064
Amcast Industrial Corporation	Cedarburg, WI	EPA–HQ–SFUND–2009–0073

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

C. What Documents Are Available for Review at the Regional Dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the

Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes EPA's responses to comments.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW.; EPA West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SMR–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mailcode SUPRERNB, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6463.

Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD–9–1, San Francisco, CA 94105; 415/972–3219.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

E. How May I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (*see* contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following 11 sites to the NPL, all to the General Superfund Section. The sites are presented in the table below:

State	Site name	City/county
CA	B.F. Goodrich	Rialto.
IN	Lane Street Ground Water Contamination	Elkhart.
MO	Southwest Jefferson County Mining	Jefferson County.
MT	Flat Creek IMM	Superior.
NC	Ore Knob Mine	Ashe County.
NC	GMH Electronics	Roxboro.
NJ	Curtis Specialty Papers, Inc.	Milford.
OH	Little Scioto River	Marion County.
PA	Salford Quarry	Lower Salford Township.
PR	Papelera Puertorriquena, Inc.	Utuado.
WI	Amcast Industrial Corporation	Cedarburg.

B. Site Name Change

The Curtis Specialty Papers, Inc. site in Milford, New Jersey, was proposed to the NPL under a different name. The former name was Curtis Papers, Inc. (*see* Proposed Rule at 73 FR 51393, September 3, 2008). EPA believes the new name, Curtis Specialty Papers, Inc., more accurately identifies the site.

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule and responded to all relevant comments.

Eleven sites are being finalized in this rule. EPA received adverse comments related to the HRS scoring of two sites: B.F Goodrich and Curtis Specialty Papers, Inc. The comments, EPA's responses to the comments, and the impacts, if any, on the HRS scores, are presented in support documents responding to the comments for each of the two sites. These support documents are being placed in the Headquarters and regional dockets concurrently with the publication of this rule.

EPA received non-HRS comments for three sites. For two of these sites, Papelera Puertorriquena, Inc. and Amcast Industrial Corporation, commenters requested extensions of the comment period in order to have more review time and discuss voluntary cleanup options (Papelera Puertorriquena, Inc.) and in order to complete due diligence and purchase negotiations (Amcast Industrial Corporation). EPA denied both extension requests. There were no errors in the materials available during the comment period in either docket, and therefore, the commenters had adequate opportunity to comment upon the proposed listing and the underlying record for the listings. Moreover, EPA is finalizing the sites because EPA, Puerto Rico and Wisconsin believe listing is the most effective way of obtaining site cleanup. This action should not interfere with a voluntary cleanup at Papelera Puertorriquena, Inc. EPA notes that potentially responsible parties (PRPs) may undertake the RI/FS and/or remedial design/remedial action stages under supervision and pursuant to appropriate agreements with governmental authorities. PRPs may also take part in the remedy selection process through public participation opportunities. Regarding Amcast Industrial Corporation, where a potential developer requested the extension in order to pursue EPA brownfields grant funding, this arrangement would have been precluded once the site was proposed; sites proposed to the NPL are not

eligible to be considered for brownfields funding. The mayor of Cedarburg commented in support of listing the Amcast site, which EPA is doing through this final rule.

In the case of the third site, Flat Creek IMM, four commenters supported listing but urged EPA to use local workers and implement an Historically Underutilized Business (HUB) zone set aside. EPA anticipates using the local work force at later stages of the Superfund process, but cannot create a HUB zone set aside because this is the responsibility of the Small Business Administration. Another commenter raised several different issues regarding the site. The commenter first provided dates and other site history details that were sometimes inconsistent with the documentation in the HRS record, which EPA based on materials from the Montana Department of State Lands. Regardless of whether the commenter or the State documents are correct, the differences have no impact on the site score since the information presented in the Site History and Description sections of the HRS documentation record was not used to compute the HRS score. The commenter claimed mining activities did not contaminate the ground water or surface drinking water. This has no bearing on the score because neither the ground water pathway nor the surface drinking water pathway was used in the scoring; the site was scored on the soil exposure and surface water environmental and human food chain pathways. The commenter next claimed the levels of lead in two dumptrucks worth of the tailings were less than the levels in the two batteries of the commenter's pickup. In response, although lead was identified as being at the site, it was not used to calculate the site score, and removing it from the record would have no impact on the score. The commenter claimed fish still inhabit Flat Creek. This is consistent with the HRS record, which documents a fishery to be present within Flat Creek. The commenter also stated that most people have no contact with the tailings located along Flat Creek. Even if true, this comment does not affect the HRS site score because the soil exposure pathway scoring for the site considered locations other than the tailings along Flat Creek in computing the HRS score. In conclusion, these comments have no impact on the HRS score or listing decision for the Flat Creek IMM site.

For the six remaining sites being finalized in this rule, EPA received no comments during the comment period: Lane Street Ground Water Contamination; Southwest Jefferson County Mining; Ore Knob Mine; GMH Electronics; Little Scioto River; and Salford Quarry.

All comments that were received by EPA are contained in the Headquarters Docket and are also listed in EPA's electronic public Docket and comment system at *www.regulations.gov.*

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one 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 otherwise 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 recipients thereof; 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.

2. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

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; 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.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a

rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Final Rule?

This final 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. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site listing does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What Is Executive Order 13132

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.''

2. Is Executive Order 13132 Applicable to This Final Rule?

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to States or other levels of government. Thus, the requirements of the Executive Order do not apply to this final rule.

EPA believes, however, that this final rule may be of significant interest to State governments. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA therefore consulted with State officials and/or representatives of State governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this final rule were referred to EPA by States for listing. For all sites in this rule, EPA received letters of support either from the Governor or a State official who was delegated the authority by the Governor to speak on their behalf regarding NPL listing decisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What Is Executive Order 13045?

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.

2. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

Is This Rule Subject to Executive Order 13211?

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

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), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. What Is Executive Order 12898?

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.

2. Does Executive Order 12898 Apply to This Rule?

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, tribal or local governments, this rule will neither increase nor decrease environmental protection.

K. Congressional Review Act

1. Has EPA Submitted This Rule to Congress and the Government Accountability Office?

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, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the Federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on State and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date

of major rules after this report is submitted.

3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (DC Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 14, 2009.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
CA	B.F. Goodrich	Rialto..	
*	*	*	*
IN	Lane Street Ground Water Contamination	Elkhart..	
*	*	*	*
MO	Southwest Jefferson County Mining	Jefferson County..	
*	*	*	*
MT	Flat Creek IMM	Superior..	
*	*	*	*
NC	Ore Knob Mine	Ashe County..	
*	*	*	*
NC	GMH Electronics	Roxboro..	
*	*	*	*
NJ	Curtis Specialty Papers, Inc	Milford..	
*	*	*	*
OH	Little Scioto River	Marion County..	
*	*	*	*
PA	Salford Quarry	Lower Salford Township..	
*	*	*	*
PR	Papelera Puertorriquena, Inc	Utuado..	
*	*	*	*
WI	Amcast Industrial Corporation	Cedarburg.	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be > 28.50).
C = Sites on Construction Completion list.
S = State top priority (HRS score need not be > 28.50)
P = Sites with partial deletion(s).

[FR Doc. E9–22934 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation; Solicitation Provisions and Contract Clauses

CFR Correction

In Title 48 of the Code of Federal Regulations, Chapter 1 (Parts 52 to 99), revised as of October 1, 2008, on page 123, in section 52.219–9, in the clause, move paragraph (d)(2)(vi), which precedes paragraph (d)(2)(v), to follow paragraph (d)(2)(v); remove the second paragraph (d)(2)(vi); and reinstate paragraph (d)(2)(iv) to read as follows:

52.219–9 Small business subcontracting plan.

* * * * *

(d) * * *

(2) * * *

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

* * * * *

[FR Doc. E9–23053 Filed 9–22–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

48 CFR Part 909

Acquisition Regulation; Contractor Qualifications

CFR Correction

In Title 48 of the Code of Federal Regulations, Chapters 7 to 14, revised as of October 1, 2008, on page 300, reinstate section 909.405 to read as follows:

909.405 Effect of listing. (DOE coverage—paragraph (e), (f), (g) and (h))

(e) The Department of Energy may not solicit offers from, award contracts to or consent to subcontract with contractors debarred, suspended or proposed for debarment unless the Deputy Assistant Secretary for Procurement and Assistance Management makes a written determination justifying that there is a compelling reason for such action in accordance with FAR 9.405(a).

(f) DOE may disapprove or not consent to the selection (by a contractor) of an individual to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is on the GSA List.

(g) DOE shall not conduct business with an agent or representative of a contractor if the agent's or representative's name appears on the GSA List.

(h) DOE shall review the GSA List before conducting a preaward survey or soliciting proposals, awarding contracts, renewing or otherwise extending the duration of existing contracts, or approving or consenting to the award, extension, or renewal of subcontracts.

[61 FR 39857, July 31, 1996; 61 FR 41684, Aug. 9, 1996]

[FR Doc. E9–23051 Filed 9–22–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.0812171612–9134–02]

RIN 0648–XR63

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific sardine off the coasts of Washington, Oregon and California. This action is necessary because the directed harvest allocation total for the third seasonal period (September 15–December 31) is projected to be reached by the effective date of the rule. From the effective date of this rule until December 31, 2009, Pacific sardine can only be harvested as part of the live bait fishery or incidental to other fisheries; the incidental harvest of Pacific sardine is limited to 20–percent by weight of all fish per trip. Fishing vessels must be at shore and in the process of offloading at 12:01 am Pacific Daylight Time on date of closure.

DATES: Effective 12:01 am Pacific Daylight Time (PDT) September 23, 2009, through December 31, 2009

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: This document announces that based on the best available information recently obtained from the fishery and information on past effort, the directed fishing harvest allocation for the third allocation period (September 15 - December 31) will be reached and therefore directed fishing for Pacific sardine is being closed until December 31, 2009. Fishing vessels must be at shore and in the process of offloading at the time of closure. From 12:01 am on the date of closure until December 31, 2009, Pacific sardine may be harvested only incidental to other fisheries, with the incidental harvest of Pacific sardine limited to 20–percent by weight of all fish caught during a trip.

NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published in the **Federal Register** establish the harvest guideline (HG) and allowable harvest levels for each Pacific sardine fishing season (January 1 - December 31). If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, only incidental harvest is allowed and, for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking.

Under 50 CFR 660.509 if the total HG or these apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine fishery via appropriate rulemaking and it is to remain closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional Administrator shall publish a notice in the **Federal Register** announcing the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution the live bait portion of the Pacific sardine fishery.

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the July 1–September 14 directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel. Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

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

Dated: September 14, 2009.

Emily H. Menashes,

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

[FR Doc. E9–22910 Filed 9–18–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 0908131233–91275–02]

RIN 0648–XQ14

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; 2009–10 Main Hawaiian Islands Bottomfish Total Allowable Catch

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

ACTION: Final specification.

SUMMARY: NMFS specifies a total allowable catch (TAC) of 254,050 lb (115,235 kg) of Deep 7 bottomfish in the main Hawaiian Islands (MHI) for the 2009–10 fishing year.

DATES: This final specification is effective October 23, 2009.

ADDRESSES: Copies of the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP) and related Environmental Impact Statement are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *www.wpcouncil.org*.

An environmental assessment (EA), was prepared that describes the impact on the human environment that would result from this action. Based on the environmental impact analysis presented in the EA, NMFS prepared a finding of no significant impact (FONSI). Copies of the EA and FONSI are available from *www.regulations.gov*, the Council, or William L. Robinson, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries Division, NMFS PIR, 808–944–2108.

SUPPLEMENTARY INFORMATION: This final specification is also accessible at *www.gpoaccess.gov/fr*.

NMFS specifies a TAC for the 2009–10 fishing year of 254,050 lb (115,235 kg) of Deep 7 bottomfish in the MHI, as recommended by the Council, based on the best available scientific, commercial, and other information, taking into account the associated risk of overfishing.

The MHI Management Subarea refers to the portion of U.S. Exclusive Economic Zone around the Hawaiian Archipelago lying to the east of 161° 20′ W. long. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapu‘upu‘u (*Epinephelus quernus*).

When the TAC is projected to be reached, NMFS will close the non-commercial and commercial Deep 7 bottomfish fisheries until the end of the fishing year (August 31, 2010). During a fishery closure for Deep 7 bottomfish, no person may fish for, possess, or sell any of these fish in the MHI, except as otherwise authorized by law. Specifically, fishing for, and the resultant possession or sale of, Deep 7 bottomfish by vessels legally registered to Mau Zone, Ho omalu Zone, or Pacific Remote Island Areas bottomfish fishing permits, and conducted in compliance with all other laws and regulations, are not affected by the closure. There is no prohibition on fishing for or selling other non-Deep 7 bottomfish species throughout the year.

All other management measures continue to apply in the MHI bottomfish fishery. The MHI bottomfish fishery reopened on September 1, 2009, and will continue until August 31, 2010, unless the fishery is closed prior to August 31 as a result of the TAC being reached.

Additional background information on this final specification may be found in the preamble to the proposed specification published on August 24, 2009 (74 FR 42641), and is not repeated here.

Comments and Responses

On August 24, 2009, NMFS published a proposed specification and request for public comments on the MHI bottomfish TAC (74 FR 42641). The comment period ended on September 8, 2009. NMFS did not receive any public comments.

Classification

The Regional Administrator, NMFS PIR, determined that this final specification is necessary for the conservation and management of the MHI bottomfish fishery, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required, and none was prepared.

This action is exempt from review under Executive Order 12866.

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

Dated: September 17, 2009.

James W. Balsiger,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. E9–22913 Filed 9–22–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 183
Wednesday, September 23, 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

Agricultural Marketing Service

7 CFR Part 970

[Docket No. AO–FV–09–0138; AMS–FV–09–0029; FV09–970–1E]

Leafy Green Vegetables Handled in the United States; Extension of Time for First Session of Hearing on Proposed Marketing Agreement No. 970

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; notice of additional time for public hearing on proposed national marketing agreement for leafy green vegetables.

SUMMARY: This notice announces that the scheduled hearing date for the Monterey, California session of a public hearing to consider a proposed marketing agreement for the handling of leafy green vegetables in the United States may be extended by one day, if deemed necessary by the presiding administrative law judge.

DATES: The Monterey, California session for the public hearing is currently scheduled for September 22 through 24, 2009. This hearing session may be extended by an additional day, September 25, 2009, if deemed necessary. As with the other scheduled sessions, this session would begin at 8:30 a.m. and conclude at 5 p.m., or any other time as determined by the presiding administrative law judge.

ADDRESSES: The hearing location in Monterey is: Hyatt Regency Monterey, 1 Old Golf Course Road, Monterey, California, (831) 372–1234.

FOR FURTHER INFORMATION CONTACT: Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *e-mail: Antoinette.Carter @ams.usda.gov*; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Northwest Marketing Field Office, AMS, USDA, 1220 SW. Third Avenue, Room 385, Portland, OR 97204; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *e-mail: Melissa.Schmaedick @ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding: Notice of Hearing issued August 31, 2009; published September 3, 2009 (74 FR 45565).

Notice is hereby given that the scheduled hearing date for the Monterey, California session of a public hearing to consider a proposed marketing agreement for the handling of leafy green vegetables in the United States may be extended by one day, if deemed necessary by the presiding administrative law judge.

The Department of Agriculture (USDA) previously announced a hearing to consider a proposed marketing agreement for the handling of leafy green produce in the United States. Hearing dates have been scheduled for various locations throughout the United States, including Monterey, California. However, an additional day may be required to receive testimony and evidence in Monterey. This notice announces the addition of September 25, 2009 to the first session, if deemed necessary by the presiding administrative law judge.

Information regarding the hearing and the proposed marketing agreement is contained in the Notice of Hearing, which may be viewed at: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a1c313*.

List of Subjects in 7 CFR Part 970

Marketing agreements, Reporting and recordkeeping requirements, Vegetables.

Authority: U.S.C. 601–674.

Dated: September 18, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–22992 Filed 9–21–09; 11:15 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 4

[Docket No. FDA–2008–D–0409]

Current Good Manufacturing Practice Requirements for Combination Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or agency) proposes to codify the current good manufacturing practice (cGMP) requirements applicable to combination products. This proposed rule is intended to promote the public health by clarifying which cGMP requirements apply when drugs, devices, and biological products are combined to create a combination product. In addition, the proposed rule sets forth a transparent and streamlined regulatory framework for firms to use when demonstrating compliance with cGMP requirements for ''single-entity'' and ''co-packaged'' combination products.

DATES: Submit written or electronic comments on this proposed rule by December 22, 2009. See section IX of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2008–D–0409 (formerly Docket No. 2004D–0431), by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-

mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John Weiner, Office of Combination Products (HFG–3), Food and Drug Administration, 15800 Crabbs Branch Way, suite 200, Rockville, MD 20855, 301–427–1934.

SUPPLEMENTARY INFORMATION:

I. Introduction

As set forth in part 3 (21 CFR Part 3), a combination product is a product comprised of any combination of a drug and a device; a device and a biological product; a biological product and a drug; or a drug, a device, and a biological product.[1] Under § 3.2(e), a combination product includes:

1. A product comprised of two or more regulated components, i.e., drug/device, biologic/device, drug/biologic, or drug/device/biologic, that are physically, chemically, or otherwise combined or mixed and produced as a single entity (single-entity combination products);

2. Two or more separate products packaged together in a single package or as a unit and comprised of drug and device products, device and biological products, or biological and drug products (co-packaged combination products);

3. A drug, device, or biological product packaged separately that according to its investigational plan or proposed labeling is intended for use only with an approved individually specified drug, device, or biological product where both are required to achieve the intended use, indication, or effect and where upon approval of the proposed product the labeling of the approved product would need to be changed, e.g., to reflect a change in intended use, dosage form, strength, route of administration, or significant change in dose; or

4. Any investigational drug, device, or biological product packaged separately that according to its proposed labeling is for use only with another individually specified investigational drug, device, or biological product where both are required to achieve the intended use, indication, or effect.

The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) modified section 503(g) of the act) (21 U.S.C. 353(g)) to require the establishment of an Office (Office of Combination Products (OCP)) within the Office of the Commissioner of FDA. The responsibilities of OCP include ensuring the prompt assignment of combination products to agency components, the timely and effective premarket review of such products, and the consistent and appropriate postmarket regulation of like products subject to the same statutory requirements to the extent permitted by law (21 U.S.C. 353(g)(4)).

Section 501 of the act (21 U.S.C. 351) states circumstances under which drugs and devices (including biological products, which by definition are also drugs or devices, and including human cellular and tissue-based products (HCT/Ps) that are regulated as drugs, devices, and/or biological products) are deemed adulterated.[2] Adulteration includes the failure to manufacture a product in accordance with applicable cGMP requirements, regardless of whether the product appears to meet its final specifications.[3]

The constituent parts of a combination product retain their regulatory status (as a drug or device, for example) even after they are combined. Accordingly, the cGMP requirements that apply to each of the constituent parts continue to apply when they are combined to make combination products. To date, however, the agency has not issued specific regulations clarifying the applicability of the cGMP requirements to combination products. While cGMP regulations are in place that establish requirements for drugs, devices, biological products, and HCT/Ps, there are currently no regulations that clarify and explain the application of these cGMP requirements when these drugs, devices, biological products, and HCT/Ps are constituent parts of a combination product.

FDA believes that the absence of clear cGMP requirements for combination products could result in inconsistent or differing application of the various cGMP requirements applicable to the constituent parts, which could affect product safety and the public health.

In the **Federal Register** of October 4, 2004 (69 FR 59239), the agency announced the availability of a Draft Guidance for Industry and FDA entitled ''Current Good Manufacturing Practice for Combination Products.'' The agency received 15 comments, which were largely supportive of the regulatory approach described in the draft guidance. The agency has carefully reviewed these comments and has addressed many of them in the proposed rule. A common theme that emerged from these comments was the need to develop a clear regulatory framework that takes account of the fact that combination products are made up of drug, device, and biological product constituent parts. At the same time, commenters wanted to ensure that the framework would not demand unnecessary redundancy in the operating systems to meet cGMP requirements (cGMP operating systems).

After careful consideration of the comments, and of how best to ensure that cGMPs for combination products are consistent and appropriate, FDA has determined that rulemaking is warranted. FDA believes that rulemaking will best help ensure the manufacture of safe and effective combination products, by providing a clear and transparent regulatory roadmap for the application of cGMP requirements to these products. The rule is being proposed as part of FDA's ongoing effort to improve the consistency and appropriateness of the regulatory requirements for combination products.

For certain types of combination products, the application of current good manufacturing practice requirements is fairly straightforward. Specifically, the constituent parts of a combination product are each subject only to the cGMP regulations applicable to that type of constituent part (e.g., drug or device) if the combination product consists of constituent parts that are packaged separately and intended for use only with another approved or investigational, individually specified drug, device, or biological product, as defined in

[1] For purposes of part 3 and this proposed rule, a ''biological product'' means a biological product subject to regulation under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262). All biological products regulated under the PHS Act meet the definitions of drug or device in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321).

[2] See also 21 U.S.C. 360j(f)(1).

[3] See, generally, 21 U.S.C. 351(a)(2)(B) and (h).

§ 3.2(e)(3) and (e)(4). This is because these constituent parts, while part of a combination product, are separately manufactured and packaged. Accordingly, they remain separate for purposes of applying the cGMP regulations.

Thus, for example, if a combination product were to include a separately manufactured and packaged drug constituent part, the manufacture of that constituent part would be subject to the cGMP regulations for drugs at parts 210 and 211 (21 CFR parts 210 and 211) (drug cGMPs). Similarly, if a combination product were to include a separately manufactured and packaged device constituent part, the manufacture of that constituent part would be subject to the quality system (QS) regulation for devices at part 820 (21 CFR part 820). Likewise, a drug, device, or biological constituent part of a combination product that is separately packaged for investigational use as defined in § 3.2(e)(4) is subject to the cGMP requirements that apply to either an investigational drug, device, or biological product, respectively. For example, an investigational drug that was labeled for use with a separately marketed device would be subject to the cGMP requirements that apply to investigational drugs under section 501(a)(2)(B) of the act and part 211.

Section 4.3 of the proposed rule would identify the cGMP regulations that apply to the constituent parts of a combination product, regardless of whether the product is a combination product under § 3.2(e)(1), (e)(2), (e)(3), or (e)(4). Since each constituent part of a combination product as defined in § 3.2(e)(3) and (e)(4) is subject only to the cGMP requirements that would otherwise apply to that constituent part, the agency sees no need to elaborate upon the practical application of cGMP requirements for these two types of combination products. The proposed rule would expressly address, however, the practical application of cGMP requirements to single-entity and co-packaged combination products as defined at § 3.2(e)(1) and (e)(2).

The proposed rule recognizes that, in most instances, for single-entity and co-packaged combination products, a cGMP operating system that satisfies the cGMP regulations applicable to one constituent part will also satisfy most of the cGMP requirements applicable to the other constituent part. In particular, the agency believes that compliance with either the drug cGMPs or the QS regulation will satisfy most of the cGMP requirements applicable to either a drug or a device constituent part. The agency has reviewed the drug cGMPs and QS regulation and identified those specific provisions from each that a firm would need to satisfy in addition to complying with the other of these two sets of cGMP regulations.

Accordingly, the proposed rule at § 4.4(b) would offer two options for demonstrating compliance with the cGMP requirements applicable to each of the constituent parts in a co-packaged or single-entity combination product. These options would be either: (1) To demonstrate compliance with the specifics of all cGMP regulations applicable to each of the constituent parts included in the combination product containing, or (2) to demonstrate compliance with the specifics of either the drug cGMPs or the QS regulation, rather than both, when the combination contains both a drug and a device, under certain conditions. These conditions include demonstrating compliance with specified provisions for the other of these two sets of requirements, and with all other cGMP requirements applicable to the constituent parts (i.e., in parts 600 through 680 (21 CFR parts 600 through 680) for biological products or in part 1271 (21 CFR part 1271) for HCT/Ps).

The proposed rule would help ensure that cGMP requirements that apply to single-entity and co-packaged combination products are clear and consistent, regardless of which agency component has lead jurisdiction for the combination product, or which type of application is submitted for marketing authorization. The proposed rule would permit practical streamlining by providing options for demonstrating compliance with cGMP requirements for these types of combination products. This proposed approach would help ensure appropriate implementation of these requirements while avoiding unnecessary redundancy in cGMP operating systems for these products. The proposed rule would also help ensure that the cGMP operating systems for these types of combination products are appropriately tailored both to the specific constituent parts included in the combination product and to the specific manufacturing processes being used.

FDA recognizes that timely, comprehensive guidance and training is important to help ensure consistent and appropriate implementation of any final rule that may issue based upon this proposed rule. FDA intends to issue such guidance to industry on the implementation of the regulatory requirements for use of a streamlined cGMP operating system for single-entity and co-packaged combination products. FDA invites comments on particular areas of guidance that would be most helpful in designing and implementing a cGMP operating system in accordance with the proposed rule.

II. Description of the Proposed Rule

FDA proposes to create 21 CFR part 4, subpart A, to codify the cGMP requirements that apply to combination products.[4]

A. General Principles

A combination product is comprised of constituent parts, i.e., drug(s), device(s), and/or biological product(s) (21 U.S.C. 353(g)(1); see also § 3.2(e)). These drug, device, and/or biological product constituent parts retain their regulatory identity as a drug, device and/or biological product when they are combined to create a combination product. Accordingly, when combined to create a combination product, each of the constituent parts remains subject to its respective cGMP requirements.

Under proposed § 4.3, the cGMP requirements in parts 210 and 211 would apply to combination products that include a drug, and those in part 820 would apply to combination products that include a device. All biological constituent parts of combination products meet the definition for device or drug in the act, and all HCT/Ps included as constituent parts of combination products are regulated as drugs, devices, and/or biological products (see section C below). Accordingly, all constituent parts of a combination product would be subject either to the drug cGMPs or QS regulation. In addition, if a constituent part of a combination product is also a biological product, the cGMP requirements in part 606 for blood and blood components, and among the requirements (standards) for biological products in other sections of parts 600 through 680 would be applicable.[5] Similarly, if a constituent part is also an HCT/P, the current good

[4] As described in the Department of Health and Human Services (DHHS) Unified Agenda, 72 FR 22490 (April 30, 2007), FDA also plans to propose regulations on postmarketing safety reporting for combination products. FDA proposes to codify those requirements in 21 CFR part 4, subpart B.

[5] See §§ 210.1(c), 820.1(a), and 1271.45(a). For the purposes of this proposed rule, FDA uses the term ''current good manufacturing practice requirements'' to include all such requirements found in the standards in parts 600 through 680 that may apply to combination products. See § 211.1(b). FDA notes that many of the requirements in parts 600 through 680 are not considered cGMP requirements and are not covered by this proposed rule. In addition, FDA notes that biological products must comply with all applicable requirements in parts 600 through 680.

tissue practice requirements in part 1271 would be applicable.

B. CGMP Requirements for Single-Entity and Co-Packaged Combination Products

For single-entity and co-packaged combination products, the proposed rule would allow firms to demonstrate compliance with cGMP requirements by implementing and complying with either the drug cGMPs or the QS regulation, rather than both, under certain conditions. These conditions include demonstrating that the cGMP operating system complies with specified provisions from the other of these two sets of regulations. In addition, this operating system would have to be shown to comply with all other cGMP regulations applicable to the constituent parts (i.e., in parts 600 through 680 for biological products or in part 1271 for HCT/Ps).

More specifically, if a single-entity or co-packaged combination product includes both a drug and a device and the cGMP operating system is shown to comply with the drug cGMP regulations at 21 CFR parts 210 and 211, the system would also have to be shown to comply with the following specific provisions of the QS regulation, as described in proposed § 4.4(b)(1):

1. § 820.20. Management responsibility.
2. § 820.30. Design controls.
3. § 820.50. Purchasing controls.
4. § 820.100. Corrective and preventive action.
5. § 820.170. Installation.
6. § 820.200. Servicing.

In this instance, if a firm demonstrates compliance with the drug cGMP regulations at parts 210 and 211 and the specific QS regulation provisions listed above, it would also be considered to be in compliance with all other provisions of the QS regulation. The firm would not have to demonstrate compliance with the other provisions of the QS regulation.

If a single-entity or co-packaged combination product includes both a drug and a device and the cGMP operating system is shown to comply with the QS regulation requirements at part 820, the system would also have to be shown to comply with the following specific provisions of the drug cGMP regulations, as described in proposed § 4.4(b)(2):

1. § 211.84. Testing and approval or rejection of components, drug product containers, and closures.
2. § 211.103. Calculation of yield.
3. § 211.132. Tamper-evident packaging for over-the-counter (OTC) human drug products.
4. § 211.137. Expiration dating.
5. § 211.165. Testing and release for distribution.
6. § 211.166. Stability testing.
7. § 211.167. Special testing requirements.
8. § 211.170. Reserve samples.

In this instance, if a firm demonstrates compliance with the QS regulation at part 820 and the specific drug cGMP regulation provisions listed above, it would also be considered to be in compliance with all other provisions of the drug cGMP regulations. The firm would not have to demonstrate compliance with the other provisions of the drug cGMPs.

Furthermore, if the combination product includes a biological product constituent part, in addition to demonstrating compliance with either the drug cGMPs or the device QS regulation, along with the specified provisions of the other of these two sets of regulations if applicable, the cGMP operating system would also have to be shown to comply with all additional cGMP requirements that apply to that constituent part as a biological product (see parts 600 through 680). Similarly, if the combination product includes an HCT/P constituent part, it would also have to be shown to comply with the requirements of part 1271. For those combination products that contain biological products and/or HCT/Ps, the proposed rule would impose no additional burdens and, in many cases, would offer the option of streamlining related to the drug cGMPs and the device QS regulation.

The applicability of the specific provisions identified in proposed § 4.4(b) would, as is the case with all cGMP regulations, depend upon the characteristics of the constituent part and the type of manufacturing activity performed. For example, if a manufacturer makes an OTC combination product that includes a drug constituent part, it would need to comply with the specific tamper-evident packaging requirements of § 211.132. A manufacturer who makes a prescription combination product would not need to comply with that provision. To take another example, if a manufacturer makes a product that has hardware requiring installation and/or servicing, it would need to comply with the installation and/or servicing provisions at §§ 820.170 and 820.200, respectively. Similarly, the scope, specificity, and complexity of the requirements will vary depending on the type of activity performed. For example, the cGMP requirements for firms that repackage articles into certain ''convenience'' kits or package a drug with a disposable delivery device will generally be less demanding than the more extensive requirements associated with the manufacture of some other combination products, such as drug-coated devices.

The streamlined option provides for the potential to incorporate specific requirements from the drug cGMPs into the framework of a QS operating system, and vice versa. These additional, specific requirements should be incorporated where most appropriate into the operating system.

Both the QS and drug cGMP regulations require that procedures be written to assure that the products being manufactured, processed, and held meet cGMP requirements. Accordingly, the written procedures for a streamlined system would have to assure that the firm could demonstrate compliance with the cGMP requirements specified in the proposed rule.

In addition to reducing duplicative documentation that would otherwise be required if multiple sets of cGMP regulations were implemented independently, this approach to documentation of the procedures would help facilitate cGMP inspections, by setting forth how the cGMP requirements for combination products are being met and how this is being demonstrated in accordance with the streamlined approach.

C. Requirements for a Combination Product That Includes an HCT/P

Questions have been raised by stakeholders concerning the application of cGMP requirements to HCT/Ps that are constituent parts of combination products. The HCT/P regulation at part 1271 distinguishes between HCT/Ps regulated solely under section 361 of the PHS Act (42 U.S.C. 264), and those that are regulated as drugs, devices, and biological products under the PHS Act and/or the act. The HCT/P regulation provides, among other things, that an HCT/P that is combined with another article (other than water, crystalloids, or a sterilizing, preserving, or storage agent) does not meet the criteria for regulation solely under section 361 of the PHS Act, but rather would be regulated under the PHS Act and/or the act as a drug, device, and/or biological product. (See §§ 1271.10 and 1271.20). Thus, by operation of the HCT/P regulation, an HCT/P that is a constituent part of a combination product will be regulated as a drug, device, and/or biological product. Further, because all biological product constituent parts meet the definition of drug or device, all HCT/P constituent parts of a combination product regulated as a biological product also meet the definition of drug or device.

Therefore, if a combination product includes an HCT/P constituent part, in addition to whatever other cGMP requirements may apply due to the other constituent parts of the combination product, these cGMP requirements would apply:

- Part 1271;[6]
- Either the drug cGMPs or the QS regulation; and
- If the HCT/P is regulated as a biological product, whichever biological product cGMP requirements apply, as specified in parts 600 through 680.

As indicated in section II.B of this document, a firm could choose the streamlining option in proposed § 4.4(b), as applicable, with respect to the drug and device cGMP requirements for combination products containing HCT/Ps.

D. What Requirements Apply to the Constituent Parts of a Combination Product Before They Are Combined, or Packaged Together?

FDA recognizes that the manufacture of a single-entity or co-packaged combination product is a complex process. The firm or firms participating in the production process may manufacture, receive, store, or otherwise handle the constituent parts of the combination product at various facilities, including the facility at which the constituent parts are combined to make the single-entity or co-packaged combination product. The fact that many firms and/or facilities may be involved raises questions about whether and when the proposed streamlined approach to cGMP operating systems could be used. Proposed § 4.4(c) would make clear that when manufacturing of a constituent part does not occur at the same facility as another type of constituent part, the operating system must be shown to comply with all of the cGMP regulations applicable to that constituent part. Proposed § 4.4(d) would provide that when two or more types of constituent parts are in the same facility, the streamlined approach may be used. However, proposed § 4.4(d) also clarifies that whenever manufacture of a constituent part occurs at a separate facility from all other types of constituent parts, the manufacture of that part must occur under the regulations applicable to that part.

Following are some examples to illustrate the situations in which the proposed streamlined approach could or could not be used.

Example 1: *Drug and device constituent parts are manufactured at two different facilities. Then a third facility combines the constituent parts into a single-entity or co-packaged combination product.* Before the constituent parts of a single-entity or co-packaged combination product are in the same facility for incorporation into the combination product, the manufacturing processes for the constituent parts at their separate facilities are distinct. Accordingly, under proposed § 4.4(c), each of these separate facilities must maintain a separate cGMP operating system and demonstrate compliance with the cGMP regulations applicable to that type of constituent part (for example, drug cGMPs if the constituent part is a drug). Once the constituent parts are brought to the third facility, the streamlined approach could be used.

Example 2: *The constituent parts are manufactured in the same facility, and are then sent to another facility to be combined into a single-entity or co-packaged combination product.*

The streamlined approach could be used for the manufacture in both facilities. Proposed § 4.4(d) addresses this situation.

Example 3: *Facility 1 manufactures a drug constituent part. Facility 2 manufactures a device constituent part. The drug constituent part is shipped to facility 2. Then both the drug constituent part and the device constituent part are shipped from facility 2 to facility 3. Facility 3 combines the constituent parts into a single-entity or co-packaged combination product.*

In this situation, manufacture of the drug constituent part at facility 1 must be shown to comply with the drug cGMP regulations. Manufacture of the device at facility 2 must be shown to comply with the device QS regulation. Proposed § 4.4(c) would make this clear.

For the drug constituent part while it is at facility 2, the streamlined approach could be used. That is, the QS operating system at facility 2 could be supplemented by the applicable, additional drug cGMP provisions specified in proposed § 4.4(b). Proposed § 4.4(d) addresses this situation. Facility 3 could use the streamlined approach by demonstrating compliance with either the drug cGMPs or the QS regulation as the cGMP operating system, supplemented by the particular provisions from the other (drug or device) regulations specified in proposed § 4.4(b). Proposed § 4.4(d) also addresses this situation.

E. Inspection and Enforcement

For purposes of enforcing the act, section 704 of the act provides that FDA can enter any factory, warehouse, or establishment in which drugs and devices are manufactured, processed, packed, or held, for introduction into interstate commerce or after such introduction, to enter any vehicle being used to transport or hold drugs or devices in interstate commerce, and to inspect such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. This inspection extends to all records and all things bearing on whether the drugs or devices are adulterated.

In the case of combination products, if a firm chooses to use the streamlined approach outlined in the proposed rule at § 4.4(b) by implementing the drug cGMPs supplemented by compliance with the provisions of the QS regulation specified in proposed § 4.4(b)(1), the FDA inspection would focus on compliance with the drug cGMPs and the specified QS provisions. If the firm complies with the drug cGMPs and the specified QS provisions, the firm would be considered to be in compliance with the other provisions of the QS regulation. Likewise, if the operating system satisfies the QS regulation and the drug cGMP provisions proposed at § 4.4(b)(2) are also satisfied, a firm would be considered to be in compliance with all other drug cGMP provisions.

III. Legal Authority

The agency derives its authority to issue the regulations in proposed 21 CFR part 4, subpart A, from 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360b–360f, 360h–360j, 360l, 360hh–360ss, 360aaa–360bbb, 371(a), 372–374, 379e, 381, 383, and 394, Federal Food, Drug, and Cosmetic Act, and 42 U.S.C. 216, 262, 263a, 264, and 271, Public Health Service Act. Most importantly, the provisions at sections 501(a)(2)(B) and 501(h) of the act (21 U.S.C. 351(a)(2)(B) and 351(h)) require drugs and devices to be manufactured in accordance with cGMPs. Section 520(f) of the act (21 U.S.C. 360j(f)) specifically authorizes the issuance of cGMP regulations for devices.

Section 501 of the act (21 U.S.C. 351) states that a drug or device is deemed adulterated if it is not manufactured in accordance with cGMPs. This provision also applies to biological products that are constituent parts of combination products because these products meet the definition of drug or device under section 201 of the act (21 U.S.C. 321). This provision also applies to HCT/Ps that are constituent parts of combination products because the HCT/P regulation

[6] See §§ 210.1(c), 210.2, 211.1(b), 820.1(a), and 1271.1(b)(2).

provides, among other things, that an HCT/P that is combined with another article (other than water, crystalloids, or a sterilizing, preserving, or storage agent) is regulated under the PHS Act and/or the act as a drug, device, and/or biological product (see §§ 1271.10 and 1271.20). In addition, section 351 of the PHS Act (42 U.S.C. 262) authorizes FDA to issue manufacturing standards for biological products. Section 361 of the PHS Act (42 U.S.C. 264) authorizes the issuance of regulations to prevent the introduction, transmission, or spread of communicable diseases.

Under applicable statutory provisions, the following cGMP regulations were previously issued for drugs, devices, and biological products that may be included as constituent parts of combination products:

- Drug cGMP regulations for finished pharmaceuticals or drug products set forth at parts 210 and 211).

Drug products not subject to these regulations (e.g., bulk drugs or active pharmaceutical ingredients) must still meet the current good manufacturing practice general standard required by the statute.

- QS regulation for devices set forth at part 820.
- cGMP regulations specific to certain types of biological products and/or HCT/Ps set forth at parts 600 through 680 and 1271.

There is considerable overlap in the drug cGMPs and QS regulation, and for the most part the overlap is apparent. For example, both establish requirements for management, organization, and personnel; both require documentation and record keeping; and both allow flexibility in their application to the manufacture of a particular product. FDA considers the drug cGMPs and the QS regulation to be similar, and they are meant to achieve the same general goals.

Nevertheless, these two sets of regulations differ somewhat because each is tailored to the characteristics of the types of products for which it was designed. For instance, each set of regulations contains certain specific requirements for various cGMP concepts that are only more generally addressed in the other regulation. For example, the QS regulation has detailed corrective and preventive action (CAPA) requirements (§ 820.100) while CAPA principles are more generally addressed in the cGMP regulation as part of Production Record Review (§ 211.192).

The cGMP requirements specific to each constituent part of a combination product also apply to the combination product itself because, by definition, combination products consist of drugs, devices, and/or biological products. These articles do not lose their discrete regulatory identity when they become constituent parts of a combination product. Therefore, all combination products are subject to at least two sets of cGMP requirements. For example, in the case of a drug-device combination product, the QS regulation in part 820 and the drug cGMP regulations in parts 210 and 211 would apply to the combination product. This proposed rule is intended to clarify the applicability of these requirements to combination products and to provide a streamlined option for practical implementation for co-packaged and single-entity combination products.

Because the drug and device cGMP requirements are so similar, when using this streamlined approach, demonstrating compliance with the requirements of one set of regulations (e.g., drug cGMPs), along with demonstrating compliance with the requirements of the specified provisions from the other set (e.g., QS regulation), would be considered to be demonstrating compliance with all requirements from the other set (e.g., QS regulation).

Although combination products retain the regulatory identities of their constituent parts, the act also recognizes combination products as a category of products that are distinct from products that are solely drugs, devices, or biological products. For example, section 503(g)(4)(A) of the act (21 U.S.C. 353(g)(4)(A)) requires OCP to ''designate'' a product as a combination product as well as to ensure ''consistent and appropriate postmarket regulation of like products subject to the same statutory requirements.'' Further, section 563 of the act, (21 U.S.C. 360bbb–2(a)), governs the ''classification'' of products as ''drug, biological product, device, or a *combination product* subject to section 503(g)'' (emphasis added). In this respect, the act identifies a combination product as a distinct type of product that could be subject to specialized regulatory controls.

Under the preceding authorities and section 701(a) of the act (21 U.S.C. 371), which authorizes FDA to issue regulations for the efficient enforcement of the act, FDA has the authority to issue regulations clarifying the applicability of cGMP requirements to combination products. The agency is also authorized under these authorities to issue regulations specifying how compliance with cGMP requirements for combination products may be demonstrated.

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(a), 25.30(h), 25.30(j), 25.31(a), (c), (h), and (j), and 25.34(a) and (d) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

We note that the information collected under the underlying cGMP regulations for drugs, devices, and biological products, including HCT/Ps, found at parts 211, 820, 600 through 680, and 1271 have already been approved and are in effect. The currently approved burden estimates are available in the following links. The provisions of part 211 are approved under OMB control number 0910–0139, which expires November 30, 2011 (*http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200809-0910-008*). The provisions of part 820 are approved under OMB control number 0910–0073, which expires on November 30, 2010 (*http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200709-0910-006*). The provisions of parts 606, 640, and 660 are approved under OMB control number 0910–0116, which expires February 29, 2012 (*http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200811-0910-006*). The provisions of part 610 are approved under OMB control number 0910–0116, which expires February 29, 2012, (link already provided in this paragraph) and OMB control number 0910–0338, which expires on June 10, 2010 (also for part 680) (*http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200703-0910-017*). The provisions of part 1271, subparts C and D, are approved under OMB control number 0910–0543, which expires on May 31, 2010 (*http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200705-0910-001*). To obtain more detailed, itemized estimates of the burden associated with particular regulatory provisions, please click on the link called ''View Supporting Statement and Other Documents'' from any of the Reginfo.gov links provided in this paragraph. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

We do not believe that this proposal would constitute an additional paperwork burden because firms must currently comply with the cGMP regulations addressed by this proposed

rule: In fact, our intent is to minimize burden on respondents by providing a more streamlined approach. Therefore, burden associated with complying with these cGMP regulations represents the maximum burden for compliance with this proposed rule. We invite comment on how many firms might avail themselves of the streamlined approach presented in this proposed rule for co-packaged and single-entity combination products and on what the reduction in paperwork burden would be.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' The sole statutory provision giving preemptive effect to the proposed rule is section 751 of the act (21 U.S.C. 379r), which would apply only with respect to OTC drug components of combination.[7]

VII. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule explains how requirements that are currently in effect apply to combination products, the agency does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities. FDA requests comment on this issue.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $130 million, using the most current (2007) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

B. The Rationale Behind the Proposed Rule

The proposed rule has two related purposes. The first is to clarify the cGMP requirements that apply to combination products, and the second is to help ensure the consistent and appropriate application and enforcement of these requirements. Constituent parts and manufacturing practices vary among combination products; different cGMP requirements apply depending upon the constituent parts in the combination product and what manufacturing practices are used. Second, the proposed rule attempts to streamline the practical implementation of cGMP requirements for co-packaged and single-entity combination products.

C. Impact of Proposed Rule

FDA estimates that approximately 300 manufacturers of combination products will be affected by the proposed rule. These manufacturers of combination products should benefit from the greater clarity provided regarding which regulatory provisions apply to their products. For both existing and future products, the streamlined approach set forth in the proposed rule would help ensure that cGMPs for co-packaged and single-entity combination products are consistent and appropriate, without duplicative or otherwise unnecessary aspects. This codification of cGMP requirements for combination products would also help ensure predictability and consistency in the application and enforcement of these regulatory requirements with regard to all combination products across FDA.

Firms must already comply with the cGMP regulations for drugs, devices, and biological products, including HCT/Ps, found at parts 211, 820, 600 through 680, and 1271, that are applicable to the constituent parts of their combination products. The cost of this proposed rule would be the incremental costs to modify or streamline existing SOPs. We do not know how many firms may choose to use the proposed streamlined approach for single-entity and co-packaged combination products, or for how many products; nor do we know how many firms are already using such an approach in light of the draft guidance.

Some firms may incur one-time incremental costs assessing compliance with the proposed rule and perhaps altering some standard operating procedures. Because this proposed rule codifies agency practice that is described in current guidance documents and because no new cGMP requirements are proposed, we believe the time required would be small and estimate it to be about 25 hours per product. This estimate is based on numbers we have used in previous rules with similar requirements. The amount of these compliance assessment costs for an individual firm, and the impact of any such costs, will depend on the number and nature of the products the firm produces and how the firm has applied current regulations. Nonetheless, because the time required would be limited, the agency believes the impact will not be significant on entities considered small based on the Small Business Administration's definition of a small entity (500 employees for device and biological product firms and 750 employees for drug firms). The agency requests comment on the incremental burden estimate associated with this rule.

VIII. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this proposed rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

[7] The proposed rule seeks to clarify which cGMP requirements apply when drugs, devices, and biological products are used to create combination products. The agency notes that there are no express preemption provisions of the act applicable to prescription drugs or biological products. Section 521 of the act (21 U.S.C. 360k) contains an express preemption provision that applies to devices; nonetheless, the Supreme Court concluded in *Medtronic, Inc.* v. *Lohr*, 581 U.S. 470, 500–01 (1996), that requirements not applicable to a particular device (such as the device good manufacturing practice requirements at issue in this proposed rule) do not preempt State law under section 521 of the act.

IX. Proposed Effective Date

The agency is proposing that any final rule that may issue based upon this proposed rule become effective 180 days after its date of publication in the **Federal Register**.

List of Subjects in 21 CFR Part 4

Combination products, Biological products, Devices, Drugs, and Human cell, Tissue, and cellular and tissue-based products, Regulation of combination products.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 4 be added to read as follows:

PART 4—REGULATION OF COMBINATION PRODUCTS

Subpart A—Current Good Manufacturing Practice Requirements for Combination Products

Sec.
4.1 What is the scope of this subpart?
4.2 How does FDA define key terms and phrases in this subpart?
4.3 What current good manufacturing practice requirements apply to my combination product?
4.4 How can I comply with these current good manufacturing practice requirements for a co-packaged or single-entity combination product?

Subpart B [Reserved]

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360b–360f, 360h–360j, 360l, 360hh–360ss, 360aaa–360bbb, 371(a), 372–374, 379e, 381, 383, 394; 42 U.S.C. 216, 262, 263a, 264, 271.

Subpart A—Current Good Manufacturing Practice Requirements for Combination Products

§ 4.1 What is the scope of this subpart?

This subpart applies to combination products. It establishes which current good manufacturing practice requirements apply to these products. This subpart clarifies the application of current good manufacturing practice regulations to combination products, and provides a regulatory framework for designing and implementing the current good manufacturing practice operating system at facilities that manufacture co-packaged or single-entity combination product.

§ 4.2 How does FDA define key terms and phrases in this subpart?

The terms listed in this section have the following meanings for purposes of this subpart.

Act means the Federal Food, Drug, and Cosmetic Act.

Agency means the Food and Drug Administration.

Biological product has the meaning set forth in § 3.2(d) of this chapter. A biological product also meets the definitions of either a drug or device as these terms are defined under § 4.2.

Combination product has the meaning set forth in § 3.2(e) of this chapter.

Constituent part is a drug, device, or biological product, including an HCT/P, that is part of a combination product as defined in § 3.2(e) of this chapter.

Co-packaged combination product has the meaning set forth in § 3.2(e)(2) of this chapter.

Current good manufacturing practice operating system means the operating system within an establishment that is designed and implemented to address and meet the current good manufacturing practice requirements for a combination product.

Current good manufacturing practice requirements means the requirements set forth under § 4.3(a) through (d).

Device has the meaning set forth in 3.2(f) of this chapter. A device that is a constituent part of a combination product is considered a finished device within the meaning of the QS regulation.

Drug has the meaning set forth in § 3.2(g) of this chapter. A drug that is a constituent part of a combination product is considered a drug product within the meaning of the drug cGMPs.

Drug cGMPs refers to the current good manufacturing practice regulations set forth in parts 210 and 211 of this chapter.

FDA means the Food and Drug Administration.

HCT/Ps refers to human cell, tissue, and cellular and tissue-based products, as defined in § 1271.3(d) of this chapter.

Manufacture includes, but is not limited to, designing, fabricating, assembling, filling, processing, testing, labeling, packaging, repackaging, holding, and storage.

QS regulation refers to the quality system regulation in part 820 of this chapter.

Single-entity combination product has the meaning set forth in § 3.2(e)(1) of this chapter.

Type of constituent part refers to the category of the constituent part, which can be either a biological product, a device, a drug, or an HCT/P, as these terms are defined under this § 4.2.

§ 4.3 What current good manufacturing practice requirements apply to my combination product?

If you manufacture a combination product, the current good manufacturing practice requirements listed in this section apply as follows:

(a) The current good manufacturing practice requirements in parts 210 and 211 of this chapter apply to a combination product that includes a drug constituent part;

(b) The current good manufacturing practice requirements in part 820 of this chapter apply to a combination product that includes a device constituent part;

(c) The current good manufacturing practice requirements in part 606 of this chapter for blood and blood components and among the requirements (standards) for biological products in other sections of parts 600 through 680 of this chapter apply to a combination product that includes a biological product constituent part to which those requirements would apply if that constituent part were not part of a combination product; and

(d) The current good tissue practice and donor eligibility requirements for HCT/Ps in part 1271 of this chapter apply to a combination product that includes an HCT/P constituent part to which those requirements would apply if that constituent part were not part of a combination product.

§ 4.4 How can I comply with these current good manufacturing practice requirements for a co-packaged or single-entity combination product?

(a) Under this subpart, for single-entity or co-packaged combination products, compliance with all applicable current good manufacturing practice requirements for the combination product shall be achieved through the design and implementation of a current good manufacturing practice operating system that is demonstrated to comply with:

(1) The specifics of each set of current good manufacturing practice regulations listed under § 4.3 as they apply to each constituent part included in the combination product; or

(2) Paragraph (b) of this section.

(b) If you elect to establish a current good manufacturing practice operating system in accordance with paragraph (b) of this section, the following requirements apply:

(1) If the combination product includes a device constituent part and a drug constituent part, and the current good manufacturing practice operating system has been shown to comply with the drug cGMPs, the following provisions of the QS regulation must also be shown to have been satisfied; upon demonstration that these requirements have been satisfied, no additional showing of compliance with respect to the QS regulation need be made:

(i) § 820.20 of this chapter. Management responsibility.

(ii) § 820.30 of this chapter. Design controls.

(iii) § 820.50 of this chapter. Purchasing controls.

(iv) § 820.100 of this chapter. Corrective and preventive action.

(v) § 820.170 of this chapter. Installation.

(vi) § 820.200 of this chapter. Servicing.

(2) If the combination product includes a device constituent part and a drug constituent part, and the current good manufacturing practice operating system has been shown to comply with the QS regulation, the following provisions of the drug cGMPs must also be shown to have been satisfied; upon demonstration that these requirements have been satisfied, no additional showing of compliance with respect to the drug cGMPs need be made:

(i) § 211.84 of this chapter. Testing and approval or rejection of components, drug product containers, and closures.

(ii) § 211.103 of this chapter. Calculation of yield.

(iii) § 211.132 of this chapter. Tamper-evident packaging requirements for over-the-counter (OTC) human drug products.

(iv) § 211.137 of this chapter. Expiration dating.

(v) § 211.165 of this chapter. Testing and release for distribution.

(vi) § 211.166. of this chapter. Stability testing.

(vii) § 211.167 of this chapter. Special testing requirements.

(viii) § 211.170 of this chapter. Reserve samples.

(3) In addition to being shown to comply with the other applicable current good manufacturing practice requirements listed under § 4.3, if the combination product includes a biological product constituent part, the current good manufacturing practice operation system must also be shown to implement and comply with all current good manufacturing practice requirements identified under § 4.3(c) that would apply to that biological product if that constituent part were not part of a combination product.

(4) In addition to being shown to comply with the other applicable current good manufacturing practice requirements listed under § 4.3, if the combination product includes an HCT/P, the current good manufacturing practice operation system must also be shown to implement and comply with all current good manufacturing practice requirements identified under § 4.3(d) that would apply to that HCT/P constituent part if that constituent part were not part of a combination product.

(c) During any period in which the manufacture of a constituent part to be included in a co-packaged or single-entity combination product occurs at a separate facility from the other type(s) of constituent part(s) to be included in that single-entity or co-packaged combination product, the current good manufacturing practice operating system for that constituent part must be demonstrated to comply with all current good manufacturing practice requirements applicable to that type of constituent part.

(d) When two or more types of constituent parts to be included in a single-entity or co-packaged combination product have arrived at the same facility, or the manufacture of these constituent parts is proceeding at the same facility, application of a current good manufacturing process operating system that complies with § 4.4(b) may begin, except with respect to any constituent part that remains or becomes subject to § 4.4(c).

(e) The current good manufacturing practice requirements set forth in this subpart and in parts 210, 211, 600 through 680, 820, and 1271 of this chapter, supplement, and do not supersede, each other unless the regulations explicitly provide otherwise. In the event of a conflict between regulations applicable under this subpart to combination products, including their constituent parts, the regulations most specifically applicable to the constituent part in question shall supersede the more general.

Subpart B [Reserved]

Dated: September 17, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–22850 Filed 9–22–09; 8:45 am]

BILLING CODE 4160–01–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1630

RIN 3046–AA85

Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act, as Amended

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (the Commission or EEOC) proposes to revise its Americans with Disabilities Act (ADA) regulations and accompanying interpretive guidance in order to implement the ADA Amendments Act of 2008. The Commission is responsible for enforcement of title I of the ADA, as amended, which prohibits employment discrimination on the basis of disability. Pursuant to the ADA Amendments Act of 2008, EEOC is expressly granted the authority to amend these regulations, and is expected to do so, in order to conform certain provisions contained in the regulations to the Amendments Act.

DATES: Written comments on this rulemaking must be submitted on or before November 23, 2009.

ADDRESSES: Written comments should be submitted to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Suite 4NW08R, Room 6NE03F, Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal to ensure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll-free telephone numbers.) You may also submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. Copies of comments submitted by the public will be available for review at the Commission's library, 131 M Street, NE., Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5 p.m. or can be reviewed at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Christopher Kuczynski, Assistant Legal Counsel, or Jeanne Goldberg, Senior Attorney Advisor, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission at (202) 663–4638 (voice) or (202) 663–7026 (TTY). These are not toll-free-telephone numbers. This document is also available in the following formats: large print, Braille, audio tape, and electronic file on computer disk. Requests for this document in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–

4494 (TTY) or to the Publications Information Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The ADA Amendments Act of 2008 (''the Amendments Act'') was signed into law by President George W. Bush on September 25, 2008, with a statutory effective date of January 1, 2009. Pursuant to the 2008 amendments, the definition of disability under the ADA, 42 U.S.C. 12101, *et seq.,* shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the ADA as amended, and the determination of whether an individual has a disability should not demand extensive analysis. The Amendments Act makes important changes to the definition of the term ''disability'' by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA. Statement of the Managers to Accompany S. 3406, The Americans with Disabilities Act Amendments Act of 2008 (hereinafter 2008 Senate Managers' Statement); Committee on Education and Labor Report together with Minority Views (to accompany H.R. 3195), H.R. Rep. No. 110–730 part 1, 110th Cong., 2d Sess. (June 23, 2008) (hereinafter 2008 House Comm. on Educ. and Labor Report); Committee on the Judiciary Report together with Additional Views (to accompany H.R. 3195), H.R. Rep. No. 110–730 part 2, 110th Cong., 2d Sess. (June 23, 2008) (hereinafter 2008 House Judiciary Committee Report).

The Amendments Act retains the ADA's basic definition of ''disability'' as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways, therefore necessitating revision of the existing regulations and interpretive guidance contained in the accompanying ''Appendix to Part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act,'' which are published at 29 CFR part 1630.

Consistent with the provisions of the Amendments Act and Congress's expressed expectation therein, the proposed rule:

—Provides that the definition of ''disability'' shall be interpreted broadly;

—Revises that portion of the regulations defining the term ''substantially limits'' as directed in the Amendments Act by providing that a limitation need not ''significantly'' or ''severely'' restrict a major life activity in order to meet the standard, and by deleting reference to the terms ''condition, manner, or duration'' under which a major life activity is performed, in order to effectuate Congress's clear instruction that ''substantially limits'' is not to be misconstrued to require the ''level of limitation, and the intensity of focus'' applied by the Supreme Court in *Toyota Motor Mfg., Ky* v. *Williams,* 534 U.S. 134 (2002) (2008 Senate Managers' Statement at 6);

—Expands the definition of ''major life activities'' through two non-exhaustive lists:

—The first list includes activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working, some of which the EEOC previously identified in regulations and sub-regulatory guidance, and some of which Congress additionally included in the Amendments Act;

—The second list includes major bodily functions, such as functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions, many of which were included by Congress in the Amendments Act, and some of which have been added by the Commission as further illustrative examples;

—Provides that mitigating measures other than ''ordinary eyeglasses or contact lenses'' shall not be considered in assessing whether an individual has a ''disability'';

—Provides that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;

—Provides that the definition of ''regarded as'' is changed so that it no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity, and instead provides that an applicant or employee who is subjected to an action prohibited by the ADA (*e.g.,* failure to hire, denial of promotion, or termination) because of an actual or perceived impairment will meet the ''regarded as'' definition of disability, unless the impairment is both transitory and minor;

—The proposed rule provides that actions based on an impairment include actions based on symptoms of an impairment, and the Commission invites public comment on this point;

—Provides that individuals covered only under the ''regarded as'' prong are not entitled to reasonable accommodation; and,

—Provides that qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision shall not be used unless shown to be job-related for the position in question and consistent with business necessity.

To effectuate these changes, the proposed rule revises the following sections of 29 CFR part 1630 and the accompanying provisions of the accompanying Appendix:

—§ 1630.1 (adds subsections (3) and (4));

—§ 1630.2(g)(3) (adds cross-reference to 1630.2(*l*));

—§ 1630.2 (h) (replaces the term ''mental retardation'' with the term ''intellectual disability'');

—§ 1630.2(i) (revises definition of ''major life activities'' and provides examples)

—§ 1630.2(j) (revises definition of ''substantially limits'' and provides examples)

—§ 1630.2(k) (provides examples of ''record of'' a disability)

—§ 1630.2(*l*) (revises definition of ''regarded as'' having a disability and provides examples)

—§ 1630.2(m) (revises terminology)

—§ 1630.2(o) (adds subsection (4) stating that reasonable accommodations are not available to individuals who are only ''regarded as'' individuals with disabilities)

—§ 1630.4 (renumbers section and adds subsection (b) regarding ''claims of no disability'')

—§ 1630.9 (revises terminology in subsection (c) and adds subsection (e) stating that an individual covered only under the ''regarded as'' definition of disability is not entitled to reasonable accommodation)

—§ 1630.10 (revises to add provision on qualification standards and tests related to uncorrected vision)

—§ 1630.16(a) (revises terminology).

These regulatory revisions are explained in the revised Part 1630 Appendix containing the interpretive guidance which would be issued and published in the Code of Federal Regulations with the final rule. The Commission originally issued the

interpretive guidance concurrent with the issuance of the original Part 1630 ADA regulations in order to ensure that individuals with disabilities understand their rights under these regulations and to facilitate and encourage compliance by covered entities. The Appendix addresses the major provisions of the regulations and explains the major concepts. The Appendix as revised would continue to represent the Commission's interpretation of the issues discussed, and the Commission will be guided by it when resolving charges of employment discrimination under the ADA.

Regulatory Procedures

Executive Order 12866

The rule has been drafted and reviewed in accordance with Executive Order 12866, 58 FR 51735 (Sept. 30, 1993), section 1(b), Principles of Regulation. It is considered to be a ''significant regulatory action'' pursuant to section 3(f)(4) of Executive Order 12866 in that it arises out of the Commission's legal mandate to enforce the ADA, and therefore was circulated to the Office of Management and Budget for review. These revisions are necessary to bring the Commission's regulations into compliance with the ADA Amendments Act of 2008, which became effective January 1, 2009, and explicitly invalidated certain provisions of the regulations. The proposed revisions to the title I regulations and Appendix are intended to add to the predictability and consistency between judicial interpretations and executive enforcement of the ADA as now amended by Congress.

Preliminary Regulatory Impact Analysis

The following preliminary review of existing research highlights the costs and benefits of providing reasonable accommodation under the ADA and suggests that the effect on the economy of the changes to EEOC's regulation as a result of the ADA Amendments Act will very likely be below the $100 million threshold for ''economically significant'' regulations. Focusing on the costs of reasonable accommodations required by the regulations implementing the ADA Amendments, this preliminary review considers estimates of the cost of accommodation, the prevalence of accommodation already in the workplace, the number of additional accommodation requests that the ADA Amendments Act would need to generate to reach the $100 million threshold for a economically significant regulatory impact, and the reported benefits to employers of providing reasonable accommodations. Since the existing research measuring the relevant costs and benefits is limited, however, the Commission seeks public comment on this issue in order to determine whether further regulatory impact analysis will be required.

Preliminary Discussion of Assumptions

Although this review is based on data regarding how many people will benefit from the changes in the ADA and what the anticipated costs will be, it is important to take note of the following unique factors bearing on any inquiry into the increased costs imposed by the ADA Amendments Act and EEOC's proposed rule:

—The fact that prior to the Amendments Act many plaintiffs lost reasonable accommodation cases in litigation based on coverage does not mean employers denied the underlying accommodation requests because they concluded that individuals did not meet the definition of ''disability.'' Many pre-Amendments Act court decisions, including those cited by Congress in the legislative history of the Amendments Act, held that someone was not an individual with a disability in cases where the employer's denial of accommodation had nothing to do with coverage. Rather, coverage was raised as a legal defense after-the-fact against the asserted violation of the ADA. This suggests that costs associated with the Amendments and implementing regulations are not newly imposed and in many instances have already been expended under the ADA.

—It is incorrect to assume that cancer, epilepsy, diabetes, or other impairments addressed in section 1630.2(j)(5) of the NPRM were not covered, in absolute terms, under the prior definition, but now are. Many people with the types of impairments identified in section (j)(5) that will consistently meet the new definition of disability were already covered under EEOC's prior interpretation of the law and by those employers who voluntarily complied with it.

—Many of the individuals actually brought within the new definition of ''disability'' are likely to have less severe limitations needing less extensive accommodations. Moreover, those brought within the new ''regarded as'' definition of ''disability'' are not entitled to accommodation at all.

—Of those newly covered under the amended definition who do both request and need accommodation, employers will sometimes provide whatever is requested based on existing employer policies and procedures (*e.g.,* use of accrued annual or sick leave or employer unpaid leave policy, employer short- or long-term disability benefits, employer flexible schedule options guaranteed by a CBA, voluntary transfer programs, ''early return to work'' programs, etc.), or under another statute (*e.g.,* FMLA, workers' compensation, etc.).

—Moreover, of those individuals with disabilities who do request accommodation, not all will be entitled to it under the ADA because, for example, they do not need the accommodation requested, there is no reasonable accommodation that can be provided absent undue hardship, or they would not be ''qualified'' or would pose a ''direct threat to safety, even with an accommodation.''

—EEOC fully expects to issue a new or revised small business handbook as part of revisions made to all of our ADA publications, which include dozens of enforcement guidances and technical assistance documents, some of which are specifically geared toward small business (*e.g.,* ''The ADA: A Primer for Small Business,'' *http://www.eeoc.gov/ada/adahandbook.html).*

—An emphasis on the anticipated ''difference'' in compliance costs between smaller and larger entities may overlook some offsets to costs incurred by smaller entities. For example, EEOC makes available even more free outreach and training materials than it does paid trainings. Moreover, smaller entities are less likely to have detailed reasonable accommodation procedures containing information relating to the definition of disability that must be revised or deleted.

—The under-utilization of tax incentives available to encourage employers to provide reasonable accommodation, the lag time in receipt of the offsets, and the fact that the offsets are only partial, do not necessarily support greater costs, since the incentives typically apply to accommodations that would relate to more severe disabilities covered prior to the ADA Amendments Act.

Reasonable Accommodation

We note at the outset that extensive data on the costs of providing reasonable accommodations for applicants and employees with disabilities does not exist, and that much of the data that has been collected was obtained through either limited sample surveys or surveys that collected very little information.

In a broad sense, even the initial passage of the ADA may not have significantly increased the cost of reasonable accommodation. For example, prior to the passage of the ADA, the 1986 survey of employers by the National Organization on Disability (N.O.D.)/Harris Survey found that 51 percent of corporations surveyed had made some accommodations (National Organization on Disability, Survey Program on Participation and Attitudes (1986)). In their 1995 survey, (post ADA) the figure had risen to 81 percent (National Organization on Disability, Survey Program on Participation and Attitudes (1995)). But, also according to the 1995 N.O.D./Harris Survey, 80 percent of executives of large companies reported that the cost of accommodating people with disabilities had increased only a little or not at all.

A recent study (Helen Schartz et al., *Workplace Accommodations: Evidence-Based Outcomes,* 27 Work 345 (2006)) examined the costs and benefits of reasonable accommodations. The authors provide an overview of the past empirical research regarding the costs of accommodation. They point to an examination of costs at a major retailer from 1978 to 1997, which found that the average direct cost of an accommodation was $45 (P. D. Blanck, *The Economics of the Employment Provisions of the Americans with Disabilities Act: Part I—Workplace Accommodations,* 46 DePaul L. Rev. 877 (1997)). A 1996 study (D. L. Dowler, et al., *Outcomes of Reasonable Accommodations in the Workplace,* 5 Tech & Disability 345 (1996)) found that the average cost of accommodations was $200. An examination of Job Accommodation Network data from 1992 to 1999 showed a median cost of $250 (Job Accommodation Network, Accommodation Benefit/Cost Data Tabulated Through July 30, 1999 (1999)).

In examining these studies, questions arise as to the exact measurement of costs and what measures of central tendency are used to capture cost information. Therefore three recent cost studies including Schartz et al are examined here, and efforts were made to obtain more source data and to address the issue of the central tendency measure actually used. In order to accomplish this, primary source information was sometimes necessary.

The Schartz et al. study relied on a JAN survey,[1] and a summary of those results are provided in Table 1. A questionnaire was used to collect the data. Respondents were required to select costs from a range of values that are seen in Table 1. The only exception is that with respect to the last category, ''Greater than $5,000,'' the range had to be closed up ($10,000 was selected) in order to compute a mean.

TABLE 1—SCHARTZ, HENDRICKS & BLANCK

Total sample	705		
Cost	Midpoint	Number	Total
0	0	141	0
1–500	250.5	359.55	90,067.28
501–1,000	750.5	77.55	58,201.28
1,001–1,500	751.5	21.15	15,894.23
1,501–2,000	1,750.5	21.15	37,023.08
2,001–5,000	3,500.5	56.4	197,428.2
5,001–10,000	7,500.5	28.2	211,514.1
		705	610,128.2
Mean Cost			865.43
Median Cost			751.5

Assumes 10,000 as the highest cost in the range.

Thus the mean cost of reasonable accommodation, derived from data from the Job Accommodation Network, is $865.43. Arguably, this is not a representative sample, since employers who use JAN to assist them in developing accommodation solutions might be confronting unique or difficult accommodation issues. If this is true, the mean costs might be higher than would be found in a broader sample of employers.

An additional study (Lisa Nishii & Susanne Bruyère, Presentation at the 2009 American Psychological Association Convention: Protecting Employees with Disabilities from Discrimination: The Role of Unit Managers (August 7, 2009)) was based on a sample of approximately 5,000 respondents from a single large Fortune 500 company. Nishii & Bruyère found that half of all accommodations requested by people with disabilities cost the company no money, and 75% of accommodations (with known costs) cost less than $500.

TABLE 2—BRUYÈRE AND NISHII, 2009 UNPUBLISHED

Total Sample	5000		
Disabled	145		
Cost	Midpoint	Number	Total
0	0	76.85	0
1–100	50	7.25	362.5
101–500	300.5	24.65	7,407.325
1,001–5,000	3,000.5	8.7	26,104.35

[1] Figures derived from personal communication from James Lee Schmeling, Syracuse Law School, 7/13/2009.

TABLE 2—BRUYÈRE AND NISHII, 2009 UNPUBLISHED—Continued

Total Sample	5000		
Cost	Midpoint	Number	Total
5,001–10,000	7,500.5	2.9	21,751.45
		120.35	55,625.63
Mean Cost			462.1988
Median Cost			199.5

Assumes 10,000 as the highest cost in the range.

Here the mean cost is estimated at $462.

Another recent study was produced by JAN itself (Job Accommodation Network, Workplace Accommodations: Low Cost, High Impact (JAN 2007 Data Analysis) (2007)).[2] The mean cost of reasonable accommodations reported by JAN clients was $1,434.[3] As mentioned above, the JAN sample of their clients may not be representative, as those using JAN may be experiencing some difficulties in identifying a reasonable accommodation solution.

These three studies illustrate a large variance in the estimates of mean cost of reasonable accommodations from a high of $1,434 in the JAN study to $865.43 in Schartz et al. (which also uses JAN data), and $462 in the single case study.

The Schartz et al. and the Bruyère and Nishii studies both find, based on employer input, that the costs of accommodation are out-weighed or significantly ameliorated by benefits. In both studies, respondents were asked to classify their costs within a number of given ranges. The upper range did not have an upper boundary. When data is collected in this manner it is necessary to arbitrarily set an upper bound in order to compute a mean. Therefore the computed mean is sensitive to the arbitrary value used for the highest figure.

An additional confounding factor here is that not all reasonable accommodations are requested by or provided for individuals with disabilities. Nishii & Bruyère report that the percentages of people with and without disabilities that request accommodation are remarkably similar. For example, under federal or state worker compensation laws, there are numerous accommodations extended to injured workers (whose impairments may not be disabilities within the meaning of the ADA) that enable them to return to work safely. Similarly, some individuals who are able to take leave needed for treatment or other disability-related purposes under the Family and Medical Leave Act may not have impairments that would be considered disabilities.

Applicants and Employees With Disabilities

The Amendments Act retains the ADA's basic definition of ''disability'' as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways. Clearly this is not likely to be a sweeping change but one that adjusts the definition with a level of precision that is not captured in commonly-used databases. The number of affected workers is thus a difficult albeit key element to determine in estimating regulatory impact.

Deriving an estimate of the number of affected workers depends upon several key factors including: the survey data used, the defined set of disability measures, the definition of employment, and the age range of the population under study. Below, we briefly discuss and present results from two nationally-representative surveys that are widely-used sources of information regarding the population with disabilities in the United States: the Annual Social and Economic Supplement to the Current Population Survey (CPS–ASEC) and the American Community Survey (ACS).

The Annual Social and Economic Supplement to the Current Population Survey

The CPS–ASEC is the only dataset that, since 1981, has annually interviewed Americans with disabilities using a consistently-defined disability variable. Therefore, it has an advantage over all other national surveys in depicting lengthy time series information regarding working-age people with disabilities. The CPS–ASEC contains a single indicator of disability to identify individuals with work limitations. The measure is phrased as follows: *Does anyone in this household have a health problem or disability which prevents them from working or which limits the kind or amount of work they can do? [If so,] who is that? Anyone else?*

The American Community Survey

The ACS is an annual survey that contains six questions regarding disability status. While it was first fielded in 2000, a subset of the 2000–2002 disability indicators are known to be problematic due to questionnaire phrasing that affected the interpretation of two of the indicators, the go-outside-home and work limitation questions (Sharon M. Stern, U.S. Census Bureau, Counting People with Disabilities: How Survey Methodology Influences Estimates in the Census 2000 and the Census 2000 Supplementary Survey (2003), *www.census.gov/acs/www/Downloads/ACS/finalstern.pdf;* Sharon Stern & Matthew Brault, U.S. Census Bureau, Disability Data from the American Community Survey: A Brief Examination of the Effects of a Question Redesign in 2003 (2005), *www.census.gov/hhes/www/disability/ACS_disability.pdf;* Andrew J. Houtenville et al., *Complex Survey Questions and the Impact of Enumeration Procedures: Census/American Community Survey Disability Questions* (Census Bureau, Working Paper No. CES–WP–09–10, 2009), *available at http://ssrn.com/abstract=1444534*). The phrasing was reworded, and the ACS questions for 2003–2007 became:

Does this person have any of the following long-lasting conditions: a. Blindness, deafness, or a severe vision or hearing impairment? b. A condition

[2] JAN's ''Workplace Accommodations: Low Cost, High Impact'' research findings were updated as of September 1, 2009. The data cited in this preamble are from the 2007 findings. The Commission will update its analysis based on the new 2009 data when issuing the final rule.

[3] Communication between Dr. Ron Edwards and Dr. Beth Loy, Job Accommodation Network. (Original 2005, Updated 2007). Accommodation benefit/cost data (JAN 2007 Data Analysis). Job Accommodation Network: Author.

that substantially limits one or more basic physical activities such as walking, climbing stairs, reaching, lifting, or carrying? Because of a physical, mental, or emotional condition lasting 6 months or more, does this person have any difficulty in doing any of the following activities: a. Learning, remembering, or concentrating? b. Dressing, bathing, or getting around inside the home? Because of a physical, mental, or emotional condition lasting 6 months or more, does this person have any difficulty in doing any of the following activities: a. (Answer if this person is 15 YEARS OLD OR OVER.) Going outside the home alone to shop or visit a doctor's office? b. (Answer if this person is 15 YEARS OLD OR OVER.) Working at a job or business?

Comparing CPS–ASEC and ACS Estimates

Key differences exist between the nationally-representative surveys that are largely used to generate statistics covering the population with disabilities. Researchers have noted a positive correlation between the number of disability items on a survey and the prevalence of disability.[4] In particular, this means that the lengthier list of disability questions (six in the ACS as compared with one in the CPS–ASEC) may capture more people with disabilities. The definition of employment, which defines the population in the labor force, may also differ in these two surveys.

Table 3 below, produced by Dr. Bjelland from Cornell, uses the CPS–ASEC to provide an overview of the number of disabled individuals in the workforce over time. It uses present data from the CPS–ASEC rather than from the ACS because they cover a lengthier time period (1999 onward, as compared with 2003 onward). Additionally, because individuals with employment (or work limitation) disabilities are expected to be most likely to request reasonable accommodation in the workplace, they are the target population of interest.

TABLE 3—POPULATION WITH DISABILITIES USING CURRENT POPULATION SURVEY DATA, 1999–2007

Year	Workers with disabilities	Labor force participants with disabilities
1999	3,207,218	3,588,806
2000	3,545,209	3,889,798
2001	3,187,276	3,533,647
2002	3,081,585	3,574,294
2003	2,835,976	3,414,687
2004	3,146,749	3,727,859
2005	3,067,059	3,579,808
2006	3,200,808	3,698,593
2007	3,042,300	3,497,321

Note: Disability is defined using the CPS work limitation variable, ''Does anyone in this household have a health problem or disability which prevents them from working or which limits the kind or amount of work they can do? [If so,] who is that? Anyone else?'' The sample is comprised of CPS respondents ages 16 and older.

Statistics generated by Cornell University's Employment and Disability Institute on 2009–07–02 and provided by Melissa J. Bjelland, Ph.D.

The counts presented in Table 3 are supported by other sources of information regarding individuals with employment disabilities. While according to data from the ACS, 8,229,000 people ages 21–64 reported one of the six ACS-defined disabilities and were employed in 2007, only 2,263,000 had an employment disability and were employed (Erickson, W., & Lee, C., Rehabilitation Research & Training Center on Disability—Demographics and Statistics, 2007 *Disability Status Reports: United States 25* (2008)). This is fairly consistent with the results from the CPS–ASEC—2,594,000 people ages 21–64 had a work limitation and were employed in 2007 (Melissa J. Bjelland et al., Rehabilitation Research and Training Center on Disability Demographics and Statistics, Disability Statistics from the Current Population Survey (CPS) (2008)).[5]

These figures are reinforced by the 2004 National Organization on Disability N.O.D./Harris Survey, which reports that just over one-third (35 percent) of people ages 18–64 with disabilities are employed compared to more than three-quarters of those without disabilities (National Organization on Disability, Survey Program on Participation and Attitudes (2004)). These figures have not changed from those reported in the comparable 1986 poll.

The alternative ACS six question definition of disability results in 6,217,000 disabled workers in July 2009. (See *http://www.bls.gov/cps/cpsdisability.htm*, downloaded September 2, 2009).

Certainly an effort to return to what is, in essence, an earlier definition of workers with disabilities is unlikely to increase the number of workers requesting reasonable accommodations.

While this provides an outer boundary estimate of the number of affected workers, it is far too broad to gauge the impact of the ADA Amendments. In some sense the amendments affect those workers that have always been covered by the ADA. Arguably, the amendments may cause an increase in requests for reasonable accommodation, particularly from individuals whom section 1630.2(j)(5) of the proposed rule says will consistently meet the definition of ''disability''—that is, individuals with autism, cancer, cerebral palsy, diabetes, epilepsy, HIV or AIDS, multiple sclerosis and muscular dystrophy, and individuals with depression, bipolar disorder, obsessive-compulsive disorder, post-traumatic stress disorder, or schizophrenia. But the exact number is difficult to estimate, because it requires an assumption that such individuals now perceive themselves as protected by the law when they previously assumed they were not.

One measure of this type of impact might be an increase in the number of charges filed by workers with these impairments. EEOC charge receipts were tallied for the period of June through December 2008 (pre-amendments) and January through July 2009 (post-amendments) for ADA charges (including those concurrent with other statutes) filed with EEOC. The difference between the numbers of charges for each reported basis was computed and the mean difference per each basis was calculated at 46. The process was just repeated for those bases listed above and the mean difference was 43. Thus, increases in those bases associated with § 1630.2(j)(5) of the proposed rule were less than that of all bases during the period. This suggests that there may not be a perception of increased or modified protection by workers with the impairments mentioned in § 1630.2(j)(5).

A second approach is to estimate the number of workers with these impairments and then determine what percentage would request reasonable accommodation. Again, this data is not readily available. However, the Centers

[4] Statistics derived using the CPS–ASEC, ACS, National Health Interview Survey (NHIS), and Survey of Income and Program Participation (SIPP) demonstrate this trend well. The number of people who report at least one disability and are employed is lowest in the CPS–ASEC and is highest in the NHIS and SIPP, both of which have over 20 disability indicators. Additional measures may result in the inclusion of individuals with temporary health or functional limitations.

[5] Note that the sample population used to construct Table 3 covers all people ages 16 and older in the CPS–ASEC, not just the number of people 21–64 as is the case from the results cited from DisabilityStatistics.org, and are therefore slightly larger. All labor force participants are covered by the ADA, not just those who are of traditional working age.

for Disease Control publishes data regarding the prevalence of most of these disabilities. *See* ''Main cause of disability among civilian non-institutionalized U.S. adults aged 18 years or older with self reported disabilities, estimated affected population and percentages, by sex—United States, 2005,'' *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5816a2.htm* (Table 1) (last visited September 15, 2009). Not all of the cited disabilities are included here, but the following are: cancer (1 million or 2.2 percent), cerebral palsy (223,000 or 0.5 percent), diabetes (2 million or 4.5 percent), epilepsy (256,000 or 0.6 percent), AIDS or AIDS related condition (90,000 or 0.2 percent), ''mental or emotional'' impairment (2.2 million 4.9 percent)—a total of 5.8 million people or 13 percent of the civilian non-institutionalized adults. Thus, if we assume that people with these health conditions make up approximately 13 percent of workers with work limitation disabilities, an estimate of the number of workers who might request reasonable accommodations as the result of the ADA Amendments Act would be 450,000 (3.5 million times 0.13). However, this may be an underestimate given that this accounts for only workers with ''work limitation'' disabilities based on CPS–ASEC data. Instead, if we assume that 13 percent of 8.2 million employed persons who report a disability (based on ACS data reported above) have these health conditions, approximately 1 million individuals would consistently meet the definition of ''disability.''

Requests for Accommodation

As discussed above, one million additional workers represents an upper bound of those who would consistently meet the definition of ''disability'' under the ADA Amendments Act.[6] Not all employees with disabilities, however, report that they need a reasonable accommodation. ''Of the 4,937 individuals in our study population, a relatively small proportion (16%) reported needing any of the 17 accommodations [that the authors list] (Craig Zwerling *et al., Workplace Accommodations for People with Disabilities: National Health Interview Survey Disability Supplement, 1994–1995,* 45 J. Occupational & Envtl. Med. 517 (2003)).'' On the other hand, Nishii and Bruyère report that 82 percent of disabled employees in their study request an accommodation.[7] Certainly, the costs of reasonable accommodation cannot be assumed for all workers with disabilities, but it is not clear how much this factor reduces costs.

If we assume only 16 percent of the ''covered'' disabled work force request accommodations as Zwerling et al. suggest, the number of requested accommodations would drop to 160,000 requests for accommodation. Table 4 shows potential costs based on this projected number of requests.

TABLE 4—ESTIMATED REASONABLE ACCOMODATION COSTS WITH 16 PERCENT REQUEST RATE

Average accommodation cost	Total cost (million)	Accommodations over five years (million)
$462	$74	$15
865	138	28
1,434	229	46

Under this assumption, only if all requests occur in the first year does the estimated cost exceed $100 million.

As an upper bound estimate, if we assumed that 82 percent of these workers will request an accommodation, the number of requests would be 820,000 requests for accommodation. Table 5 shows potential costs based on the various estimates of reasonable accommodation costs discussed here.

TABLE 5—ESTIMATED REASONABLE ACCOMODATION COSTS WITH 82 PERCENT REQUEST RATE

Average accommodation cost	Total cost (million)	Accommodations over five years (million)
$462	$379	$76
865	709	142
1,434	1,176	235

Here, under this upper bound scenario, even if the requests come over a five year period then annual costs may exceed $100 million except when the lowest estimate of reasonable accommodation costs is assumed.[8]

Of course these estimates assume that all requests will result in an accommodation. However, Schartz et al. report that ''[i]n almost 43% (379) of accommodation inquiries by employers [to JAN], the respondents had implemented, or were in the process of implementing, an accommodation solution.'' (Schartz et al., at 347). It is possible then that all of these estimates are at least twice as great as is likely.

[6] There is no data that enables us to determine whether, or to what extent, the remaining workers with disabilities would request or would be entitled to reasonable accommodation as the result of the ADA Amendments Act. It appears, however, that workers with the kinds of impairments mentioned in section 1630.2(j)(5) would be most likely to request accommodations as a result of the proposed rule, because they would have the greatest assurance that their impairments would ''consistently'' meet the definition of ''disability.''

[7] Disparities may be accounted for both by the fact that the samples were different, and by the fact that Nishii and Bruyère listed 20 different accommodations. Additionally Nishii and Bruyère also report that 82% of non-disabled employees also requested an accommodation. Across the entire organization, 91% of all accommodation requests were made by people without disabilities, with only 9% of them being made by people with disabilities. Across all 20 of their accommodation types, there was not one for which a larger proportion of the accommodations made were for people with disabilities (in every case, the majority of that type of accommodation was made for people without disabilities).

[8] Using the count of disabled workers provided in Table 3 as a lower bound, the mean costs of reasonable accommodation would range from $6.7 million to $104.3 million.

Administrative Costs

There are some additional potential costs. Covered employers that changed their internal policies and procedures, in response to the Supreme Court decisions that the ADA Amendments Act has overturned, will need to update their existing internal policies and procedures to reflect the broader definition of disability and train personnel to ensure appropriate compliance with the revised regulation. As previously discussed, smaller entities are less likely to have detailed reasonable accommodation procedures containing information relating to the definition of disability that must be revised or deleted. However, larger firms such as the 18,000 firms with more than 500 employees, are more likely to have formal procedures that may need to be revised.[9] More universal will be costs required to review and analyze the final regulation. In addition, to the extent that the revised regulation increases the number of requests for accommodation, there may be additional costs associated with processing and adjudicating the requests, though these costs may be offset in part by the fact that application of the revised definition of ''disability'' will decrease the time spent processing accommodation requests generally.

A rough estimate of administrative costs might be based on days of human resource managers time estimated at $681[10] plus some training costs for that manager. EEOC provides such outreach sessions at approximately $350. So a rough estimate of these administrative costs might be $1,031. These figures will underestimate costs at large firms but will overestimate costs at small firms and at firms who either do not have to alter their policies. This level of costs seems appropriate for large firms of at least 150 employees (approximately 68,306 firms based on the SBA data cited below). This would result in a one time cost of approximately $70 million. However, the Commission was unable to identify empirical research to demonstrate such costs; therefore, this is considered to be a very rough estimate.

Finally there will be costs to the Commission primarily for increased charge workload. The Congressional Budget Office estimated these costs.

> H.R. 3195 would increase this workload by no more than 10 percent in most years, or roughly 2,000 cases annually. Based on EEOC staffing levels necessary to handle the agency's current caseload, we expect that implementing H.R. 3195 would require 50 to 60 additional employees. CBO estimates that the costs to hire those new employees would reach $5 million by fiscal year 2010, subject to appropriation of the necessary amounts.

H.R. 3195, ADA Amendments Act of 2008, Congressional Budget Office, June 23, 2008, at 2.

In conclusion, it appears very unlikely that the promulgation of regulations to implement the ADA Amendments Act would create annual costs exceeding $100 million per year. However, the data available is not prevalent or ideal, so these estimates are volatile. Additionally, there might be other regulatory costs that are not anticipated at this time. For these reasons, the Commission seeks public comment on such costs.

Regulatory Flexibility Act and Unfunded Mandates Act

The Commission additionally seeks comment from the public during the comment period regarding whether, under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), these regulations will have a significant economic impact on a substantial number of small entities, which will determine whether a regulatory flexibility analysis is required. This information will also determine whether the proposed rule imposes a burden that requires additional scrutiny under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.,* concerning the burden imposed on state, local, or tribal governments.

The Commission's preliminary review suggests that the regulations will not have a significant economic impact on a substantial number of small entities.

Thirty-five percent of employment covered by the ADA Amendments is expected to occur at firms that would be classified as working for small businesses (those with less than 500 employees). ''Employer Firms, Establishments, Employment, and Annual Payroll Small Firm Size Classes, 2006.'' [11] This represents 1,277,383 (22.5 percent) of establishments, or 844,842 (14 percent) of all firms. The rule is expected to apply to all of these small establishment firms uniformly.

Description of the Projected Reporting, Recordkeeping, and other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirement and the Long-Term and Short-Term Compliance Costs

The proposed rule does not include reporting requirements and imposes no new recordkeeping requirements. Compliance costs are expected to stem primarily from the costs of providing reasonable accommodation. The Amendments and proposed rule clarify the definition of a disability in response to a limited number of court cases, so it is not clear that the Amendments will cause additional requests for reasonable accommodation. Therefore it can be argued that no new compliance costs will be created. However, the Initial Regulatory Impact Analysis provides cost estimates based on two important criteria (1) mean reasonable accommodation costs and (2) percent of disabled workers requesting reasonable accommodation. Mean reasonable accommodation cost used here were $462, (Nishii & Bruyère (2009)) $865 (Schartz et al. (2006)) and $1,434 (Job Accommodation Network (2007)). Estimates of percent of workers with disabilities requesting reasonable accommodation varied a great deal from a high of 82 percent to a lower estimate of 16 percent ((Zwerling et al. (2003); Nishii & Bruyère (2009)). Table 1 below indicates the cost for small businesses when the 82 percent estimate of reasonable accommodation costs are used.

TABLE 1—IMPACT ON SMALL BUSINESSES BASED ON 82 PERCENT REQUEST RATE

Accommodations over five years, all firms	Small business accommodations over five years	Firms from 15 to 499 employees	Cost per firm
75,768,000.00	26,518,800.00	844,842	31.39
141,930,520.00	49,675,682.00	844,842	58.80
235,176,000.00	82,311,600.00	844,842	97.43

[9] *http://www.sba.gov/advo/research/us_06ss.pdf.*

[10] Occupational Outlook Handbook, 2008–09 *Editionhttp://stats.bls.gov/OCO/OCOS021.HTM,* downloaded September 2, 2009.

[11] Source: U.S. Small Business Administration, Office of Advocacy, based on data provided by the U.S. Census Bureau, Statistics of U.S. Businesses.

Under this scenario, costs to small businesses based on an 82 percent request rate range from $26.5.7 million to $82.3 million.

Table 2 provides estimates based on the lower request rate of 16 percent of all workers with disabilities requesting reasonable accommodations.

TABLE 2—IMPACT ON SMALL BUSINESSES BASED ON 16 PERCENT REQUEST RATE

Accommodations over five years, all firms	Small business accommodations	Establishments from 15 to 499 employees	Cost per establishment
14,784,000.00	5,174,400.00	844,842	6.12
27,693,760.00	9,692,816.00	844,842	11.47
45,888,000.00	16,060,800.00	844,842	19.01

With the lower estimated request rate, costs to small business range from $5.1 million to $16.1 million.

A characteristic of small businesses warrants some attention. Compared to establishments with 500 or more employers the number of establishments is high. The high volume of establishments when applied to the expected cost of reasonable accommodation results in a very low chance that a small business firm will be asked to make an accommodation. The Preliminary Regulatory Impact Analysis uses an upper bound estimate that one million workers with disabilities may consider themselves to be newly covered, roughly based on the percentages of individuals in the population of workers with disabilities who have the types of impairments identified in section 1630.2(j)(5) of the proposed rule as consistently meeting the definition of ''disability.'' If 82 percent of these request reasonable accommodations, then there would be 820,000 requests. With 35 percent of workers employed in small businesses, it can be anticipated that small businesses would receive 287,000 reasonable accommodation requests. If these requests occur over a five year period there would be 57,400 per year. When the number of small business firms (844,842) is divided by the number of reasonable accommodation requests made annually to small businesses, only seven firms out of 100 would receive a request. The same calculations based on a 13 percent request rate would result in just one in 100 small business firms receiving a reasonable accommodation request. An effective method for minimizing the impact of this concentration of costs among a more limited number of small businesses is the Amendments Act's and the new rule's retention of the ''undue hardship'' defense as ''significant difficulty or expense.''

There are some additional potential costs. Covered employers that changed their internal policies and procedures in response to the Supreme Court decisions that the ADA Amendments Act has overturned will need to update their existing internal policies and procedures to reflect the broader definition of disability and train personnel to ensure appropriate compliance with the revised regulation. More universal will be costs required to review and analyze the final regulation. These types of administrative costs may be particularly difficult for small businesses that operate with a smaller margin.

The following steps, however, are expected to assist in reducing the burden on small businesses. The Commission expects to prepare a small business handbook and to revise all of its ADA publications, which include dozens of enforcement guidances and technical assistance documents, some of which are specifically geared toward small business (*e.g.* ''The ADA: A Primer for Small Business'').

Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

The Commission is unaware of any duplicative, overlapping, or conflicting federal rules. The Commission seeks comments and information about any such rules.

Paperwork Reduction Act

These regulations contain no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

List of Subjects in 29 CFR Part 1630

Equal employment opportunity, Individuals with disabilities.

For the Commission.

Dated: September 16, 2009.

Stuart J. Ishimaru,

Acting Chairman.

Accordingly, for the reasons set forth in the preamble, EEOC proposes to amend 29 CFR part 1630 as follows:

PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT

1. Revise the authority citation for 29 CFR part 1630 to read as follows:

Authority: 42 U.S.C. 12116 and 12205a of the Americans with Disabilities Act, as amended.

2. Revise § 1630.1 to read as follows:

§ 1630.1 Purpose, applicability, and construction.

(a) *Purpose.* The purpose of this part is to implement title I of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.,* as amended) (ADA), requiring equal employment opportunities for qualified individuals with disabilities.

(b) *Applicability.* This part applies to ''covered entities'' as defined at § 1630.2(b).

(c) *Construction*—(1) In general. Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790–794a, as amended), or the regulations issued by Federal agencies pursuant to that title.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this part.

(3) *State workers' compensation laws and disability benefit programs.* Nothing in this part alters the standards for determining eligibility for benefits under State workers' compensation laws or under State and Federal disability benefit programs.

(4) The definition of disability in this part shall be construed broadly, to the maximum extent permitted by the terms of the ADA.

3. Amend § 1630.2 by revising paragraphs (g) through (m) and adding paragraph (o)(4), to read as follows:

§ 1630.2 Definitions.

* * * * *

(g) *Disability* means, with respect to an individual—

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) A record of such an impairment; or

(3) Being regarded as having such an impairment (as described in section (*l*)).

Note to paragraph (g): See § 1630.3 for exceptions to this definition.

(h) *Physical or mental impairment* means:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) *Major Life Activities* are those basic activities, including major bodily functions, that most people in the general population can perform with little or no difficulty. Major life activities include, but are not limited to:

(1) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and

(2) The operation of major bodily functions, including functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. For example, kidney disease affects bladder function; cancer affects normal cell growth; diabetes affects functions of the endocrine system (*e.g.,* production of insulin); epilepsy affects neurological functions or functions of the brain; and Human Immunodeficiency Virus (HIV) and AIDS affect functions of the immune system and reproductive functions. Likewise, sickle cell disease affects functions of the hemic system, lymphedema affects lymphatic functions, and rheumatoid arthritis affects musculoskeletal functions.

(3) *No Negative Implication From Omission of Particular Major Life Activities or Impairments.*

(i) The list of examples of major life activities in paragraphs (i)(1) and (2) of this section is not exhaustive.

(ii) The list of examples in paragraph (i)(2) of this section is intended to illustrate some of the types of major bodily functions that may be affected by some types of impairments. The impairments listed may affect major life activities other than those specifically identified.

(j) *Substantially Limits*—(1) *In general.* An impairment is a disability within the meaning of this section if it ''substantially limits'' the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered a disability.

(2) *Rules of Construction.*

(i) Consistent with Congress's clearly expressed intent in the ADA Amendments Act that the focus of an ADA case should be on whether discrimination occurred, not on whether an individual meets the definition of ''disability,'' (Section 2(b)(5) (''Findings and Purposes''), the term ''substantially limits,'' including the application of that term to the major life activity of working, shall be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and should not require extensive analysis.

(ii) An individual whose impairment substantially limits a major life activity need not also demonstrate a limitation in the ability to perform activities of central importance to daily life in order to be considered an individual with a disability.

(A) *Example 1:* Someone with a 20-pound lifting restriction that is not of short-term duration is substantially limited in lifting, and need not also show that he is unable to perform activities of daily living that require lifting in order to be considered substantially limited in lifting.

(B) *Example 2:* Someone with monocular vision whose depth perception or field of vision would be substantially limited, with or without any compensatory strategies the individual may have developed, need not also show that he is unable to perform activities of central importance to daily life that require seeing in order to be substantially limited in seeing.

(iii) An impairment that ''substantially limits'' one major life activity need not limit other major life activities in order to be considered a disability. To the extent cases pre-dating the 2008 Amendments Act reasoned otherwise, they are contrary to the law as amended. 2008 House Judiciary Committee Report at 19.

(A) *Example 1:* An individual whose endocrine system is substantially limited due to diabetes need not also show that he is substantially limited in eating or any other major life activity.

(B) *Example 2:* An individual whose normal cell growth is substantially limited due to cancer need not also show that he is substantially limited in working or any other major life activity.

(iv) The comparison of an individual's limitation to the ability of most people in the general population often may be made using a common-sense standard, without resorting to scientific or medical evidence. 2008 Senate Managers' Statement at 7.

(A) *Example 1:* An individual with epilepsy will meet the definition of disability because he is substantially limited in major life activities such as functions of the brain or, during a seizure, functions such as seeing, hearing, speaking, walking, or thinking;

(B) *Example 2:* An individual with diabetes will meet the definition of disability because he is substantially limited in functions of the endocrine system. (See paragraph (j)(5) of this section.)

(v) The ''transitory and minor'' exception in § 1630.2(*l*) of this part (the ''regarded as'' prong of the definition of ''disability'') does not establish a durational minimum for the definition of ''disability'' under § 1630.2(g)(1) (actual disability) or § 1630.2(g)(2) (record of a disability). An impairment may substantially limit a major life activity even if it lasts, or is expected to last, for fewer than six months.

(vi) In determining whether an individual has a disability, the focus is on how a major life activity is substantially limited, not on what an individual can do in spite of an impairment. (See, *e.g.*, paragraph (j)(6)(i)(C) of this section.)

(3) *Ameliorative Effects of Mitigating Measures Not Considered*—

(i) The ameliorative effects of mitigating measures shall not be considered in determining whether an impairment substantially limits a major life activity. To the extent cases pre-dating the 2008 Amendments Act reasoned otherwise, they are contrary to the law as amended. See 2008 House Judiciary Committee Report at 20–21 (citing, *e.g., McClure* v. *General Motors*

Corp., 75 Fed. Appx. 983 (5th Cir. 2003) (court held that individual with muscular dystrophy who with the mitigating measure of ''adapting'' how he performed manual tasks had successfully learned to live and work with his disability was therefore not an individual with a disability); *Orr* v. *Wal-Mart Stores, Inc.*, 297 F.3d 720 (8th Cir. 2002) (court held that *Sutton* v. *United Air Lines, Inc.*, 527 U.S. 471 (1999), required consideration of the ameliorative effects of plaintiff's careful regimen of medicine, exercise and diet, and declined to consider impact of uncontrolled diabetes on plaintiff's ability to see, speak, read, and walk); *Todd* v. *Academy Corp.*, 57 F. Supp. 2d 448, 452 (S.D. Tex. 1999) (court held that because medication reduced the frequency and intensity of plaintiff's seizures, he was not disabled)).

(ii) Mitigating measures include, but are not limited to:

(A) Medication, medical supplies, equipment, or appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(B) Use of assistive technology;

(C) Reasonable accommodations or ''auxiliary aids or services'' (as defined by 42 U.S.C. 12103(1));

(D) Learned behavioral or adaptive neurological modifications; or

(E) Surgical interventions, except for those that permanently eliminate an impairment.

(iii) An individual who, because of use of medication or another mitigating measure, has experienced no limitations, or only minor limitations, related to an impairment nevertheless has a disability if the impairment would be substantially limiting without the mitigating measure.

(A) *Example 1:* An individual who is taking a psychiatric medication for depression, or insulin for diabetes, or anti-seizure medication for a seizure disorder has a disability if there is evidence that the mental impairment, the diabetes, or the seizure disorder, if left untreated, would substantially limit a major life activity.

(B) *Example 2:* An individual who uses hearing aids, a cochlear implant, or a telephone audio device due to a hearing impairment is an individual with a disability where, without the benefit of the mitigating measure, he would be substantially limited in the major life activity of hearing or any other major life activity.

(iv) The ameliorative effects of ordinary eyeglasses or contact lenses shall be considered when determining whether an impairment substantially limits a major life activity. The term ''ordinary eyeglasses or contact lenses'' is defined in the ADA as amended as lenses that are ''intended to fully correct visual acuity or to eliminate refractive error.''

(A) *Example 1:* An individual with severe myopia whose visual acuity is fully corrected, is not substantially limited in seeing, because the ameliorative effects of the lenses must be considered in determining whether the individual is substantially limited in seeing.

(B) *Example 2:* If the only visual loss an individual experiences affects the ability to see well enough to read, and the individual's ordinary reading glasses are intended to completely correct for this visual loss, the ameliorative effects of using the reading glasses must be considered in determining whether the individual is substantially limited in seeing.

(C) *Example 3:* Eyeglasses or contact lenses that are the wrong prescription or an outdated prescription may nevertheless be ''ordinary'' eyeglasses or contact lenses, if there is evidence that a proper prescription would fully correct visual acuity or eliminate refractive error.

(4) *Impairments that are Episodic or in Remission.* An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. Examples may include, but are not limited to, impairments such as epilepsy, hypertension, multiple sclerosis, asthma, cancer, and psychiatric disabilities such as depression, bipolar disorder, and post-traumatic stress disorder.

(5) *Examples of Impairments that Will Consistently Meet the Definition of Disability*—(i) Interpreting the definition of disability broadly and without extensive analysis as required under the ADA Amendments Act, some types of impairments will consistently meet the definition of disability. Because of certain characteristics associated with these impairments, the individualized assessment of the limitations on a person can be conducted quickly and easily, and will consistently result in a determination that the person is substantially limited in a major life activity. In addition to examples such as deafness, blindness, intellectual disability (formerly termed mental retardation), partially or completely missing limbs, and mobility impairments requiring the use of a wheelchair, other examples of impairments that will consistently meet the definition include, but are not limited to—

(A) Autism, which substantially limits major life activities such as communicating, interacting with others, or learning;

(B) Cancer, which substantially limits major life activities such as normal cell growth;

(C) Cerebral palsy, which substantially limits major life activities such as walking, performing manual tasks, speaking, or functions of the brain;

(D) Diabetes, which substantially limits major life activities such as functions of the endocrine system (*e.g.*, the production of insulin, see 2008 House Judiciary Committee Report at 17);

(E) Epilepsy, which substantially limits major life activities such as functions of the brain or, during a seizure, seeing, hearing, speaking, walking, or thinking;

(F) HIV or AIDS, which substantially limit functions of the immune system;

(G) Multiple sclerosis and muscular dystrophy, which substantially limit major life activities including neurological functions, walking, performing manual tasks, seeing, speaking, or thinking;

(H) Major depression, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, or schizophrenia, which substantially limit major life activities including functions of the brain, thinking, concentrating, interacting with others, sleeping, or caring for oneself.

(ii) *No Negative Implication From Omission of Particular Major Life Activities.* An individual with one of the impairments listed in paragraph (j)(5)(i) of this section may be substantially limited in one or more of the major life activities identified, and/or may be substantially limited in other major life activities.

(iii) *No Negative Implication From Omission of Particular Impairments.* The list of examples in paragraph (j)(5)(i) of this section is merely intended to illustrate some of the types of impairments that are consistently substantially limiting. Other types of impairments not specifically identified in the examples included in paragraph (j)(5)(i) of this section may also consistently be substantially limiting, such as some forms of depression other than major depression and seizure disorders other than epilepsy.

(6) *Examples of Impairments that May Be Disabling for Some Individuals But Not For Others*—(i) In addition to the examples in paragraph (j)(5) of this section of types of impairments that will consistently meet the definition of disability, other types of impairments may be disabling for some individuals but not for others, and therefore may require more analysis in order to determine whether or not they substantially limit an individual in performing of a major life activity. The standards for determining whether such an impairment has been shown to be a disability are intended to be construed in favor of broad coverage, and should not demand an extensive analysis. The following examples illustrate some of the ways in which such impairments may (with or without the use of mitigating measures) substantially limit a major life activity.

(A) *Example 1:* An individual with asthma who is substantially limited in respiratory functions and breathing compared to most people, as indicated by the effects experienced when exposed to substances such as cleaning products, perfumes, and cigarette smoke, is an individual with a disability.

(B) *Example 2:* An individual with high blood pressure who is substantially limited in the functions of the circulatory system compared to most people, as indicated by the decrease in blood circulation caused by narrowing of the blood vessels, is an individual with a disability.

(C) *Example 3:* An individual with a learning disability who is substantially limited in reading, learning, thinking, or concentrating compared to most people, as indicated by the speed or ease with which he can read, the time and effort required for him to learn, or the difficulty he experiences in concentrating or thinking, is an individual with a disability, even if he has achieved a high level of academic success, such as graduating from college. The determination of whether an individual has a disability does not depend on what an individual is able to do in spite of an impairment.

(D) *Example 4:* An individual with a back or leg impairment who is substantially limited compared to most people in the length of time she can stand, the distance she can walk, or the weight she can lift, is an individual with a disability (such as where the individual has a back impairment resulting in a 20-pound lifting restriction that is expected to last for several months or more).

(E) *Example 5:* An individual with a psychiatric impairment (such as panic disorder, anxiety disorder, or some forms of depression other than major depression), who is substantially limited compared to most people, as indicated by the time and effort required to think or concentrate, the diminished capacity to effectively interact with others, the length or quality of sleep the individual gets, the individual's eating patterns or appetite, or the effect on other major life activities, is an individual with a disability.

(F) *Example 6:* An individual with carpal tunnel syndrome who is substantially limited in performing manual tasks compared to most people, as indicated by the amount of pain experienced when writing or using a computer keyboard or the length of time for which such manual tasks can be performed, is an individual with a disability.

(G) *Example 7:* An individual with hyperthyroidism who is substantially limited in the functioning of the endocrine system compared to most people, as indicated by overproduction of a hormone that controls metabolism, is an individual with a disability, because a major bodily function may be substantially limited when an impairment ''causes the operation [of the bodily function] to over-produce or under-produce in some harmful fashion.'' (2008 House Judiciary Committee Report at 17).

(ii) *No Negative Implication From Omission of Particular Major Life Activities.* An individual with one of the impairments listed in paragraph (j)(6)(i) of this section may be substantially limited in one or more of the major life activities identified, and/or in other major life activities.

(iii) *No Negative Implication From Omission of Particular Impairments.* The list of examples in paragraph (j)(6)(i) of this section is merely intended to illustrate some of the types of impairments that may be substantially limiting. Impairments other than those specifically listed in paragraph (j)(6)(i) of this section may also substantially limit major life activities.

(7) With respect to the major life activity of *working,*—

(i) An individual with a disability will usually be substantially limited in another major life activity, therefore generally making it unnecessary to consider whether the individual is substantially limited in working.

(ii) An impairment substantially limits the major life activity of working if it substantially limits an individual's ability to perform, or to meet the qualifications for, the type of work at issue. Whether an impairment substantially limits the major life activity of working must be construed broadly to the maximum extent permitted under the ADA and should not demand extensive analysis.

(iii) Type of Work

(A) The type of work at issue includes the job the individual has been performing, or for which the individual is applying, and jobs with similar qualifications or job-related requirements which the individual would be substantially limited in performing because of the impairment.

(B) The type of work at issue may often be determined by reference to the nature of the work an individual is substantially limited in performing because of an impairment as compared to most people having comparable training, skills, and abilities. Examples of types of work include, but are not limited to: Commercial truck driving (*i.e.,* driving those types of trucks specifically regulated by the U.S. Department of Transportation as commercial motor vehicles), assembly line jobs, food service jobs, clerical jobs, or law enforcement jobs.

(C) The type of work at issue may also be determined by reference to job-related requirements that an individual is substantially limited in meeting because of an impairment as compared to most people performing those jobs. Examples of job-related requirements that are characteristic of types of work include, but are not limited to, jobs requiring: Repetitive bending, reaching, or manual tasks; repetitive or heavy lifting; prolonged sitting or standing; extensive walking; driving; working under certain conditions, such as in workplaces characterized by high temperatures, high noise levels, or high stress; or working rotating, irregular, or excessively long shifts.

(*1*) *Example 1:* Carpal tunnel syndrome that does not substantially limit a machine operator in the major life activity of performing manual tasks when compared with most people in the general population nevertheless substantially limits her in the major life activity of working if the impairment substantially limits her ability to perform her job and other jobs requiring similar repetitive manual tasks.

(*2*) *Example 2:* An impairment that does not substantially limit an individual's ability to stand as compared to most people in the general population nevertheless substantially limits an individual in working if it substantially limits his ability to perform his job and other jobs that require standing for extended periods of time (*e.g.,* jobs in the retail industry).

(3) *Example 3:* An impairment that does not substantially limit an individual's ability to lift as compared to most people in the general population nevertheless substantially limits the individual in working if it substantially limits his ability to perform his job and other jobs requiring frequent heavy lifting.

(4) *Example 4:* A permanent knee impairment that does not substantially limit an individual's ability to walk as compared to most people in the general population nevertheless substantially limits the individual in working if it substantially limits her in performing the job for which she is applying and other jobs that require walking long distances.

(iv) *Evidence of Ability to Obtain Employment Elsewhere.* The fact that an individual has obtained employment elsewhere is not dispositive of whether an individual is substantially limited in working.

(A) *Example 1:* Someone who, because of an impairment, cannot perform work that requires repetitive bending or heavy lifting is substantially limited in working, even if he also has skills that would qualify him to perform jobs that do not include these requirements.

(B) *Example 2:* An individual whose impairment substantially limits the ability to do repetitive tasks associated with certain manufacturing positions and who is denied a reasonable accommodation for a manufacturing job by his employer could be substantially limited in working, even if the individual performed similar work for another employer who provided an accommodation for this limitation.

(8) *Impairments That Are Usually Not Disabilities.* Temporary, non-chronic impairments of short duration with little or no residual effects (such as the common cold, seasonal or common influenza, a sprained joint, minor and non-chronic gastrointestinal disorders, or a broken bone that is expected to heal completely) usually will not substantially limit a major life activity.

(k) *Has a record of such an impairment*—(1) An individual has a record of a disability if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(i) *Example 1:* An applicant who in the past was diagnosed with prostate cancer that was treated, and whose doctor says he no longer has cancer, nevertheless has a ''record of'' a substantially limiting impairment.

(ii) *Example 2:* An employee who in the past was misdiagnosed with bipolar disorder and hospitalized as the result of a temporary reaction to medication she was taking has a record of a substantially limiting impairment, even though she did not actually have bipolar disorder.

(2) *Broad Construction.* Whether an individual has a record of an impairment that substantially limited a major life activity shall be construed broadly to the maximum extent permitted by the ADA and should not demand extensive analysis. An individual will be considered to have a record of a disability if the individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population, or was misclassified as having had such an impairment.

(l) ''*Is regarded as having such an impairment*''—(1) *In General.* An individual is ''regarded as'' having a disability if the individual is subjected to an action prohibited by this part, including non-selection, demotion, termination, or denial of any other term, condition, or privilege of employment, based on an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity. Proof that the individual was subjected to a prohibited employment action, *e.g.,* excluded from one job, because of an impairment (other than an impairment that is transitory and minor, as discussed below) is sufficient to establish coverage under the ''regarded as'' definition. 2008 House Committee on Educ. and Labor Report at 12–14; 2008 Senate Managers' Statement at 9–10. Evidence that the employer believed the individual was substantially limited in any major life activity is not required.

(2) *Actions Taken Based on Symptoms of an Impairment or Based on Use of Mitigating Measures.* A prohibited action based on an actual or perceived impairment includes, but is not limited to, an action based on a symptom of such an impairment, or based on medication or any other mitigating measure used for such an impairment.

(i) *Example 1:* An individual who is not hired for a driving job because he takes anti-seizure medication is regarded as having a disability, even if the employer is unaware of the reason the employee is taking the medication.

(ii) *Example 2:* An employer that refuses to hire someone with a facial tic regards the individual as having a disability, even if the employer does not know that the facial tic is caused by Tourette's Syndrome.

(3) *Impairments That Are Transitory and Minor.* An individual may not establish coverage under this prong where the impairment that is the basis for the covered entity's action is both transitory (lasting or expected to last for six months or less) and minor.

(i) *Example 1:* An individual who is not hired for a data entry position because he will be unable to type for three weeks due to a sprained wrist is not regarded as disabled, because a sprained wrist is transitory and minor.

(ii) *Example 2:* An individual who is placed on involuntary leave because of a broken leg that is expected to heal normally is not regarded as disabled, because the broken leg is transitory and minor.

(iii) *Example 3:* An individual who is not hired for an assembly line job by an employer who believes she has carpal tunnel syndrome would be regarded as disabled, because carpal tunnel syndrome is not transitory and minor.

(iv) *Example 4:* An individual who is fired from a food service job because the employer believes he has Hepatitis C is regarded as disabled, because Hepatitis C is not transitory and minor.

(v) *Example 5:* An individual who is terminated because an employer believes that symptoms attributable to a mild intestinal virus are actually symptoms of heart disease is regarded as disabled, because heart disease—the impairment the employer believes the individual has—is not transitory and minor.

(m) The term ''*qualified,*'' with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. (See § 1630.3 for exceptions to this definition.)

* * * * *

(o) * * *

(4) An employer is required, absent undue hardship, to provide reasonable accommodation to a qualified individual with a substantially limiting impairment or a ''record of'' such an impairment, but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the ''regarded as'' prong.

* * * * *

4. Revise § 1630.4 to read as follows:

§ 1630.4 Discrimination prohibited.

(a) *In General.* (1) It is unlawful for a covered entity to discriminate on the

basis of disability against a qualified individual in regard to:

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the covered entity;

(vii) Selection and financial support for training, including: Apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by a covered entity including social and recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The term discrimination includes, but is not limited to, the acts described in §§ 1630.4 through 1630.13 of this part.

(b) *Claims of No Disability.* Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of his lack of disability, including a claim that an individual with a disability was granted an accommodation that was denied to an individual without a disability.

5. Amend § 1630.9 by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 1630.9 Not making reasonable accommodation.

* * * * *

(c) A covered entity shall not be excused from the requirements of this part because of any failure to receive technical assistance authorized by section 507 of the ADA, including any failure in the development or dissemination of any technical assistance manual authorized by that Act.

* * * * *

(e) The reasonable accommodation requirements set forth in this part apply to an individual with a substantially limiting impairment or a record of a substantially limiting impairment. A covered entity is not required to provide a reasonable accommodation to an individual who is only ''regarded as'' disabled within the meaning of § 1630.2(l) of this part.

6. Revise § 1630.10 to read as follows:

§ 1630.10 Qualification standards, tests, and other selection criteria.

(a) *In general.* It is unlawful for a covered entity to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.

(b) *Qualification Standards and Tests Related to Uncorrected Vision.* Notwithstanding paragraph (j)(3)(iv) of § 1630.2 of this part, a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

7. Amend § 1630.16(a) by removing ''because'' and adding ''on the basis'' in its place in the last sentence.

* * * * *

8. Amend the Appendix to Part 1630 as follows:

A. Revise the ''Introduction.''

B. Revise Section 1630.1.

C. Revise Sections 1630.2(a) through (f).

D. Revise Section 1630.2(g).

E. Revise Section 1630.2(i).

F. Revise Section 1630.2(j).

G. Revise Section 1630.2(k).

H. Revise Section 1630.2(*l*).

I. Amend Section 1630.2(m) and Section 1630.2(n) by removing the term ''qualified'' individual with a disability'' and adding in its place ''qualified individual'' and by removing the term ''qualified individuals with disabilities'' and adding in its place ''qualified individuals.''

J. Amend Section 1630.2(o) by revising the first paragraph.

K. Revise Section 1630.4.

L. Revise the first paragraph in Section 1630.5.

M. Amend Section 1630.9(a) through (d) to replace the term ''qualified individual with a disability'' with the term ''qualified individual.''

N. Add Section 1630.9(e).

O. Revise Section 1630.10.

P. Amend Section 1630.16(a) by removing ''because'' and adding ''on the basis'' in its place in the last sentence.

The revisions and additions read as follows:

Appendix to Part 1630—Interpretive Guidance on Title I of the Americans With Disabilities Act

* * * * *

Introduction

The Equal Employment Opportunity Commission (the Commission or EEOC) is responsible for enforcement of title I of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.,* as amended, which prohibits employment discrimination on the basis of disability. Pursuant to the ADA Amendments Act of 2008, EEOC is expressly granted the authority and is expected to amend these regulations. The Commission believes that it is essential to issue interpretive guidance concurrently with the issuance of this part in order to ensure that qualified individuals with disabilities understand their rights under this part, and to facilitate and encourage compliance by covered entities. This appendix represents the Commission's interpretation of the issues discussed, and the Commission will be guided by it when resolving charges of employment discrimination. The appendix addresses the major provisions of this part and explains the major concepts of disability rights. As revised effective _____, this appendix and the accompanying regulations reflect the findings and purposes of the ADA Amendments Act of 2008, which states, among other things, that the prior EEOC regulations defining the term ''substantially limits'' as ''significantly restricted'' set too high a standard, and that the holdings in a series of U.S. Supreme Court and lower court decisions had failed to fulfill Congress's expectation that the definition of disability under the ADA would be interpreted consistently with the broad interpretation of the term ''handicapped'' under section 504 of the Rehabilitation Act of 1973 and with the broad view of the ''regarded as'' prong of the definition of ''disability, as first enunciated by the Supreme Court in *Sch. Bd. of Nassau Cty. v. Arline,* 480 U.S. 273 (1987). Pursuant to the 2008 amendments, the definition of disability in this part shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the ADA, and the determination of whether an individual has a disability should not demand extensive analysis. Statement of the Managers to Accompany S. 3406, The Americans with Disabilities Act Amendments Act of 2008 (hereinafter 2008 Senate Managers' Statement); Committee on Education and Labor Report together with Minority Views (to accompany H.R. 3195), H.R. Rep. No. 110–730 part 1, 110th Cong., 2d Sess. (June 23, 2008) (hereinafter 2008 House Comm. on Educ. and Labor Report); Committee on the Judiciary Report together with Additional Views (to accompany H.R. 3195), H.R. Rep. No. 110–730 part 2, 110th Cong., 2d Sess. (June 23, 2008) (hereinafter 2008 House Judiciary Committee Report).

The terms ''employer'' or ''employer or other covered entity'' are used interchangeably throughout the appendix to refer to all covered entities subject to the employment provisions of the ADA. Consistent with the Amendments Act,

revisions have been made to the regulations and this appendix to refer to ''individual with a disability'' and ''qualified individual'' as separate terms, and to change the prohibition on discrimination to ''on the basis of disability'' instead of prohibiting discrimination against a qualified individual ''with a disability because of the disability of such individual.'' ''This ensures that the emphasis in questions of disability discrimination is properly on the critical inquiry of whether a qualified person has been discriminated against on the basis of disability, and not unduly focused on the preliminary question of whether a particular person is a 'person with a disability.' '' 2008 Senate Managers' Statement at 11.

Section 1630.1 Purpose, Applicability and Construction

Section 1630.1(a) Purpose

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990, and amended effective January 1, 2009. The ADA was amended by the Americans with Disabilities Act Amendments Act of 2008, which was signed into law on September 25, 2008, and became effective on January 1, 2009. The ADA is an antidiscrimination statute that requires that individuals with disabilities be given the same consideration for employment that individuals without disabilities are given. An individual who is qualified for an employment opportunity cannot be denied that opportunity based on the fact that the individual has a disability. The purpose of title I of the ADA and this part is to ensure that qualified individuals with disabilities are protected from discrimination on the basis of disability.

The ADA uses the term ''disabilities'' rather than the term ''handicaps'' which was originally used in the Rehabilitation Act of 1973, 29 U.S.C. 701–796. Substantively, these terms are equivalent. As noted by the House Committee on the Judiciary, ''[t]he use of the term 'disabilities' instead of the term 'handicaps' reflects the desire of the Committee to use the most current terminology. It reflects the preference of persons with disabilities to use that term rather than 'handicapped' as used in previous laws, such as the Rehabilitation Act of 1973 * * *.'' H.R. Rep. No. 485 part 3, 101st Cong., 2d Sess. 26–27 (1990) (hereinafter House Judiciary Report); see also S. Rep. No. 116, 101st Cong., 1st Sess. 21 (1989) (hereinafter Senate Report); H.R. Rep. No. 485 part 2, 101st Cong., 2d Sess. 50–51 (1990) (hereinafter House Labor Report).

The use of the term ''Americans'' in the title of the ADA is not intended to imply that the Act only applies to United States citizens. Rather, the ADA protects all qualified individuals with disabilities, regardless of their citizenship status or nationality, from discrimination by a covered entity.

Section 1630.1(b) and (c) Applicability and Construction

Unless expressly stated otherwise, the standards applied in the ADA are not intended to be lesser than the standards applied under the Rehabilitation Act of 1973.

The ADA does not preempt any Federal law, or any State or local law, that grants to individuals with disabilities protection greater than or equivalent to that provided by the ADA. This means that the existence of a lesser standard of protection to individuals with disabilities under the ADA will not provide a defense to failing to meet a higher standard under another law. Thus, for example, title I of the ADA would not be a defense to failing to prepare and maintain an affirmative action program under section 503 of the Rehabilitation Act. On the other hand, the existence of a lesser standard under another law will not provide a defense to failing to meet a higher standard under the ADA. See House Labor Report at 135; House Judiciary Report at 69–70.

This also means that an individual with a disability could choose to pursue claims under a State discrimination or tort law that does not confer greater substantive rights, or even confers fewer substantive rights, if the potential available remedies would be greater than those available under the ADA and this part. The ADA does not restrict an individual with a disability from pursuing such claims in addition to charges brought under this part. House Judiciary at 69–70.

The ADA does not automatically preempt medical standards or safety requirements established by Federal law or regulations. It does not preempt State, county, or local laws, ordinances or regulations that are consistent with this part, and are designed to protect the public health from individuals who pose a direct threat to the health or safety of others that cannot be eliminated or reduced by reasonable accommodation. However, the ADA does preempt inconsistent requirements established by State or local law for safety or security sensitive positions. See Senate Report at 27; House Labor Report at 57.

An employer allegedly in violation of this part cannot successfully defend its actions by relying on the obligation to comply with the requirements of any State or local law that imposes prohibitions or limitations on the eligibility of qualified individuals with disabilities to practice any occupation or profession. For example, suppose a municipality has an ordinance that prohibits individuals with tuberculosis from teaching school children. If an individual with dormant tuberculosis challenges a private school's refusal to hire him or her on the basis of the tuberculosis, the private school would not be able to rely on the city ordinance as a defense under the ADA.

Subparagraph (c)(3) is consistent with language added to section 501 of the ADA by the ADA Amendments Act of 2008. It makes clear that nothing in this part is intended to alter the determination of eligibility for benefits under state workers' compensation laws or Federal and State disability benefit programs. State workers' compensation laws and Federal disability benefit programs, such as programs that provide payments to veterans with service-connected disabilities and the Social Security Disability Insurance program, have fundamentally different purposes from title I of the ADA.

Sections 1630.2(a)–(f) Commission, Covered Entity, etc

The definitions section of part 1630 includes several terms that are identical, or almost identical, to the terms found in title VII of the Civil Rights Act of 1964. Among these terms are ''Commission,'' ''Person,'' ''State,'' and ''Employer.'' These terms are to be given the same meaning under the ADA that they are given under title VII. In general, the term ''employee'' has the same meaning that it is given under title VII. However, the ADA's definition of ''employee'' does not contain an exception, as does title VII, for elected officials and their personal staffs. It should be further noted that all State and local governments are covered by title II of the ADA whether or not they are also covered by this part. Title II, which is enforced by the Department of Justice, became effective on January 26, 1992. See 28 CFR part 35.

The term ''covered entity'' is not found in title VII. However, the title VII definitions of the entities included in the term ''covered entity'' (*e.g.,* employer, employment agency, etc.) are applicable to the ADA.

Section 1630.2(g) Disability

In addition to the term ''covered entity,'' there are several other terms that are unique to the ADA. The first of these is the term ''disability.'' Congress adopted the definition of this term from the Rehabilitation Act definition of the term ''individual with handicaps.'' By so doing, Congress intended that the relevant case law developed under the Rehabilitation Act be generally applicable to the term ''disability'' as used in the ADA. Senate Report at 21; House Labor Report at 50; House Judiciary Report at 27. The definition of the term ''disability'' is divided into three parts. An individual must satisfy only one of these parts in order to be considered an individual with a disability for purposes of this part. However, an individual may satisfy more than one of the three ''parts'' of the definition of disability. An individual is considered to have a ''disability'' if that individual either (1) has a physical or mental impairment which substantially limits one or more of that person's major life activities, (2) has a record of such an impairment, or (3) is regarded by the covered entity as having such an impairment. To understand the meaning of the term ''disability,'' it is necessary to understand, as a preliminary matter, what is meant by the terms ''physical or mental impairment,'' ''major life activity,'' and ''substantially limits,'' ''record of,'' and ''regarded as.'' Each of these terms is discussed below.

* * * * *

Section 1630.2(i) Major Life Activities

''Major life activities'' are those basic activities, including major bodily functions, that most people in the general population can perform with little or no difficulty. The inclusion of ''major bodily functions'' in the definition of ''major life activities'' is consistent with the plain language of the ADA Amendments Act.

Many of the major life activities listed in the ADA Amendments Act and section 1630.2(i)(1) have been referred to in EEOC's 1991 regulations implementing title I of the ADA and in sub-regulatory documents, and by courts. The ADA Amendments expressly made the list of major life activities in the

statute non-exhaustive. Thus, the fact that a major life activity that has previously been identified by EEOC or the courts is not in the statute ''does not create any negative implication as to whether such activity * * * constitutes a 'major life activity' under the statute.'' 2008 Senate Managers' Statement at 8. The list is intended to be merely illustrative. 2008 House Committee on Educ. and Labor Report at 11. For example, EEOC has previously taken the position that major life activities also include sitting, reaching, and interacting with others, and the regulations include those major life activities. Similarly, special sense organs, skin, genitourinary, cardiovascular, hemic, lymphatic, and musculoskeletal functions are major bodily functions not included in the statutory list of examples but included in section 1630.2(i)(2) to provide further illustrations. Some of these additional examples reflect examples of bodily systems already included in the definition of physical impairment in section 1630.2(h), and some are from the U.S. Department of Labor's nondiscrimination and equal employment opportunity regulations implementing section 188 of the Workforce Investment Act of 1998. The Commission has added these examples to further illustrate the non-exhaustive list of major life activities, including major bodily functions, and to emphasize that the concept of major life activities is to be interpreted broadly consistent with the Amendments Act. The Commission expects that courts will have occasion to recognize other examples as presented in a given case.

The link between particular impairments and various major bodily functions should not be difficult to identify. For example, cancer affects an individual's major bodily function of ''normal cell growth''; diabetes affects the major bodily function of insulin production, a function of the endocrine system; and the Human Immunodeficiency Virus (HIV) affects functioning of the immune system. Cf. *Heiko* v. *Columbo Savings Bank,* F.S.B., 434 F.3d 249 (4th Cir. 2005) (in case brought by individual with polycystic kidney disease requiring dialysis treatment, court held that eliminating waste is a major life activity). Likewise, sickle cell disease affects the functions of the hemic system, lymphedema affects lymphatic functions, and rheumatoid arthritis affects musculoskeletal functions.

The list of examples in section 1630.2(i) of some impairments and some of the major bodily functions they affect is intended to assist in understanding possible links between some impairments and some of the major life activities they may implicate. Section 1630.2(j) also gives examples of impairments and major life activities they affect, but the purpose of the examples in that section is to demonstrate how impairments may substantially limit major life activities. The impairments listed in both 1630.2(i) and (j) may affect other major life activities not specifically identified. Additionally, the fact that a particular impairment is not offered as an example creates no negative implication concerning whether that impairment is or may be a disability.

Section 1630.2(j) Substantially Limits

In General

The Commission has revised its original standard for determining whether an impairment substantially limits a major life activity. Congress stated in the ADA Amendments Act of 2008 that the definition of disability ''shall be construed in favor of broad coverage,'' and that ''the term 'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.'' 42 U.S.C. 12101(4), as amended. One such stated purpose in the Amendments Act is that ''the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand an extensive analysis.'' Section 2(b)(5) (''Findings and Purposes'').

In keeping with this instruction, the Commission concludes that its prior formulation may suggest a more extensive analysis than Congress intended. The revised regulations therefore provide that an impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population, deletes the language to which Congress objected, and provides numerous practical examples to reflect Congressional intent and to illustrate some of the ways in which impairments may substantially limit a major life activity. The Commission believes that this provides a useful framework in which to analyze whether an impairment satisfies the definition of disability. Further, this framework better reflects Congress's expressed intent in the ADA Amendments Act that the definition of the term ''disability'' shall be construed broadly, and is consistent with statements in the Amendments Act's legislative history. See 2008 Senate Managers' Statement at 7 (stating that '''substantially limits' as construed consistently with the findings and purposes of this legislation establishes an appropriate functionality test of determining whether an individual has a disability'' and that ''using the correct standard—one that is lower than the strict or demanding standard created by the Supreme Court in *Toyota* [*Motor Mfg., Ky v. Williams,* 534 U.S. 134 (2002)]—will make the disability determination an appropriate threshold issue but not an onerous burden for those seeking accommodations or modifications''). Although the Senate Managers' Statement, citing the original ADA legislative history, also made reference to the terms ''condition, manner, or duration'' under which a major life activity is performed, the Commission has deleted that specific language from the expression of the standard itself to effectuate Congress's clear instruction in the Amendments Act that ''substantially limits'' is not to be misconstrued to require the ''level of limitation, and the intensity of focus'' applied by the Supreme Court in *Toyota.* 2008 Senate Managers' Statement at 6. Moreover, the Commission notes that the U.S. Department of Justice has never included the terms ''condition, manner, or duration'' in its regulations promulgated under titles II and III of the ADA. *See* 29 CFR part 35 (title II regulation) and 28 CFR part 36 (title III regulation).

Not all impairments affect an individual in a major life activity such that they are substantially limiting. An individual with a disability is someone who due to an impairment is substantially limited in performing a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity to be considered a disability. See 2008 Senate Managers' Statement at 6–7 & n.14; 2008 House Committee on Educ. and Labor Report at 9–10 (''While the limitation imposed by an impairment must be important, it need not rise to the level of severely restricting or significantly restricting the ability to perform a major life activity to qualify as a disability.'') The level of limitation required is ''substantial'' as compared to most people in the general population, which does not require a significant or severe restriction, yet must be more than a temporary, non-chronic impairment of short duration with little or no residual effects (*e.g.,* the common cold or flu). Multiple impairments that combine to substantially limit one or more of an individual's major life activities also constitute a disability.

The term ''average person in the general population,'' as the basis for determining whether an individual's impairment substantially limits a major life activity, has been changed to ''most people in the general population.'' This revision is not a substantive change in the concept, but rather is intended to conform the language to the simpler and more straightforward terminology used in the legislative history to the 2008 Amendments Act, and to emphasize that the comparison between the individual and ''most people'' should be based on a common-sense approach that does not require an exacting or statistical analysis. The comparison to the general population continues to mean a comparison to other people in the general population, not a comparison to those similarly situated. For example, the ability of an individual with an amputated limb to perform a major life activity is compared to other people in the general population, not to other amputees. However, this does not mean that disability cannot be shown where an impairment is diagnosed, or its limitations evidenced, by reference to intra-individual differences (*i.e.,* a disparity between an individual's aptitude and actual versus expected achievement), or in comparison to a particular class of people rather than how the impairment manifests itself in reference to the general population. For example, an individual with dyslexia may be substantially limited in reading and/or learning as evidenced by information about how the impairment affected his learning as compared to what would otherwise be expected of the individual or others of a certain age, school grade, level of education, or aptitude.

The regulations include a clear statement that the definition of an impairment as

''transitory,'' that is ''lasting or expected to last for six months or less,'' that appears only in the ''regarded as'' definition of ''disability'' as an exception to coverage, does not establish a requirement that an impairment last for more than six months in order to be considered substantially limiting under the ''actual'' or ''record of'' parts of the definition of disability. Impairments causing limitations that last, or are expected to last, for six or fewer months may still be substantially limiting.

Mitigating Measures

The ameliorative effects of mitigating measures shall not be considered in determining whether an impairment substantially limits a major life activity, with the exception of ordinary eyeglasses or contact lenses (defined as lenses ''that are intended to fully correct visual acuity or eliminate refractive error''). ''The ADA Amendments Act provides a non-comprehensive list of the types of mitigating measures that are not to be considered.'' 2008 Senate Managers' Statement at 9. The regulations include all of those mitigating measures listed in the ADA Amendments Act's illustrative list of mitigating measures, including reasonable accommodations (as applied under title I) or ''auxiliary aids or services'' (as defined by 42 U.S.C. § 12103(1) and applied under titles II and III). Additionally, consistent with a statement in the 2008 House Education and Labor Report at 15, the Commission has also included ''surgical intervention'' as an example of a mitigating measure. In the Commission's view, a ''surgical intervention'' may constitute a mitigating measure, except when it permanently eliminates an impairment. The regulations also make clear that even an individual who, because of the use of medication or another mitigating measure, has experienced no limitations, or only minor limitations, related to the impairment may still be an individual with a disability, where there is evidence that in the absence of an effective mitigating measure the individual's impairment would be substantially limiting.

Impairments That Are Episodic or in Remission

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. Examples of impairments that may be episodic include, but are not limited to, epilepsy, multiple sclerosis, hypertension, diabetes, asthma, major depression, bipolar disorder, and schizophrenia. Individuals with these impairments can experience flare-ups that may substantially limit major life activities such as sleeping, breathing, caring for oneself, thinking, or concentrating. See 2008 House Judiciary Committee Report at 19–20. Cancer is an example of an impairment that may be in remission.

Examples—Definition of Disability

The ADA and this part, like the Rehabilitation Act of 1973, do not attempt an exhaustive ''laundry list'' of impairments that are ''disabilities.'' Rather, disability is determined based on an individualized assessment. However, § 1630.2(j)(5) of the regulations recognizes, and offers examples to illustrate, that characteristics associated with some types of impairments allow an individualized assessment to be conducted quickly and easily, and will consistently render those impairments disabilities. This result is the consequence of considering the combined effect of the statutory changes to the definition of disability contained in the ADA Amendments Act, including the lower standard for ''substantially limits'', the rule that major life activities include major bodily functions, the new rule for impairments that are episodic or in remission, and the principle that the ameliorative effects of mitigating measures (other than ordinary eyeglasses or contact lenses) must be disregarded in assessing whether an individual has a disability.

The ADA Amendments Act's legislative history lends support to the view that impairments like those in section (j)(5) consistently will meet the definition of ''disability.'' The legislative history states that Congress modeled the ADA definition of disability on the definition contained in the Rehabilitation Act, and said it wished to return courts to the way they had construed that definition. 2008 House Judiciary Committee Report at 6. Describing this goal, the Committee report states that courts had interpreted the Rehabilitation Act definition ''broadly to include persons with a wide range of physical and mental impairments such as epilepsy, diabetes, multiple sclerosis, and intellectual and developmental disabilities,'' even where a mitigating measure lessened their impact.'' *Id.*

Section 1630.2(j)(6), on the other hand, offers examples of impairments that may be disabling for some individuals but not for others, depending on the stage of the impairment, the presence of other impairments that combine to make the impairment disabling, or any number of other factors. The types of impairment described in section (j)(6) will require somewhat more analysis than those in section (j)(5) in order to determine whether they substantially limit an individual's major life activities, although the Commission notes that the level of analysis required for these types of impairments still should be less than that required prior to the ADA Amendments Act. The examples do not set minimum requirements for establishing substantial limitations. The regulations also make clear that no negative implication should be drawn from the fact that a particular impairment does not appear on the lists of examples in §§ 1630.2(j)(5) and (6). The standards for determining whether an impairment has been shown to be a disability are intended to be construed in favor of broad coverage of individuals, and should not demand an extensive analysis.

It is important to remember that the limitation on the performance of a major life activity must be the result of a condition that is an impairment. As noted earlier, advanced age by itself, physical or personality characteristics, and environmental, cultural, and economic disadvantages are not impairments. Consequently, even if such factors substantially limit an individual's ability to perform a major life activity, this limitation will not constitute a disability. Thus, if someone could sleep only three hours per night because he had a newborn child living in his home, or because he lived along a noisy street, his limitation would not constitute a disability. An individual who is unable to read because he or she was never taught to read would not be an individual with a disability because lack of education is not an impairment. However, an individual who is substantially limited in reading because of dyslexia would be an individual with a disability because dyslexia, a learning disability, is an impairment.

Substantially Limited in Working

In most instances, an individual with a disability will be able to establish coverage by showing that a major life activity other than working is substantially limited, therefore generally making it unnecessary to consider whether the individual is substantially limited in working. An individual need not demonstrate that he is substantially limited in working if he can demonstrate a substantial limitation in another major life activity.

However, working may be the only major life activity at issue in some cases, for example where an impairment limits only the ability to satisfy certain job-related requirements of the position the individual was performing or for which the individual is applying. Some of these requirements may involve performance of major life activities in ways that are characteristic of the workplace, such as requirements to stand, sit, bend, lift, or perform manual tasks frequently, for a prolonged period of time, or repetitively.

Consistent with Congress's exhortation in the Amendments Act to favor broad coverage and disfavor extensive analysis (Section 2(b)(5) (''Findings and Purposes'')), the Commission has adopted a more straightforward articulation of the standard for substantial limitation in the major life activity of working. The regulations provide that an individual who, because of an impairment, is substantially limited in performing a type of work will be considered substantially limited in working. The terms ''class of jobs'' and ''broad range of jobs in various classes'' and specific criteria for applying those terms have been eliminated, and replaced with ''type of work.'' ''Type of work'' is more straightforward and easier to understand. Many of the examples of types of work, and many of the examples of job-related requirements characteristic of a type of work, would in the Commission's view make up either a class or broad range of jobs under the prior standard.

A type of work includes the job the individual has been performing or for which he is applying, and jobs that have qualifications or job-related requirements which the individual would be substantially limited in performing as a result of the impairment. A type of work may be identified by the nature of the work as to which the individual is substantially limited when compared to most people having similar training, skills, and abilities, for instance, commercial truck driving (*i.e.,* driving those types of trucks specifically regulated by the U.S. Department of

Transportation as commercial motor vehicles), assembly line jobs, food service jobs, clerical jobs, and law enforcement jobs. A type of work may also be identified by reference to job-related requirements that an individual is substantially limited in meeting because of an impairment, as compared to most people performing those jobs. The regulations provide examples of job-related requirements that may be characteristic of a type of work, such as repetitive bending, reaching, or manual tasks; repetitive or heavy lifting; prolonged sitting or standing; extensive walking; the ability to work under certain conditions (such as in workplaces characterized by high temperatures, high noise levels, or high stress); or the ability to work rotating, irregular, or excessively long shifts.

Consistent with Congress's clearly expressed intent in the ADA Amendments Act that the focus of an ADA case should be on whether discrimination occurred, not on whether an individual meets the definition of ''disability'' (Section 2(b)(5) (''Findings and Purposes'')), the statistical analysis previously required by some courts will not be needed in order to establish that an individual is substantially limited in working. See, *e.g., Duncan* v. *WMATA,* 240 F.3d 1110 (DC Cir. 2001); *Taylor* v. *Federal Express,* 429 F.3d 461 (4th Cir. 2005). For this same reason, the specific factors in the prior regulation that guided determination of whether the limitation in working was ''substantial'' have been eliminated, including the geographical area to which the individual has reasonable access, the job from which the individual has been disqualified and the number and types of jobs using (and the number and type not using) similar training, knowledge, skills, or abilities within that geographical area from which the individual is also disqualified because of the impairment. Rather, using the ''type of work'' standard, evidence from the individual regarding his educational and vocational background and the limitations resulting from his impairment may be sufficient for the court to conclude from the nature of the jobs implicated that he is substantially limited in performing a type of work. Expert testimony concerning the types of jobs in which the individual is substantially limited will generally not be needed.

The regulations also make clear that an individual's ability to obtain similar employment with another employer is not dispositive of whether an individual is substantially limited in working. Similarly, someone who, due to an impairment, is substantially limited in the ability to perform a type of work will be substantially limited in working even if the individual possesses skills that would qualify him or her for another type of work.

The conclusion that an individual is substantially limited in working is consistent with the conclusion that the individual is qualified pursuant to section 1630.2(m) for the employment position the individual holds or desires. First, disability is determined without reference to accommodation, which is a mitigating measure, whereas whether an individual is qualified has always been, and is still, determined with the benefit of any accommodation to which the individual is legally entitled. Moreover, in cases where an employee claims denial of reasonable accommodation based on an employer's failure to offer reassignment to a vacant position as the accommodation of last resort prior to termination, an individual who is no longer able to perform his current position and is substantially limited in performing that type of work may nevertheless be qualified for the vacant position(s) to which he could have been reassigned as an accommodation.

Finally, not every limitation on the ability to perform a job that results from an impairment will constitute a substantial limitation in working. This is the case, for example, where the limitation results from an impairment that is temporary, non-chronic, and short-term.

Impairments That Are Usually Not Disabilities

Certain types of impairments usually will not constitute disabilities. For example, temporary non-chronic impairments of short duration that result in little or no residual effects will usually not meet the definition of disability. Such impairments may include, but are not limited to, broken limbs that heal normally, sprained joints, appendicitis, and seasonal or common influenza. Moreover, episodic conditions that impose only minor limitations are not disabilities. These conditions may include seasonal allergies that do not substantially limit a person's major life activities even when active. The fact that an impairment is of long duration, chronic, or even permanent, does not necessarily establish that it is substantially limiting.

Section 1630.2(k) Record of a Substantially Limiting Impairment

The second part of the definition of the term ''individual with a disability'' provides that an individual with a record of an impairment that substantially limits a major life activity is an individual with a disability. The intent of this provision, in part, is to ensure that people are not discriminated against because of a history of disability. For example, the ''record of'' provision would protect an individual who was previously treated for cancer but who is now deemed by a doctor to be free of cancer, from discrimination based on his or her prior medical history. This provision also ensures that individuals are not discriminated against because they have been misclassified as disabled. For example, individuals misclassified as having learning disabilities are protected from discrimination on the basis of that erroneous classification. Senate Report at 23; House Labor Report at 52–53; House Judiciary Report at 29.

This part of the definition is satisfied where evidence establishes that the individual has or has had a substantially limiting impairment. The impairment indicated in the record must be an impairment that would substantially limit one or more of the individual's major life activities. There are many types of records that could potentially contain this information, including but not limited to, education, medical, or employment records.

The Commission has deleted language from the interpretive guidance accompanying the title I regulations issued in 1991 which implied that evidence that an employer ''relied on'' a record of disability is necessary to establish coverage under this definition of ''disability.'' Only evidence that an individual has a past history of a substantially limiting impairment is necessary to establish a record of a disability. Whether the employer relied on the record of a disability when making an employment decision is relevant to the merits, *i.e.,* whether the employer discriminated on the basis of disability.

The fact that an individual has a record of being a disabled veteran, or of disability retirement, or is classified as disabled for other purposes does not guarantee that the individual will satisfy the definition of ''disability'' under part 1630. Other statutes, regulations and programs may have a definition of ''disability'' that is not the same as the definition set forth in the ADA and contained in part 1630. Accordingly, in order for an individual who has been classified in a record as ''disabled'' for some other purpose to be considered an individual with a disability for purposes of part 1630, the impairment indicated in the record must be a physical or mental impairment that substantially limits one or more of the individual's major life activities. The term ''substantially limits'' under the second prong of the definition of ''disability'' is to be construed in accordance with the same principles applicable under the first prong. In other words, the term is to be construed broadly to the maximum extent permitted under the ADA and should not require extensive analysis.

Section 1630.2(*l*) Regarded as Substantially Limited in a Major Life Activity

The third way that an individual may be an ''individual with a disability'' under the definition is if the individual is ''regarded as'' an individual with a disability. As newly defined under the statute, ''regarded as'' coverage can be established whether or not the employer was motivated by myths, fears, or stereotypes. Under the ADA as amended, an individual is regarded as disabled when a covered entity takes some action prohibited by the ADA (*e.g.,* refusal to hire, termination, or demotion) because of an actual or perceived impairment. Proof that the individual was subjected to a prohibited employment action, *e.g.,* excluded from one job, because of an impairment (other than an impairment that is transitory and minor, as discussed below) is sufficient to establish coverage under the ''regarded as'' definition. 2008 House Committee on Educ. and Labor Report at 12–14; 2008 Senate Managers' Statement at 9–10. Evidence that the employer believed the individual was substantially limited in any major life activity is not required. For example, if an employer refused to hire an applicant because of skin graft scars, the employer has regarded the applicant as an individual with a disability. Similarly, if an employer

terminates an employee because he has cancer, the employer has regarded the employee as an individual with a disability. It is not necessary, as it was prior to enactment of the ADA Amendments Act, for an individual to demonstrate that a covered entity perceived him as substantially limited in the ability to perform a major life activity.

The regulations explain that an employer that takes a prohibited action against an individual because of symptoms related to an impairment or because of mitigating measures, such as medication that an individual uses because of an impairment, may also regard the individual as disabled, even if the employer is unaware of the underlying impairment. The regulations offer two examples to illustrate this point—one involving an employer who refuses to hire someone with a facial tic associated with Tourette's Syndrome and the second describing an employer that refuses to hire someone for a driving job because he takes anti-seizure medication.

Nevertheless, as with establishing disability under any of the three prongs of the definition, the individual must still establish the other elements of a claim and the employer may raise any available defenses. For example, an employer who withdraws a conditional offer of employment because the post-offer pre-employment medical examination reveals that the applicant takes anti-seizure medication has regarded the applicant as an individual with a disability. However, the applicant would still need to establish that he is otherwise qualified for the position, and the employer could still raise any applicable defenses under § 1630.15, for example that the applicant posed a direct threat to health or safety based on the best available objective medical evidence and an individualized assessment of the risk, if any, posed by the particular applicant, or that excluding individuals who take anti-seizure medication from the position at issue is *required* by another federal law. Similarly, if a claim is brought alleging that an employer's qualification standard screened out or tended to screen out an individual on the basis of disability, the applicant would still need to establish that he is otherwise qualified for the position, and the employer could still show that the qualification standard at issue is job-related and consistent with business necessity, that a safety-based exclusion satisfied the direct threat standard, or any other applicable defenses under § 1630.15.

As prescribed in the ADA Amendments Act, the regulations provide a restriction on coverage under the ''regarded as'' prong where the impairment on which a prohibited action is based is *both* transitory (having an actual or expected duration of six months or less) *and* minor. The relevant inquiry is whether the impairment on which the employer's action was based is transitory and minor, not whether the individual actually has or had that impairment. The regulations provide several examples to illustrate the exception. An additional example would include a situation in which an employer terminated an employee with a transitory and minor wound on his hand, believing the wound to be symptomatic of HIV infection. The employer will have ''regarded'' the employee as an individual with a disability, because it took a prohibited employment action based on a perceived impairment (HIV infection) that is not transitory and minor. Under the Amendments Act, an individual need not establish that an employer was motivated by myths, fears, and stereotypes about an actual or perceived impairment to establish coverage under the ''regarded as'' prong. As long as the employer bases an employment action on an actual or perceived impairment that was not transitory and minor, the employer regards the individual as disabled, whether or not myths, fears, or stereotypes about disability motivated the employer's decision. For this reason, the Commission has deleted certain language about myths, fears, and stereotypes from the original version of this section of the appendix that might otherwise be misconstrued. Of course, evidence that an employer harbored myths, fears, and stereotypes related to an impairment may be relevant in establishing that the employer took a prohibited action based on the impairment.

* * * * *

Section 1630.2(o) Reasonable Accommodation

An individual with a disability is considered ''qualified'' if the individual can perform the essential functions of the position held or desired with or without reasonable accommodation. A covered entity is required, absent undue hardship, to provide reasonable accommodation to a qualified individual with a substantially limiting impairment or a ''record of'' such an impairment. However, a covered entity is not required to provide an accommodation to an individual who meets the definition of disability solely under the ''regarded as'' prong.

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Section 1630.4 Discrimination Prohibited

Subparagraph (a) of this provision prohibits discrimination against a qualified individual with a disability in all aspects of the employment relationship. The range of employment decisions covered by this nondiscrimination mandate is to be construed in a manner consistent with the regulations implementing section 504 of the Rehabilitation Act of 1973.

Subparagraph (b) makes it clear that the language ''on the basis of disability'' is not intended to create a cause of action for an individual without a disability who claims that someone with a disability was treated more favorably (disparate treatment), or was provided a reasonable accommodation that an individual without a disability was not provided. Additionally, the ADA and this part do not affect laws that may require the affirmative recruitment or hiring of individuals with disabilities, or any voluntary affirmative action employers may undertake on behalf of individuals with disabilities. At the same time, however, part 1630 is not intended to limit the ability of covered entities to choose and maintain a qualified workforce. Employers can continue to use job-related criteria to select qualified employees, and can continue to hire employees who can perform the essential functions of the job.

Section 1630.5 Limiting, Segregating and Classifying

This provision and the several provisions that follow describe various specific forms of discrimination that are included within the general prohibition of § 1630.4. The capabilities of qualified individuals must be determined on an individualized, case by case basis. Covered entities are also prohibited from segregating qualified employees into separate work areas or into separate lines of advancement on the basis of their disabilities.

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Section 1630.9 Not Making Reasonable Accommodation

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Section 1630.9(e)

The purpose of this provision is to incorporate the clarification made in the ADA Amendments Act of 2008 that an individual is not entitled to reasonable accommodation under the ADA if the individual is only covered under the ''regarded as'' prong of the definition of ''individual with a disability.'' However, if the individual is covered under both the ''regarded as'' prong and one or both of the other two prongs of the definition of ''individual with a disability,'' the individual is entitled to reasonable accommodation assuming the other requirements of the ADA are met.

Section 1630.10 Qualification Standards, Tests, and Other Selection Criteria

Section 1630.10(a)—In General

The purpose of this provision is to ensure that individuals with disabilities are not excluded from job opportunities unless they are actually unable to do the job. It is to ensure that there is a fit between job criteria and an applicant's (or employee's) actual ability to do the job. Accordingly, job criteria that even unintentionally screen out, or tend to screen out, an individual with a disability or a class of individuals with disabilities because of their disability may not be used unless the employer demonstrates that those criteria, as used by the employer, are job-related to the position to which they are being applied and are consistent with business necessity. The concept of ''business necessity'' has the same meaning as the concept of ''business necessity'' under section 504 of the Rehabilitation Act of 1973.

Selection criteria that exclude, or tend to exclude, an individual with a disability or a class of individuals with disabilities because of their disability but do not concern an essential function of the job would not be consistent with business necessity.

The use of selection criteria that are related to an essential function of the job may be consistent with business necessity. However, selection criteria that are related to an essential function of the job may not be used to exclude an individual with a disability if that individual could satisfy the criteria with the provision of a reasonable

accommodation. Experience under a similar provision of the regulations implementing section 504 of the Rehabilitation Act indicates that challenges to selection criteria are, in fact, most often resolved by reasonable accommodation. It is therefore anticipated that challenges to selection criteria brought under this part will generally be resolved in a like manner.

This provision is applicable to all types of selection criteria, including safety requirements, vision or hearing requirements, walking requirements, lifting requirements, and employment tests. See Senate Report at 37–39; House Labor Report at 70–72; House Judiciary Report at 42. As previously noted, however, it is not the intent of this part to second guess an employer's business judgment with regard to production standards. (See section 1630.2(n) Essential Functions). Consequently, production standards will generally not be subject to a challenge under this provision.

The Uniform Guidelines on Employee Selection Procedures (UGESP) 29 CFR part 1607 do not apply to the Rehabilitation Act and are similarly inapplicable to this part.

Section 1630.10(b)—Qualification Standards and Tests Related to Uncorrected Vision

This provision allows challenges to qualification standards based on uncorrected vision, even where the person excluded by a standard has fully corrected vision with ordinary eyeglasses or contact lenses. Because the statute does not limit the provision on uncorrected vision standards to individuals with disabilities, a person does not need to be an individual with a disability in order to challenge such qualification standards. Nevertheless, the Commission believes that such individuals will usually be covered under the ''regarded as'' prong of the definition of disability. Someone who wears eyeglasses or contact lenses to correct vision will still have an impairment, and a qualification standard that screens them out on the basis of the impairment by requiring a certain level of uncorrected vision to perform a job will amount to an action prohibited by the ADA based on an impairment. (See § 1630.2(*l*); Appendix to § 1630.2(*l*)).

A covered entity may still defend a qualification standard requiring a certain level of uncorrected vision by showing that it is job-related and consistent with business necessity. For example, an applicant or employee with uncorrected vision of 20/100 who wears glasses that fully correct his vision may challenge a police department's qualification standard that requires all officers to have uncorrected vision of no less than 20/40 in one eye and 20/100 in the other, and visual acuity of 20/20 in both eyes with correction. The department would then have to establish that the standard is job-related and consistent with business necessity.

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[FR Doc. E9–22840 Filed 9–22–09; 8:45 am]

BILLING CODE 6570–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0025; FRL–8958–8]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Modification of Existing Qualified Facilities Program and General Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing disapproval of revisions to the SIP submitted by the State of Texas that relate to the Modification of Existing Qualified Facilities (the Texas Qualified Facilities State Program or the Program). EPA proposes disapproval of the Texas Qualified Facilities State Program because it does not meet the Minor NSR SIP requirements nor does it meet the NSR SIP requirements for a substitute Major NSR SIP revision.

EPA also proposes to take action on revisions to the SIP submitted by Texas for definitions severable from the definitions in the Qualified Facilities submittals. EPA proposes to take action on some of the submitted severable definitions (General Definitions). We propose to approve three definitions, grandfathered facility, maximum allowable emission rate table (MAERT), and new facility. We propose to disapprove the definition for best available control technology (BACT) and two subparagraphs, A and B, and paragraph G under the definition for modification of existing facility. We propose to make an administrative correction to the SIP-approved definition of facility, and take no action on the addition to the SIP-approved definition of federally enforceable because it relates to a Federal program that is implemented separately from the SIP. Third, EPA is proposing to take no action on a provision not in the Texas SIP that includes, among other things, a trading provision containing a cross-reference that no longer is in Texas' rules; EPA will act upon all of it in a separate notice.

We are proposing action under section 110, part C, and part D of the Federal Clean Air Act (the Act or CAA). EPA is taking comments on this proposal and intends to take a final action.

DATES: Comments must be received on or before November 23, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2005–TX–0025, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Stanley M. Spruiell at *spruiell.stanley@epa.gov.*
- *Fax:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), at fax number 214–665–7263.
- *Mail:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:00 a.m. and 4:00 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2005–TX–0025. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Air Branch, Multimedia Planning and Permitting Division, Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number 214–665–7263; e-mail address *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the following terms have the meanings described below:

- "We," "us," and "our" refer to EPA.
- "Act" or "CAA" means Federal Clean Air Act.
- "40 CFR" means Title 40 of the Code of Federal Regulations—Protection of Environment.
- "SIP" means State Implementation Plan as established under section 110 of the Act.
- "NSR" means new source review, a phrase intended to encompass the statutory and regulatory programs that regulate the construction and modification of stationary sources as provided under CAA section 110(a)(2)(C), CAA Title I, parts C and D, and 40 CFR 51.160 through 51.166.
- "Minor NSR" means NSR established under section 110 of the Act and 40 CFR 51.160.
- "Major NSR" means any new or modified source that is subject to NNSR and/or PSD.
- "NNSR" means nonattainment NSR established under Title I, section 110 and part D of the Act and 40 CFR 51.165.
- "PSD" means prevention of significant deterioration of air quality established under Title I, section 110 and part C of the Act and 40 CFR 51.166.
- "Program" means the SIP revision submittals from the TCEQ concerning the Texas Qualified Facilities State Program.
- "NAAQS" means any national ambient air quality standard established under 40 CFR part 50.
- "TSD" means the Technical Support Document for this action.

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I. What Action is EPA Proposing?

We are proposing to disapprove the Texas Qualified Facilities State Program, as submitted by Texas in Title 30 of the Texas Administrative Code (30 TAC) at 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. This includes the following regulations under Chapter 116: 30 TAC 116.116 (e), 30 TAC 116.117, 30 TAC 116.118, and the definitions in 30 TAC 116.10 for qualified facility, actual emissions, allowable emissions, and modification of existing facility at (E) for qualified facilities, as not meeting the Act and EPA's NSR regulations. It is EPA's position that none of these identified elements for the submitted Qualified Facilities State Program is severable from each other.

First, we are proposing to disapprove the submitted Texas Qualified Facilities State Program as not meeting the requirements for a substitute Major NSR SIP revision. Our grounds for proposing disapproval as a substitute Major NSR SIP revision include the following:

- It is not clearly limited to Minor NSR thereby allowing major modifications to occur without a Major NSR permit;
- It has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements thereby allowing changes at existing facilities to avoid the requirement to obtain preconstruction permit authorizations for projects that would otherwise require a Major NSR preconstruction permit;
- It does not require that first an applicability determination be made whether the modification is subject to Major NSR thereby exempting new major stationary sources and major

modifications from the EPA Major NSR SIP requirements;

• It does not include a demonstration from the TCEQ showing how the use of ''modification'' is at least as stringent as the definition of ''modification'' in the EPA Major NSR SIP program;

• It does not include the requirement to make Major NSR applicability determinations based on actual emissions and on emissions increases and decreases (netting) that occur within a major stationary source;

• It fails to meet the statutory and regulatory requirements for a SIP revision;

• It is not consistent with applicable statutory and regulatory requirements as interpreted in EPA policy and guidance on SIP revisions; and

• It fails to ensure protection of the national ambient air quality standards (NAAQS), and noninterference with the Texas SIP control strategies and reasonable further progress (RFP).

We are proposing to disapprove the submitted Program as not meeting the Minor NSR SIP requirements. It is not clearly limited to Minor NSR. It has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements. This Program does not require that first an applicability determination be made whether the modification is subject to Major NSR.

In addition to the failures to protect Major NSR SIP requirements, EPA cannot find that the submitted Program, as a Minor NSR SIP program, will ensure protection of the NAAQS, and noninterference with the Texas SIP control strategies and RFP. We are proposing to disapprove this Program as a Minor NSR SIP revision because it does not meet certain provisions of the Act and EPA's Minor NSR SIP requirements. Our grounds for proposing disapproval as a Minor NSR SIP revision include the following:

• It is not clearly limited to Minor NSR thereby allowing major modifications to occur without a Major NSR permit;

• It has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements thereby allowing sources to avoid the requirement to obtain preconstruction permit authorizations for projects that would otherwise require a Major NSR preconstruction permit;

• It does not require that first an applicability determination be made whether the modification is subject to Major NSR thereby exempting new major stationary sources and major modifications from the EPA Major NSR SIP requirements;

• It fails to meet the statutory and regulatory requirements for a SIP revision;

• It is not consistent with applicable statutory and regulatory requirements as interpreted in EPA policy and guidance on SIP revisions;

• It is not an enforceable Minor NSR permitting program;

• It lacks safeguards to ensure that the changes will not violate a Texas control strategy and would not interfere with attainment and maintenance of a NAAQS;

• It fails to demonstrate that the requested relaxation to the Texas Minor NSR SIP will not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the Act.

Secondly, in a proposed action separate from the above action on the submitted Texas Qualified Facilities State Program, we are proposing to disapprove severable definitions as submitted by Texas for ''best available control technology (BACT)'' and subparagraphs (A) and (B) addressing insignificant increases and subparagraph (G) of ''modification of existing facility,'' as not meeting the Act and EPA's NSR regulations. We are proposing to approve the severable definitions as submitted for ''grandfathered facility,'' ''new facility'' and ''maximum allowable emission rate table (MAERT).'' We are proposing to take no action on the submitted severable new subparagraph relating to the SIP definition of ''federally enforceable'' because it is outside the scope of the SIP and the submitted severable provision in 30 TAC 116.116(f) concerning trading for which we will take action later in a separate notice. It is EPA's position that these definitions are separate from those in the submitted Texas Qualified Facilities State Program; moreover, each is severable from each other but for subparagraphs (A) and (B) in the definition for ''modification of existing facility.'' Subparagraphs (A) and (B) in ''modification of existing facility'' are not severable from each other. The submitted definition for ''best available control technology'' is not severable, however, from another action appearing in today's **Federal Register**. *See* sections IV through VIII for further information.

We have evaluated the submitted Texas Qualified Facilities State Program. Based upon our evaluation, we have concluded that the portions of the submitted SIP revisions specifically applicable to the Program do not meet the requirements of the Act and 40 CFR part 51. All these portions of the submittals for the Program are not severable and therefore are not approvable.

We have evaluated other (but not all) additional definitions in the submitted General Definitions that are not part of the submitted Texas Qualified Facilities State Program. Based upon our evaluation, we have concluded that some of the evaluated definitions do not meet the Federal requirements and therefore, are not approvable whereas other evaluated definitions meet the Federal requirements and are approvable. Each definition that we evaluated in the submitted General Definitions (that is not identified above as part of the Program) is severable from each other but for the subparagraphs (A) and (B) identified above.

As authorized in sections 110(k)(3) and 301(a) of the Act, where portions of the State submittals are severable, EPA may approve the portions of the submittals that meet the requirements of the Act, take no action on certain portions of the submittals,[1] and disapprove the portions of the submittals that do not meet the requirements of the Act. When the deficient provisions are not severable from all of the submitted provisions, EPA must propose disapproval of the submittals, consistent with sections 301(a) and 110(k)(3) of the Act. The submitted provisions work together to form the Texas Qualified Facilities State Program and are not severable from each other. Therefore, EPA is proposing disapproval of the submitted Program. The submitted provisions for the General Definitions that EPA evaluated do not work together and are severable from each other. Therefore, EPA is proposing to disapprove the submitted definition for BACT and subparagraphs (A) and (B) (that are not severable from each other), and subparagraph (G) in the definition for modification of existing facility. The submitted definition for BACT is not severable from another action proposed in today's **Federal Register.** *See* section II and footnote 2 for additional information.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a mandatory requirement of the Act starts a sanctions clock and a Federal Implementation Plan (FIP) clock. The provisions in these submittals relating to the Texas Qualified Facilities State Program and the General Definitions were not

[1] In this action, we are taking no action on a submitted revision to a definition that is outside the scope of the SIP and a submitted revision to a regulatory provision that is currently undergoing review for appropriate action.

submitted to meet a mandatory requirement of the Act. Therefore, if EPA takes final action to disapprove the submitted Texas Qualified Facilities State Program or to disapprove either the submitted definition for BACT or subparagraphs (A) and (B) or subparagraph (G) in the submitted definition of modification of existing facility in the General Definitions, no sanctions and FIP clocks will be triggered.

II. What Are the Other Relevant Proposed Actions on the Texas Permitting SIP Revision Submittals?

This proposed action should be read in conjunction with two other proposed actions appearing elsewhere in today's **Federal Register**, (1) proposed action on the Texas NSR SIP, including PSD, NNSR for the 1997 8–Hour Ozone Standard, NSR Reform, and a Minor NSR Standard Permit (NSR SIP); [2] and (2) proposed action on the Texas NSR SIP, Flexible Permits. On November 26, 2008, EPA proposed limited approval/limited disapproval of the Texas submittals relating to public participation for air permits of new and modified facilities (73 FR 72001). EPA believes these actions should be read in conjunction with each other because the permits issued under these State programs are the vehicles for regulating a significant universe of the air emissions from sources in Texas and thus directly impact the ability of the State to achieve and maintain attainment of the NAAQS and to protect the health of the communities where these sources are located. Our proposal is based upon our interpretation of the Texas preconstruction permitting program, which is outlined in each notice and accompanying technical support document (TSD). Those interested in any one of these actions are encouraged to review and comment on the other proposed actions as well.

EPA intends to take final action on the State's Public Participation SIP revision submittals in November 2009. EPA intends to take final action on the submitted Texas Qualified Facilities State Program by March 31, 2010, the submitted Texas Flexible Permits State Program by June 30, 2010, and the NSR SIP on August 31, 2010. These dates are expected to be mandated under a Consent Decree (see, Notice of Proposed Consent Decree and Proposed Settlement Agreement, 74 FR 38015, July 30, 2009).

After review of public comment, we may take action to finalize the approvable portions of the submittals and the disapprovable portions of the submittals in separate actions; wherever severable, we may take final action on some portions in a separate action.

III. What Has the State Submitted?

This notice provides a summary of our evaluation of Texas' March 13, 1996, SIP revision submittal, as replaced by severable portions in the July 22, 1998 SIP revision submittal; and as revised by severable portions in the September 11, 2000; July 31, 2002, and September 4, 2002, SIP revision submittals. We provide our reasoning in general terms in this preamble, but provide a more detailed analysis in the TSD that has been prepared for this proposed rulemaking. Because we are proposing to disapprove this submitted Program based on the inconsistencies and deficiencies discussed herein, we have not attempted to review and discuss all of the issues that would need to be addressed for approval of this submitted Program as a Major NSR SIP revision.

A. Qualified Facilities State Program Submittals

On March 13, 1996, Texas submitted revisions affecting 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. These revisions include adding a new (e) to 30 TAC 116.116—Changes to Facilities, concerning Qualified Facilities, a new 30 TAC 116.117—Documentation and Notification of Changes at Qualified Facilities, a new 116.118—Pre-Change Qualification, a new definition relating to modifications of existing Qualified Facilities in 30 TAC 116.10, and new definitions in 30 TAC 116.10 for ''qualified facility,'' ''actual emissions,'' and ''allowable emissions.'' On July 22, 1998, Texas submitted severable revisions that included the repeal of the contents of the 1996 submittal. Among other things, the 1998 submittal included a new 30 TAC 116.10, General Definitions, ''actual emissions'' at (1), ''allowable emissions'' at (2), ''modification of existing facility'' at (9)(F), and ''qualified facility'' at (16), a new 30 TAC 116.116(e), a new 30 TAC 116.117, and a new 30 TAC 116.118. On September 11, 2000, Texas submitted a revision in 30 TAC 116.10 to the definition of ''allowable emissions'' and a revision to subparagraph (e)(5)(B) of 30 TAC 116.116. On September 4, 2002, TCEQ submitted a revision to 30 TAC 116.10 that included the renumbering of the definitions.

General Definitions Submittals

On March 13, 1996, Texas submitted revisions to 30 TAC 116.10—General Definitions. This submittal included, among other definitions, new state regulatory definitions for ''BACT,'' ''facility,'' ''grandfathered facility,'' ''maximum allowable emission rate table (MAERT),'' ''modification of existing facility'' at subparagraphs (A), (B), and (G), and ''new facility.'' On July 22, 1998, Texas submitted severable revisions that included, among other things, repeal of the 1996 submitted definitions. Texas adopted a new 30 TAC 116.10—General Definitions, that included among other definitions, new definitions for ''BACT,'' ''facility,'' ''grandfathered facility,'' ''maximum allowable emission rate table (MAERT),'' ''modification of existing facility,'' and ''new facility.'' On September 11, 2000, Texas submitted a new definition for ''federally enforceable.'' On July 31, 2002, Texas submitted a revision to the definition of ''facility.'' On September 4, 2002, Texas submitted a revision to add two new definitions in 30 TAC 116.10 and renumber the other definitions to accommodate the new definitions.

On September 18, 2002 (67 FR 58697), EPA approved the definition of ''federally enforceable,'' introductory paragraph and (A) through (E), as submitted July 22, 1998. On September 6, 2006 (71 FR 52698), EPA approved the definition ''facility'' as submitted July 22 1998. On August 28, 2007 (72 FR 49198), EPA approved the two new definitions submitted on September 4, 2002, and the renumbering of existing SIP approved definitions. EPA's August 28, 2007, action also included a typographical error that inadvertently removed the definition of ''facility'' that was previously approved September 6, 2006, as part of the Texas SIP.

Summary of the Submittals Addressed in This Proposed Action

The table below summarizes the changes that are in the SIP revision submittals. A summary of EPA's evaluation of each section and the basis for this proposal is discussed in sections IV through VIII of this preamble. The

[2] In that proposed action, the submitted definition of BACT is not severable from the proposed action on the PSD SIP revision submittals. EPA may choose to take final action on the definition of BACT in the final action on the NSR SIP rather than on the Qualified Facilities or the General Definitions final action. EPA is obligated to take final action on the submitted definitions in the General Definitions for those identified as part of the Texas Qualified Facilities State Program, the Texas Flexible Permits Program, Public Participation, Permit Renewals (there will be a proposed action published at a later date), and this BACT definition as part of the NSR SIP.

TSD includes a detailed evaluation of the submittals.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION

Section	Title	Submittal dates	Description of change	Proposed action
30 TAC 116.10 General Definitions				
30 TAC 116.10(1)	Definition of "actual emissions"	03/13/1996	Added new definition	Disapproval.
		07/22/1998	Repealed and a new definition submitted as paragraph (1).	
30 TAC 116.10(2)	Definition of "allowable emissions".	03/13/1996	Added new definition	Disapproval.
		07/22/1998	Repealed and a new definition submitted as paragraph (2).	
		09/11/2000	Revised paragraphs (2)(A) through (D).	
30 TAC 116.10(3)	Definition of "BACT"	03/13/1996	Added new definition	Disapproval.
		07/22/1998	Repealed and a new definition submitted as paragraph (3).	
30 TAC 116.10(6)	Definition of "facility"	03/13/1996	Added new definition	Administrative correction to clarify the definition of "facility" is in the SIP.
		07/22/1998	Repealed and a new definition submitted as paragraph (4).	
			Approved 09/06/06 (71 FR 52698).	
		09/04/2002	Redesignated to paragraph (6).	
			Inadvertently identified as non-SIP provision in 08/28/07 SIP revision.	
30 TAC 116.10(7)	Definition of "Federally enforceable".	09/11/00	New subparagraph (5)(F)	No action.
		09/04/02	Subparagraph (5)(F) redesignated to subparagraph (7)(F).	
			Implements section 112(g) of Act.	
30 TAC 116.10(8)	Definition of "grandfathered facility".	03/13/1996	Added new definition	Approval.
		07/22/1998	Repealed and a new definition submitted as paragraph (6).	
		07/31/2002	Revised definition.	
		09/04/2002	Redesignated to paragraph (8).	
30 TAC 116.10(10)	Definition of "maximum allowable emission rate table".	03/13/1996	Added new definition	Approval,
		07/22/1998	Repealed and a new definition submitted as paragraph (8).	
		09/04/2002	Redesignated to paragraph (10).	
30 TAC 116.10(11)	Definition of "modification of existing facility".	03/13/1996	Added new definition	Disapproval of (A), (B), (E), and (G).
		07/22/1998	Repealed and a new definition submitted as paragraph (9).	
		09/11/2000	Revised paragraph (9).	
		09/04/2002	Redesignated to paragraph (11).	
30 TAC 116.10(12)	Definition of "new facility"	03/13/1996	Added new definition	Approval.
		07/22/1998	Repealed and a new definition submitted as paragraph (10).	
		09/04/2002	Redesignated to paragraph (12).	
30 TAC 116.10(16)	Definition of "qualified facility"	03/13/1996	Added new definition	Disapproval.
		07/22/1998	Repealed and a new definition submitted as paragraph (14).	
		09/04/2002	Redesignated to paragraph (16).	
30 TAC 116.116	Changes to Facilities	03/13/1996	Added subsection (e)	Disapproval.
		07/22/1998	Repealed and a new 116.116 (e) submitted.	Disapproval.
30 TAC 116.117	Documentation and Notification of Changes to Qualified Facilities.	03/13/1996	Added new section	Disapproval.
		07/22/1998	Repealed and a new 116.117 resubmitted.	
30 TAC 116.118	Pre-Change Qualification	03/13/1996	Added new section	Disapproval.
		07/22/1998	Repealed and a new 116.118 submitted.	

IV. Is the Texas Qualified Facilities State Program Submittal for a Major or Minor NSR SIP Revision?

A. Description of the Submitted Program

This part of today's action describes the Qualified Facilities State Program submitted by Texas to EPA for approval into the State's SIP. The submitted Program adds an exemption under State law allowing a change to an existing facility that is ''qualified,'' to net out of the NSR SIP permitting requirements.

First, EPA wishes to acknowledge that its interpretation of the Texas law and the Texas NSR SIP inclines it to the legal position that the State uses a ''dual definition'' for the term ''facility.'' It is our understanding of State law, that a ''facility'' can be an ''emissions unit,'' i.e., any part of a stationary source that emits or may have the potential to emit any air contaminant. A ''facility'' also can be a piece of equipment, which is smaller than an ''emissions unit.'' A ''facility'' can be a ''major stationary source'' as defined by Federal law. A ''facility'' under State law can be more than one ''major stationary source.'' It can include every emissions point on a company site, without limiting these emissions points to only those belonging to the same industrial grouping (SIC code). EPA encourages comment on whether its understanding of Texas law is correct for the definition of ''facility.'' If a commenter does not believe this legal position is correct, we encourage the commenter to submit any applicable case law, Texas legislative history, etc., that can further our legal understanding of the State's meaning of the term ''facility.'' The State legal meaning of the term ''facility'' is critical to EPA's understanding of the Texas permitting program, both minor and major. We also are requesting comment on the meaning of ''a TCEQ air quality account number.'' This too is critical to our legal positions discussed today in this notice.

The SIP revision submittals establish the criteria by which a physical change in, or change in the method of operation of, an existing minor or major Qualified Facility is not a modification and does not trigger the permitting requirements for a case-by-case NSR SIP permit, amendment, or alteration, or coverage under a minor NSR SIP permit by rule or standard permit. They also include the criteria for becoming a Qualified Facility, the permitting process required for a Qualified Facility, and the methods for determining the net effect of emission increases and decreases, compound interchanges,[3] and intraplant trading of emissions (*i.e.,* relying upon emission reductions from other existing Qualified Facilities in the applicability netting analysis).

Under the submittals, a facility[4] is designated as a Qualified Facility if either of the following criteria is met:

(1) The existing facility was issued a case-by-case Major or Minor NSR SIP permit or permit amendment, or was covered under a Minor NSR SIP permit by rule, within 10 years before the change occurs. *See* submittals at 30 TAC 116.10(11)(E)(i).

(2) The existing facility was issued a case-by case Major or Minor NSR permit or permit amendment, or was covered under a Minor NSR SIP permit by rule, for the voluntarily installed additional air pollution control methods (see submittals at 30 TAC 116.116(e)(6)), within 10 years before the change occurs (*see* submittals at 30 TAC 116.10(1)). We request comment on whether our interpretation of the regulatory language is correct that a permit is required for a facility to be a Qualified Facility. This interpretation is critical to our position on whether all Qualified Facilities have undergone an ambient air quality analysis, as required before issuance of any Minor or Major NSR SIP permit in Texas.

Under the second criterion, the additional air pollution controls methods must be at least as effective as the Minor NSR BACT[5] that would have been required in a case-by-case Minor NSR SIP permit or permit amendment at the time the additional control methods were applied. An emissions limitation is established based upon the application of Minor NSR SIP BACT, which is reflected as an allowable emission rate in a permit. *See* the submittals at 30 TAC 116.116(e)(6)(A) and (B) and page 148 of the 1996 SIP revision submittal. The permit under the second criterion must have been issued within 10 years before the change occurs. *See* the submittals at 30 TAC 116.10(1) and (11)(E). The Texas legislature envisioned this second criterion as a ''carrot'' to encourage grandfathered facilities[6] to apply for a permit to become qualified and thereby be able to participate in the netting. See *e.g.,* submittals at 30 TAC 116.10(2)(C). At the time of the State's adoption of this submitted Program, the State did not have the statutory authority to impose controls on or require permits for grandfathered facilities.

The submitted Program applies only to Qualified Facilities with the same TCEQ air quality account number.[7] *See* submittals at 30 TAC 116.116(e)(2). The first step in determining whether there is a modification subject to NSR review

[3] Section 382.003(2) of the TCAA defines ''air contaminant'' as ''particulate matter, radioactive matter, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.'' SB 1126 did not revise this statutory term. TCEQ interpreted the legislative intent to allow individual compounds to be interchanged with other compounds in the same air contaminant category. Submitted 30 TAC 116.116(e)(3)(F) defines an ''air contaminant category'' as ''a group of related compounds, such as VOCs, particulate matter, nitrogen oxides, and sulfur compounds.'' An example is if the owner or operator wishes to make a change that will increase emissions of heptane, a VOC. The reductions relied upon in the applicability netting analysis will be acetone, another VOC. TCEQ has established an ''interchange'' methodology to ensure that compounds within the VOCs air contaminant category, as interchanged, will have an equivalent impact on the air quality.

[4] ''Facility'' is defined in the SIP-approved 30 TAC 116.10(6) as ''A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.'' In this action, we are also proposing an administrative correction to clarify that the definition of ''facility'' is in the SIP. See section VII.C.

[5] Texas adopted a revised NSR State rule on July 27, 1972, to add the requirement that a proposed new facility and proposed modification utilize at least best available control technology (BACT), with consideration to the technical practicability and economical reasonableness of reducing or eliminating the emissions from the facility. EPA approved the revised 603.16 into the Texas SIP, presently codified in the Texas SIP at 30 TAC 116.111(a)(2)(C). The Federal definition for PSD BACT is part of the Texas SIP as codified in the SIP at 30 TAC 116.160(a). (This current SIP rule citation was adopted by the State on October 10, 2001, and EPA approved this recodified SIP rule citation on July 22, 2004 (69 FR 43752).) EPA approved the Texas PSD program SIP revision submittals, including the State's incorporation by reference of the Federal definition of BACT, in 1992. *See* proposal and final approval of the Texas PSD SIP at 54 FR 52823 (December 22, 1989) and 57 FR 28093 (June 24, 1992). EPA specifically found that the SIP BACT requirement (now codified in the Texas SIP at 30 TAC 116.111(a)(2)(C)) did not meet the Federal PSD BACT definition. To meet the PSD SIP Federal requirements, Texas chose to incorporate by reference, the Federal PSD BACT definition, and submit it for approval by EPA as part of the Texas PSD SIP. Upon EPA's approval of the Texas PSD SIP submittals, both EPA and Texas interpreted the SIP BACT provision now codified in the SIP at 30 TAC 116.111(a)(2)(C) as being a minor NSR SIP requirement for minor NSR permits.

[6] Grandfathered facilities are facilities that were once exempt from most State air permitting requirements because the facilities predated the 1971 Texas Clean Air Act that required preconstruction review and operating permits for construction of any new source and modification of any existing source that may emit air contaminants into the atmosphere of the State.

[7] ''Account'' for NSR purposes is defined in 30 TAC 101.1(1), second sentence, as ''any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of way, waterways, or similar divisions.'' This definition was approved as part of the Texas SIP (March 30, 2005 (70 FR 16129)).

is to evaluate the type of proposed change. The change cannot be an increase in emissions of any air contaminant not previously emitted. *See* submittals at 30 TAC 116.116(e)(1)(B). The change cannot be any physical change to the existing permitted Major or Minor Qualified Facility that creates a discrete or identifiable structure, device, item, equipment, or enclosure, which constitutes or contains a stationary source. *See* submittals at 30 TAC 116.116(e)(5)(A). If the change is not either of these types of change, next one evaluates whether the change's increased emissions will be above the most stringent of the Qualified Facility's permitted emissions rate or an applicable state or federal rule. There is no modification subject to NSR review if the change does not cause an increase in emissions above the Facility's most stringent applicable emissions rate (imposed by NSR SIP permit or applicable state or federal rule). *See* the submittals at 30 TAC 116.116(e)(3) and 30 TAC 116.116(e)(1)(A)–(B). In no way can a Qualified Facility's existing most stringent applicable emissions rate be lessened by using this submitted Program. *See* submittals at 30 TAC 116.116(e)(8).

If the change will cause an increase in emissions above the Qualified Facility's most stringent applicable emissions rate (imposed by NSR SIP permit or applicable state or federal rule), then the holder of the permit may perform an applicability netting analysis. The applicability netting analysis considers emissions increases from the change and reductions from the Qualified Facility making the change and reductions from any other existing permitted minor or major Qualified Facility at the same air quality account number. These reductions relied upon in the applicability netting analysis must be *surplus* to each Qualified Facility's most stringent applicable emissions rate (imposed by NSR SIP permit or applicable state or federal rule). *See* the submittals at 30 TAC 116.116(e)(2) -(3) and 30 TAC 116.10(2). *See* also Texas NSR SIP-codified rule at 30 TAC 116.115(b)(2)(I)(ii).

No emissions increases are considered from the other participating existing permitted minor or major permitted Qualified Facilities. If the sum of the increase in emissions from the projected change and an equivalent decrease in emissions from the Qualified Facility making the change is zero, *i.e.,* no net increases, the change is not a modification and is not subject to the NSR permitting requirements. *See* submittals at 30 TAC 116.116(e)(3). If the sum is above zero, then the holder of the permit that is making the change can use the netting process to offset the change by an equivalent decrease at other participating Qualified Facilities. Id. If the sum is zero, *i.e.,* no net increases, the change is not a modification and not subject to NSR permitting requirements. *Id.* If the sum is above zero, *i.e.,* net increases, the change is a modification subject to NSR permitting requirements. *See* submittals at 30 TAC 116.116(e)(1(A).

B. Is the Submitted Program Clearly a Minor NSR SIP Revision?

Our evaluation of Texas' submitted SIP revisions is guided by whether the submitted Qualified Facilities State Program applies to Major NSR or Minor NSR, or both. From our review of the record with the SIP revision submissions and other correspondence and TCEQ guidance, we believe that Texas intends its Qualified Facilities State Program to apply only to *minor* modifications at minor and major existing Qualified Facilities. *See e.g.,* 20 Tex. Reg. 8306 (October 10, 1995), 21 Tex. Reg. 1579 (1996), the 1996 SIP revision submittal particularly at pages 141, 142, 143, 148, 153, 154 of 215 pages, December 2000 Guidance for Air Quality, Qualified Changes under Senate Bill 1126, Air Permits Division, TCEQ (see particularly pages 3, 20), and TCAA Section 382.003(9), introductory paragraph and (A)–(G). As a matter of fact, EPA sent a comment letter to Texas during its public comment period and EPA said in its 1995 letter that Texas had adequately satisfied our concern that its Qualified Facilities State Program, as proposed, would not circumvent or supersede any Major NSR SIP requirements. Since we sent the 1995 letter, however, the State legislators have revised the Texas Clean Air Act (TCAA) significantly.

For the submitted Program, the TCAA definition for ''modification of existing facility'' at Section 382.003, Health and Safety Code, was revised by Senate Bill 1126 of the 1995 74th Texas Legislature. The statutory definition was revised to add, among other things, subsection at (E), a new category for when a physical change in, or change in the method of operation of, an existing major or minor NSR Qualified Facility is not a modification subject to the NSR SIP permitting requirements.[8] It provides that increases in emissions are not a modification if the increases occur at an existing permitted Qualified Facility and there are sufficient emission reductions from it and other participating existing permitted Qualified Facilities, to offset the increase.

The Legislature in 1995 also changed the factors for determining whether a modification occurs by adding a new subsection (b) to TCAA Section 382.0512. In all situations but for modifications of existing Qualified Facilities, in determining whether a proposed change at an existing facility is a modification, there can be no consideration of the effect on emissions of any pollution control method applied to the source and no consideration of any decreases in emissions from other sources, including the source proposing to make the change. *See* TCAA Section 382.0512 (a), introductory paragraph, and (1)–(2). The legislative intent was to allow under the Qualified Facilities State Program, consideration of any pollution control method applied to the Qualified Facility (see the submittals at 30 TAC 116.116(e) (2)) and any decreases in emissions from other Qualified Facilities in determining if an increase in emissions had occurred by a change made at a Qualified Facility, *i.e.,* a netting analysis now was allowed to net out of *minor* NSR permitting requirements. Additionally, grandfathered facilities could voluntarily install emission controls, obtain a permit reflecting the highest achievable actual emissions rate after the installation of the emission controls, and participate in this new Program. *See* SB 1126 Bill Analysis, April 10, 1995.

In 1999, the Texas legislature made extensive revisions to the TCAA. Relevant to today's proposed action is the legislature's adding an explicit statutory prohibition against the use of an Exemption or Permit by Rule or a Standard Permit for major modifications. *See* sections 382.05196 and .057. These 1999 legislative actions required a new legal review of the statutory definition for ''modification of existing facility'' to see if it was still limited to minor modifications. It is EPA's interpretation that the 1999 legislative changes made this statutory definition ambiguous.

The statutory definition on its face does not prohibit the use of the Program for a major modification as defined by the CAA and EPA's Major NSR SIP regulations. This Texas statutory definition has never been explicitly revised to prohibit major modifications. There are no prohibitions against using the submitted Program for major modifications, as there now are for the minor NSR SIP permits/exemptions by rule and standard permits. There are no

[8] At the time of this 1995 statutory revision to the definition of ''modification of existing facility,'' the consensus legal interpretation of this definition was that it applied only to minor modifications, not major modifications.

statutory provisions in the TCAA that clearly limit modifications under the submitted Program to minor modifications.

Similarly, the regulatory provisions submitted by Texas do not prohibit the use of the submitted Program for major modifications of existing minor and major stationary sources. The submitted rules do not limit the use of the Program to Minor NSR. The Program does not contain any emissions limitations, applicability statement, or regulatory provision restricting the modification to minor as do the Texas Minor NSR SIP rules for Permits by Rule in Chapter 106 and Standard Permits in Chapter 116, Subchapter F.[9] Moreover, unlike the Minor NSR SIP rules for Standard Permits in 30 TAC 116.610(b) and Permits by Rule in 30 TAC 106.4(a)(4), the submitted rules do not require that a major modification, as defined in the Major NSR SIP regulations, must meet the Major NSR permitting requirements.

Although there are recordkeeping requirements in the Program at new 30 TAC 116.117(a)(4) requiring owners and operators to maintain documentation containing sufficient information as may be necessary to demonstrate that the project will comply with the Federal CAA, Title I, parts C and D, these are the same general provisions as those in the Minor NSR SIP Permits by Rule, Minor NSR SIP Standard Permits, and the general provisions of the SIP at 30 TAC 116.111 (a) (2)(H) and (I) for Minor and Major NSR SIP permits. These recordkeeping requirements, although necessary for NSR SIP approvability, cannot substitute for a clear and enforceable provision that limits applicability in the submitted Program to Minor NSR and to minor modifications only.

If Texas truly intends for the submitted Qualified Facilities State Program to apply only to Minor NSR, at a minimum, Texas must amend its rules to include additional provisions that clearly limit this Program's applicability to Minor NSR as it did in the Texas Minor NSR SIP at 30 TAC Chapter 106 for Permits by Rule and 30 TAC Chapter 116 Subchapter F for Standard Permits.

The submittals contain no applicability statement or regulatory provision that limits applicability to minor modifications. Without a clear statement of the applicability of the Program, the Program as submitted is confusing to the public, regulated sources, government agencies, or a court, because it can be interpreted as an alternative to evaluating the new modification as a major modification under Major NSR requirements. The Program fails to limit clearly its use to only the Texas Minor NSR SIP requirements. Because of the overbroad nature of the regulatory language in the State's SIP revision submittal and the lack of any Texas statutory prohibitions, we propose to find that the State has failed to limit its submitted Program only to Minor NSR.

Consequently, we are compelled to evaluate this submitted Program as being a substitute for the Texas Major NSR SIP. Accordingly, as discussed below in Section V, we evaluated whether the submitted Program meets the requirements for a Major NSR SIP revision, the general requirements for regulating construction of any stationary sources contained in Section 110(a)(2)(C) of the CAA, and the applicable statutory and regulatory requirements for an approvable SIP revision. Below is a summary of our evaluation of the submitted Program as a Substitute Major NSR SIP revision submittal. Section VI contains a summary of our evaluation of the submitted Program as a Minor NSR SIP revision submittal.

V. What is EPA's Evaluation of the Submitted Texas Qualified Facilities State Program as a Substitute Major NSR SIP Revision?

A. What Are the Requirements for EPA's Review of a Submitted Major NSR SIP Revision?

Before EPA's 1980 revised Major NSR SIP regulations, 45 FR 52676 (August 7, 1980), States were required to adopt and submit a Major NSR SIP revision where the State's provisions and definitions were identical to or individually more stringent than the Federal rules. Under EPA's 1980 revised Major NSR SIP regulations, States could submit provisions in a Major NSR SIP revision different from those in EPA's Major NSR rules, as long as the State provision was equivalent to a rule identified by EPA as appropriate for a ''different but equivalent'' State rule. If a State chose to submit *definitions* that were not verbatim, the State was required to demonstrate *any different definition* has the effect of *being as least as stringent.* (Emphasis added.) *See* 45 FR 52676, at 52687. The demonstration requirement was explicitly expanded to include not just different definitions *but also different programs* in the EPA's revised Major NSR regulations, as promulgated on December 31, 2002 (67 FR 80186) and reconsidered with minor changes on November 7, 2003 (68 FR 63021). Therefore, to be approved as meeting the 2002 revised Major NSR SIP requirements, a State submitting a customized Major NSR SIP revision *must demonstrate why its program and definitions* are in fact at least as stringent as the Major NSR revised base program. (Emphasis added). *See* 67 FR 80186, at 80241.

Moreover, because there is an existing Texas Major NSR SIP, the submitted Program must meet the requirements in section 110(l) where EPA may not approve a SIP revision if it will interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Furthermore, any submitted SIP revision must meet the applicable SIP regulatory requirements and the requirements for SIP elements in section 110 of the Act, and be consistent with EPA SIP policy and guidance. These can include, among other things, enforceability, compliance assurance, replicability of an element in the program, accountability, test methods, whether the submitted rules are vague. There are four fundamental principles for the relationship between the SIP and any implementing instruments, *e.g.,* Major NSR permits. These four principles as applied to the review of a Major or Minor NSR SIP revision include: (1) The baseline emissions from a permitted source be quantifiable; (2) the NSR program be enforceable by specifying clear, unambiguous, and measurable requirements, including a legal means for ensuring the sources are in compliance with the NSR program, and providing means to determine compliance; (3) the NSR program's measures be replicable by including sufficiently specific and objective provisions so that two independent entities applying the permit program's procedures would obtain the same result; and (4) the Major NSR permit program be accountable, including means to track emissions at sources resulting from the issuance of permits and permit amendments. See EPA's April 16, 1992, ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498) (''General Preamble''). In particular, there is a specific discussion illustrating the principles and elements of SIPs that apply to sources in implementing a SIP's control strategies

[9] The Texas SIP does not include the State Pollution Control Project Standard Permit. In a separate action in today's **Federal Register**, EPA is proposing action on this individual standard permit. Please see the proposal notice concerning the Texas NSR SIP submittals for PSD, NNSR for the 1997 8-hour ozone NAAQS, NSR Reform, and a Standard Permit. Those interested in this other action are encouraged to review and comment on it as well.

beginning on page 13567 of the General Preamble.

B. Does the Submitted Program Prohibit Circumvention of Major NSR?

There are no express regulatory provisions in the submitted Program similar to the Texas Minor NSR SIP provisions for Minor NSR Permits by Rule and Minor NSR Standard Permits that prohibit circumvention of the Major NSR requirements. See 30 TAC 106.4(b) and 30 TAC 116.610(c). Both the SIP-codified Chapter 106, Subchapter A for Permits by Rule and the SIP-codified Chapter 116, Subchapter F for Standard Permits, contain clear regulatory applicability requirements limiting their use to Minor NSR, clear regulatory requirements prohibiting their use for any project that constitutes a major modification subject to Major NSR, and clear regulatory provisions prohibiting the use of these Minor NSR permits from circumventing Major NSR. There are no similar regulatory applicability requirements, regulatory provisions prohibiting the use for Major NSR, and no regulatory provisions prohibiting circumvention of Major NSR, in the submitted Qualified Facilities State Program's rules and definitions.

There is no express provision clearly requiring that this submitted Program cannot be used to circumvent the requirements of Major NSR. We are proposing to find that the State failed to demonstrate that the submitted Program prevents the circumvention of Major NSR. Therefore, we are proposing to disapprove the Program as not meeting the Major NSR SIP requirements to prevent circumvention of Major NSR.

C. Does the Submitted Program Meet the Major NSR Applicability Determination Criteria?

Because there is no express provision in the TCAA and/or in the submitted Program clearly limiting this Program to Minor NSR, and there is no explicit provision prohibiting circumvention of the Major NSR SIP requirements, we must evaluate the submitted Program with respect to the criteria for Major stationary source NSR applicability determinations. This includes the absence of a requirement to evaluate if a project triggers Major NSR pursuant to the applicability criteria of the applicable regulations.

We do not find any provisions in the submitted Program that require a Major NSR applicability determination for changes. The submitted Program's rules and definitions are not clear on their face that *first* one must determine the threshold question of whether the change is a major stationary source or a major modification subject to Major NSR. The modifications that would be authorized under the submitted Program can include major modifications. The change that could be a major modification, including PSD BACT or NNSR LAER, could bypass the Major NSR SIP requirements, in the absence of an express requirement to perform the Major NSR SIP applicability review.

The submitted Program fails to require that the applicability of the Major NSR requirements be evaluated prior to considering whether making a change can be authorized to use the Program. We are proposing to find that the State failed to demonstrate that the Program requires an evaluation of Major source NSR applicability based on the currently approved SIP provisions or upon the current federal rules. Therefore, we are proposing to disapprove the Program as not meeting the Major NSR SIP requirements that require the Major NSR applicability requirements be met.

D. Does the Submitted Program Meet the CAA and Major NSR SIP Requirements for a Major Modification?

In evaluating Major NSR SIP revision submittals impacting ''major modifications,'' that differ from EPA's, our review is primarily guided by section 111(a)(4) of the Act that describes when a ''source'' is to be considered modified: ''The term 'modification' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.'' Texas did not submit any demonstration showing how its use of the definition ''modification'' was at least as stringent as the definition of ''modification'' in EPA's revised Major NSR SIP rules.

In conducting our review, we particularly were mindful of the United States Court of Appeals for the District of Columbia Circuit regarding the scope and requirements of Section 111(a)(4) for determining whether a change is a ''major modification.'' *See e.g., New York* v. *EPA,* 413 F.3d 3 (D.C. Cir. 2005) (''New York I'') (evaluating EPA's 2002 revised major NSR rules and interpreting Section 111(a)(4)). As discussed below, there are a number of principles associated with Section 111(a)(4) that the Program appears to violate. Moreover, the State failed to submit a demonstration showing how its use of ''modification'' is at least as stringent as the definition of ''modification'' in EPA's revised Major NSR SIP rules.

1. Does the Submitted Program require an evaluation of Emission Increases from the Major Stationary Source?

As noted above, Section 111(a)(4) requires an evaluation of whether a project has resulted in an increase in emissions from ''such source.'' Under this requirement, an evaluation of whether a physical change has resulted in an emission increase must be evaluated based on whether the project resulted in an emission increase across the major stationary source, not by an evaluation of increases outside the major stationary source or a subset of units at the major stationary source. *See Alabama Power* v. *Costle,* 636 F.2d 323, 401–403 (D.C. Cir. 1980) (holding that Agency appropriately allowed consideration of emission increases across the stationary source); *Asarco* v. *EPA,* 578 F.2d 320 (D.C. Cir. 1978) (holding that EPA inappropriately allowed a determination if a modification had occurred based on emission decreases from outside of the facility).[10] We are concerned that the submitted Program in certain circumstances, may allow an emission increase to be avoided by taking into account emission decreases outside of the major stationary source and, in other circumstances, allow an evaluation of emissions of a subset of units at a major stationary source.

First, we are concerned that the submitted Program violates the requirements of the Act and the Major NSR SIP rules, because applicability can be determined based on decreases outside of the major stationary source. The submitted Program allows for netting reductions to come from outside a major stationary source, as defined by the Major NSR rules. It allows existing permitted Qualified Facilities at the same air quality account site, to participate in the applicability netting analysis for another Qualified Facility on the company site that is making the change. The Texas SIP defines an ''account'' to include an entire company site, which could include more than one plant and certainly more than one major stationary source. SIP rule 30 TAC 101.1(1), second sentence. Accordingly,

[10] While the court's analysis regarding the scope of what constitutes a source in these two cases was rejected by the Supreme Court in *Chevron* that decision did not call into question the holding that once the EPA has defined what constitutes a ''source'' (facility for Major Stationary Source) that this is the unit of analysis for applicability. *See Chevron U.S.A. Inc.* v. *NRDC,* 467 U.S. 837 (1984).

Given the plain language of Section 111, EPA agrees that the appropriate unit of analysis for determining if there is an emission increase is the ''source'' as section 111(a)(4) provides that a modification occurs if the project ''increases the amount * * * emitted by such source.''

under the Program, the netting analysis can include multiple participating major stationary sources [11], and if there is no net emission increase, Major NSR preconstruction review is not triggered.

The submitted SIP revisions may allow a major stationary source to net a significant emissions increase against a decrease occurring outside the major stationary source, from facilities on the account's site that are participating in the netting analysis by contributing offsetting emission reductions. This approach is not consistent with the Court's findings in *Alabama Power* and *Asarco,* and it does not meet the CAA's definition of modification and the Major NSR SIP requirements.

Second, we are concerned that the submitted Program may allow an emission increase to be determined based on an evaluation of a subset of facilities within a major stationary source. There are no regulatory provisions addressing how one meets the applicable Major NSR netting requirements at a site when the unit making the change and the participating units contributing emission reductions are not all of the facilities within a major stationary source. Under the submitted Program, not all emission points, units, facilities, major stationary sources, minor modifications at the site or their increases in emissions are required to be evaluated in the applicability netting analysis. In essence, neither the submitted regulations nor the supporting documentation from Texas explain how emissions increases are calculated (both the significant emissions increase from a project, and a significant net emissions increase over the contemporaneous period) for the entire major stationary source if the major stationary source is subject to two different permitting regulations, the Qualified Facilities regulations and the Major NSR SIP regulations. As a result, the regulated community may apply these regulations inconsistently and in a way that fails to evaluate emissions changes at the entire major stationary source correctly as required by the Major NSR SIP regulations. This approach is not consistent with the Court's finding in *Alabama Power,* and it does not meet the CAA's definition of modification and the Major NSR SIP requirements.

Therefore, we propose to find that the State has failed to demonstrate the approaches are consistent with the Court's findings in *Alabama Power and Asarco,* meet the Act, and include the necessary replicability and accountability for approval as a SIP revision. Therefore, we are proposing to disapprove the submitted Program as not meeting the Major NSR SIP requirements that require an evaluation of emission increases from the major stationary source.

2. Does the Submitted Program require the Use of Actual Emissions, rather than Allowables?

Under Section 111(a)(4) of the Act since the 1977 CAA Amendments, a comparison of existing actual emissions before the change and projected actual (or potential emissions) after the change in question is required. *See* New York I at 38–40. Therefore, to determine whether a change at a unit will be subject to Major NSR requires an evaluation that, after netting, an actual to projected actual test or an actual to potential emissions test (or alternatively a PAL based on actual emissions) be used. *See* 40 CFR 51.165(f) and 51.166(w). EPA lacks the authority to approve any submitted Program that does not meet this statutory requirement. We therefore are proposing disapproval because the submitted Program would authorize existing allowable, rather than actual emissions to be used to determine applicability in violation of the Act and the Major NSR SIP requirements.

Our concerns arise regarding the requirement that an increase in emissions must be measured based on actual emissions, not permitted or potential. Under the submitted Program, the project's increases in emissions are calculated based upon its projected allowable emissions. The baseline uses the permitted allowable emission rate (lowered by any applicable state or federal requirement) if the Facility qualified under option 1. Otherwise, the baseline uses the permitted actual emission rate (minus any applicable state or federal requirement). *See* 30 TAC 116.10(2). In the applicability netting analysis, the baseline for all the other participating minor and major existing Qualified Facilities is calculated in the same way. The emission reductions are calculated similarly, *i.e.,* reductions beyond the permitted allowable or actual emission rates (minus the applicable state and federal requirements). Thus, this submitted Program allows an evaluation using allowable, not actual emissions as the baseline to calculate the project's proposed emission increase and for many of the netting emission reductions, thereby in many cases possibly circumventing the major modification applicability requirements under the Major NSR rules, rules that are based upon using actual emissions to calculate baseline emissions. Baseline actual emissions are required in the Major NSR SIP requirements for major source netting as the starting point from which the amount of creditable emission increases or decreases is determined.

We propose to find that the State's procedures do not meet the CAA and EPA's Major NSR SIP requirements that emissions increases from facility changes must be measured in terms of changes from existing baseline actual emissions, rather than allowable emissions.

E. Does the Submitted Program Meet Section 110(l) of the Act for a Major NSR SIP Revision?

Section 110(l) of the Act prohibits EPA from approving any revision of a SIP if the revision would interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the Act.

The State did not provide any demonstration showing how the submitted Program would not interfere with any applicable requirement concerning attainment and reasonable further progress, or meet any other CAA requirement.

VI. What Is EPA's Evaluation of the Submitted Texas Qualified Facilities State Program as a Minor NSR SIP Revision?

Section 110(a)(2)(C) of the Act requires that States have Minor NSR SIP permitting programs as well as Major NSR SIP permitting programs under part C (PSD) and part D (nonattainment NSR) of Title I. 40 CFR 51.160–51.163 contain the Minor NSR SIP regulatory requirements and provide that a Minor NSR SIP must include legally enforceable procedures enabling the State to determine whether construction or modification would violate a control strategy or interfere with attainment or maintenance of a NAAQS. 40 CFR 51.160(e) provides that States may exempt certain sources from regulation based on the type and size of the facility

[11] The Federal regulations define a stationary source as, among other things, all of the pollutant emitting activities that belong to the same industrial grouping. An industrial grouping is defined based on the Standard Industrial Classification (SIC code). *See, e.g.* 40 CFR 51.166(b)(5) and (6). If a stationary source has the potential to emit or actually emits at certain specified levels then the stationary source is a ''major stationary source'' for purposes of major NSR applicability. *See Id.* at 166(b)(1). By not limiting an ''account'' to pollutant-emitting activities within the same SIC code, an account can include pollutant-emitting activity that includes one or more major stationary sources. While under certain circumstances it may be appropriate to lump units/facilities from differing SIC codes into a single stationary source, this is generally based on an interdependence of the various units. Texas's rule does not require such interdependence.

and requires that ''the plan must discuss the basis for determining which facilities will be subject to review.''

At a minimum, a minor NSR SIP revision must include the requirement for minor sources and modifications to undergo public review, be subject to enforceable emissions limits, monitoring, recordkeeping, and reporting requirements, and inspection and enforcement provisions. Additionally, the State must demonstrate that the Minor NSR SIP revision does not violate a control strategy or interfere with attainment or maintenance of a NAAQS.

A. Does the Submitted Program Meet the Minor NSR SIP Requirements for Noninterference With the Major NSR SIP Requirements?

There are no statutory and/or regulatory provisions that clearly prohibit the use of the Program for major modifications. Nor are there any statutory and/or regulatory provisions clearly limiting the use of the Program to minor modifications. There are no provisions that prohibit the use of the Program for major modifications of existing major stationary sources and minor sources. There are no regulatory applicability requirements limiting use of the Program to Minor NSR and no regulatory requirements prohibiting using it for Major NSR. There is no express provision in the submittals requiring that this Program cannot be used to circumvent the requirements of Major NSR. There are no statutory and/or regulatory provisions clearly prohibiting circumvention of Major NSR. The Program further fails to require that the applicability of the Major NSR requirements be evaluated prior to considering whether the making of a change can be netted out from the Minor NSR SIP requirements. The regulatory provisions in the submitted Program fail to require that *first* one must determine the threshold question of whether the change is a major stationary source or a major modification subject to Major NSR, based upon an actual emissions baseline. See section V and the TSD for additional discussion and information.

Therefore, EPA is proposing to find that the submitted Program fails to prevent noninterference with the Texas Major NSR SIP requirements. We are proposing to disapprove the submitted Program as not meeting the Minor NSR SIP requirements to ensure that the Major NSR SIP requirements continue to be met.

B. Does the Submitted Program Meet the Request for an Exemption or a Relaxation From the Minor NSR SIP Requirements?

As noted above, EPA may approve an exemption to a State's Minor NSR SIP if certain statutory requirements are met. But any such exemption must be consistent with the requirement at 40 CFR 51.160(a)–(b) that a plan contain legally enforceable procedures to ensure that the construction or modification of a source will not result in a violation of applicable portions of a control strategy or interfere with NAAQS attainment. Consequently, EPA may approve exempting certain sources and modifications from obtaining a Minor NSR permit as part of a State's Minor NSR SIP, if the Act and regulations are met and the State shows that the sources will have only a *de minimis* effect.

Moreover, the approvability of a State's proposed *de minimis* threshold is not determined solely by mechanically comparing it with other thresholds approved for other states. The legal test for whether a plan's threshold can be approved is whether it is consistent with the need for a plan to include legally enforceable procedures to ensure that the State will not permit a source that will violate the control strategy or interfere with NAAQS attainment. That is a requirement that all minor source thresholds must meet.

The submitted Program could be considered an exemption from Minor NSR. It is a netting program allowing certain changes to net out of being subject to Minor NSR. These certain changes without the netting would be Minor NSR modifications subject to Minor NSR. To be approvable as an exemption from the Texas Minor NSR SIP, the State must demonstrate that this exemption will not permit changes that will violate the Texas control strategies or interfere with NAAQS attainment.

Furthermore, EPA does view the submitted Program as a SIP relaxation. In order to approve a SIP relaxation, EPA must find pursuant to section 110(l) that the SIP relaxation does not interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

1. Noninterference With the NAAQS and State Control Strategies by the Existing Qualified Facilities

The Minor NSR and Major NSR existing Qualified Facilities, no matter by which of the two options they chose to become qualified, will have a Minor or Major NSR SIP permit. A Minor and Major NSR SIP permit under the Texas NSR SIP requirements includes an air quality analysis, *i.e.,* a demonstration there will be no adverse impact on the NAAQS. Each of the Minor or Major NSR SIP permits for the existing Qualified Facilities will include emissions limitations based on the chosen control technology, with a determination that the permitted Qualified Facility will not interfere with attainment and maintenance of the NAAQS or violate any State control strategies. As noted above in IV.A, we request comment on whether our interpretation of the State's regulatory language is correct that a permit is required for a facility to be a Qualified Facility.

2. Ensuring Noninterference With the NAAQS and State Control Strategies by the Netting Reductions

We propose to find that because the participating Qualified Facilities are permitted through an existing SIP approved process, the allowable level established in that permit assures that the Qualified Facility can operate up to that level of emissions without interfering with attainment and maintenance of the NAAQS and not violating any State control strategy, as required by the Texas NSR SIP. The next step requires EPA to evaluate whether the Minor NSR applicability netting analysis itself includes sufficient safeguards to protect the NAAQS and State control strategies. For aid in evaluating this submitted applicability netting analysis as a Minor NSR SIP revision submittal, EPA used the fundamental principles of the Major NSR SIP netting requirements as a yardstick for appropriate comparison since their intent is to prevent violations of the NAAQS and State control strategies.

Before the netting analysis comes into play, there must be a physical or operational change at the Qualified Facility. The change must result in an emissions increase above the authorized allowable (the most stringent of the SIP permit, permit amendment, standard permit, or permit by rule or any applicable state or federal requirement) at that Qualified Facility. Under the Texas Minor NSR SIP, the change must cause an increase in the emission rate of any source, change the method of control of emissions, or cause a change in the character of the emissions. *See* SIP-codified rule at 30 TAC 116.116(b)(1)(A)—(C). If any of these three changes are to occur, the owner or operator must obtain a Minor or Major NSR SIP permit amendment or coverage under a Minor NSR SIP permit by rule. Therefore, the Texas Minor NSR SIP

relies upon allowable emissions, *i.e.,* the most stringent emissions rate for a facility, as required by the most stringent of the SIP permit or any applicable state or federal requirement, to determine whether a modification has occurred.[12]

Once the Minor NSR netting comes into play, we compared the fundamental principles of Major NSR netting to the submitted Minor NSR netting program. We did this because these fundamental principles were established to ensure there would be no interference with the NAAQS and control strategies by using the Major NSR netting. The Major NSR netting program includes the following: (1) An identified contemporaneous period, (2) the reductions must be contemporaneous and creditable, (3) the reductions must be of the same pollutant as the change, (4) the reductions must be real, (5) the reductions must be permanent, and (6) the reductions must be quantifiable. See the definition of ''net emissions increase at 40 CFR 51.165(a)(1)(vi) and 51.166(b)(3). To be considered creditable, the reduction's old level of emissions must exceed the new level of emissions, the reduction must be enforceable as a practical matter at and after the time the actual change begins, and the reduction must have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

Major NSR netting is based upon all contemporaneous increases and decreases at the same major stationary source. The submitted Program's netting is not based upon all contemporaneous increases at the same major stationary source and not all decreases at the same major stationary source. We propose, however, to find that such an approach satisfies the minimum requirements for an approvable Minor NSR netting program as long as the ambient air is protected in the trading.

The reductions in the Program's netting are based upon the most stringent of the permitted emissions rate (which includes the highest achievable actual emission rate) or any applicable state or federal rule. Therefore, this Program's netting is not based totally on changes in actual emissions. We are proposing to find that this still is acceptable as a Minor NSR netting program as long as the ambient air is protected in the trading.

It is not clear in the submitted rules when the equivalent decreases in emissions must have occurred, other than it is clear that they must occur before the change occurs. The intent of the State was that there would be no look back period, *i.e.,* no window or contemporaneous period. The State discusses in the SIP revision submittals and in its Texas Register that any relied-upon reductions must occur simultaneously at the time of the increase. *See* 21 Tex. Reg. 1573 (February 27, 1996). It wanted to ensure that there would not be any net reductions associated with this Program available to be used later in a demonstration of attainment or reasonable further progress in the Texas SIP. See page 154 of the 1996 SIP revision submittal. In this vein, it did not want a netting window; the State saw a netting window as an unnecessary complication for this Program. Therefore, the State's clear intent was that each time there is a proposed change wishing to use the Program's netting, the holder of the permit is required to perform a new, separate netting analysis to demonstrate that a net increase has not occurred.

Each project was to require a separate demonstration that a net increase has not occurred. As each project requires a separate demonstration, the decrease can be used only for that project. For an additional separate project, the reductions must occur at the time of that additional project which will need to obtain additional reductions to net out. This should prevent double counting of the netting reductions. EPA specifically solicits comment on this point of double counting.

Although the State's intent is clear, EPA cannot find any provisions in the Program that address this, much less require there be a separate netting analysis performed for each proposed change. Therefore, the State at a minimum, must revise its rule at 30 TAC 116.116(e) to explicitly require that each proposed change requires a new, separate netting analysis.

Concerning the fifth principle that the reductions must be permanent, we cannot find any provision in the submitted rules that specifically addresses this. Texas should include a prohibition against future increases at the Qualified Facility, or include regulatory language that assures that any future increase at a Qualified Facility at which a previous netting reduction occurred is analyzed in totality to assure that the NAAQS remains protected from the original increase. For example, we are concerned that if Qualified Facility ''A'' relies on decreases from Qualified Facility ''B,'' Qualified Facility ''B'' could undertake a future change and increase emissions above its new allowable level. Although under the State's program, Qualified Facility ''B'' would have to seek emission reductions from another Qualified Facility before increasing emissions and there is no net change in emissions from the account site, we remain concerned that reductions from a third qualified facility may not be sufficient to offset potential air quality impacts from the original change at Qualified Facility ''A.'' In other words, the submitted rules do not prohibit a shift in emissions from Qualified Facility ''A'' to ''B'' and then to ''C,'' or otherwise assure that the ambient air quality remains protected with regards to the original change at Qualified Facility ''A.'' Consequently, the State at a minimum must revise its rules to require that the reductions be permanent.

The reductions must be of the same pollutant as the change. See submitted 116.116(e)(3). We propose to find that the State has gone beyond this fundamental principle and established an interchange requirement at submitted 30 TAC 116.116(e)(3) for determining whether the interchange of different compounds within the same air contaminant category will result in an equivalent decrease in emissions, e.g., one VOC for another VOC. The emission rates for each different compound must be adjusted using a ratio of the effects screening levels of the compounds. See 30 TAC 116.116(e)(3)(B) through (E). TCEQ has established an ''interchange'' methodology to ensure that compounds within for example the VOC air contaminant category, as interchanged, will have an equivalent impact on the air quality.

We also propose to find that the reductions also meet the principle for being quantifiable by the submitted 30 TAC 116.10(1) and (2) that describe how to calculate the reductions but nonetheless, we request comment on whether these regulatory provisions provide clear direction on the appropriate calculation procedures.

As an example of the quantifiability of the reductions, if the reductions come from a Qualified Facility under a Minor NSR permit by rule, its allowable emissions are the most stringent of the emissions rate allowed in the SIP rules for Minor NSR permits by rule, the emissions rate specified in a particular

[12] The Texas Minor NSR SIP requires that the holder of any type of Minor NSR SIP permit must meet its representations in its permit application or registered certification. The registered certification applies to the Minor NSR SIP standard permits and permits by rule. The permit application refers to the Minor NSR SIP case-by-case permit or amendment. The operating hours, operating procedures, capacity, etc., must be included in the permit application or registered certification. They become conditions from which it is unlawful to vary. *See,* e.g., SIP-codified rules at 30 TAC 116.116(a)–(d) and 30 TAC 106.6.

permit by rule, or the maximum emissions rate represented in the required certified registration. The Texas Minor NSR SIP provides that the holder of a Minor NSR permit by rule may submit a certified registration that includes in it maximum emissions rates (lower than the rates allowed in the SIP rule) and includes a certification that the maximum emissions rates listed on the registration reflect the maximum for operation of the facility. Additionally, the lowest computed emissions rate must be reduced again by the application of *any* applicable (promulgated since the issuance of the permit) state or federal requirement. This means that not only are the reductions quantifiable but the first prong for creditability is met. The reduction's old level of emissions exceeds the new level of emissions.

Notwithstanding our proposed finding that the submitted Program satisfies the basic criteria that emissions reductions be quantifiable, we request comment on one additional aspect of the netting calculation procedures. The submitted rules provide that a Qualified Facility nets its emissions increase on the same basis as its allowable emissions limitation. See 30 TAC 116.116(e)(3)(A). For example, we are concerned that if a Qualified Facility took a decrease in its hourly rate that it could offset that emissions decrease by increasing its hours of operation; if such an increase were not prohibited the decrease is effectively negated. We request comment on whether netting on such a basis is sufficiently quantifiable, and whether any additional provisions are necessary to assure that the entire emissions increase is properly netted against reductions from the other Qualified Facility.

The State also has established a methodology whenever there is a different location of emissions because of the intraplant trading. For example, where the netting has the effect of moving emissions closer to the plant property line than the Qualified Facility to be changed, there is a pre-notification process to analyze whether there could be an increase in off-site impacts. We propose to find that this will ensure the reductions have approximately the same qualitative significance for public health and welfare, the third prong for creditability of the reductions. *See* submitted 116.117(b)(5).

Nonetheless, EPA has some concern on the protection of the ambient air quality and proposes to find that the netting provisions are inadequate to assure protection of the ambient air quality. Specifically, the State must add language to its Program's rule at 30 TAC 116.116(e) that explicitly requires the netting process assures protection of the NAAQS by providing that the netting must result in the same air quality benefit. We are requiring this because although the State's intent is clear the netting process must have this result, there is no corresponding explicit requirement in the Program's rules. The State could also consider whether in nonattainment and near-nonattainment areas, the rules should require that the netting must not result in an adverse air quality impact. Secondly, even though the State's intent is clear, to ensure that the NAAQS are protected, the State must add language to its Program's rule at 30 TAC 116.117, requiring the owner or operator to maintain the information and analysis showing how it concluded that there will be no adverse impact on ambient air quality before undertaking the change.

3. Minor NSR SIP Enforceability Requirements

Section 110(a)(2)(A) of the Act requires that a SIP revision include enforceable emission limitations and other means, as may be necessary or appropriate to meet the Act's requirements. This includes the requirement that minor modifications have enforceable emissions limits. The Program is not clear that each Qualified Facility involved in the netting transaction must submit a permit application and obtain a permit revision reflecting all of the changes made to reduce emissions (relied upon in the netting analysis) as well as reflecting the change itself that increased emissions.

The Texas NSR SIP rule at 30 TAC 116.111(a)(1) is clear that in order to be granted a case-by-case Minor or Major NSR SIP permit or permit amendment, an application must be submitted that includes a complete Form PI–1. For coverage under a Minor NSR permit by rule or standard permit, there is an applicable permit with an emissions limitation.

The Program's rules at 30 TAC 116.116(e)(4) and 116.117(b)(1)–(3) are not clear that it is a *permit application or registration* that must be submitted and that a revised permit must be issued by the TCEQ to reflect the changes made by all of the participating Qualified Facilities. It is not clear that the referenced notification of change, Form PI–E, is a permit application. There is no discussion of when the TCEQ issues the revised permit. *See* the submittals at 30 TAC 116.117(b).

If the change would affect the Special Conditions in the Permit for any participating Qualified Facility, *notification* must be made prior to the change and approval is required by the TCEQ. This requirement also is not clear, however, that a permit application is required. Nor is it clear when the TCEQ is required to issue the revised permit.

EPA acknowledges that 116.117(b)(1) through (3) reference a PI–E Form and this name is similar to the Form PI–1 referenced in the SIP rules, which is the TCEQ standard permit application form. Nevertheless, the Program's rules refer to the submittal of this Form PI–E as if it were a reporting or notification requirement, not as the submittal of a form to the TCEQ that begins the permit revision process.

There are no provisions in 30 TAC 116.117(b) requiring a permit application be submitted to the TCEQ. There also are no provisions in 30 TAC 116.117(b) clearly indicating TCEQ must issue a revised permit for the changes made by all of the participating Qualified Facilities. At a minimum, the State must revise its rules to make it clear that a permit application must be submitted by each participating Qualified Facility and the changes made by the participating Qualified Facilities are reflected in revised permits issued by the TCEQ.

4. Potential Impact of Time Lag Upon Protection of the NAAQS

EPA also is concerned about the lapse of time before each Qualified Facility's permit is revised. The Qualified Facility making the change without relying upon any reductions outside of it, must submit the request by August 1 of each year, showing the changes made during the preceding annual period of July 1–June 30. We believe that this is too long of a lag time between submitting the permit applications and TCEQ revising them downward to reflect the relied-upon emission reductions or the change being made. This lag time can lead to the State not knowing within an appropriate timeframe that the change violated the NAAQS and/or State control strategies or that the relied-upon reductions for whatever reason did not ensure protection of the NAAQS and the control strategies. The State also may not find out about such problems until after the source(s) has made the changes and incurred significant associated expenses. Therefore, we are proposing that this time should be no longer than six months, rather than a year, but nonetheless we request comment on whether six months is an acceptable lapse of time to ensure noninterference with the NAAQS and control strategies.

In summary, there is no explicit requirement that a permit application must be submitted for the change and

for any relied-upon emissions reductions in the netting analysis thereby making the new Program unenforceable. There is too long a lag time before a revised permit is issued in certain circumstances that can lead to a violation of a NAAQS, RFP, or control strategy without the TCEQ becoming aware of it in a timely manner. There is not sufficient information before EPA to make a determination that the exempted changes from the Minor NSR requirements will have only a de minimis effect and that the requested SIP revision relaxation does not interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirement of the Act, as required by section 110(l).[13]

C. What Is EPA's Summary of Whether the Submitted Program Meets the Requirements for a Minor NSR SIP Revision?

The Program is not clearly limited to Minor NSR and does not prevent circumvention of the Major NSR SIP requirements. The submitted Program does not require that first one must determine whether a change is subject to Major NSR and actual emissions are used for determining whether a change is subject to Major NSR. The Program lacks requirements necessary for enforcement of the applicable emissions limitations, including a permit application and issuance process. Overall, the Program fails to include sufficient enforceable safeguards to ensure that the NAAQS and control strategies are protected. Furthermore, there is no information to determine whether the Program's exemption from the Texas Minor NSR SIP would not violate the NAAQS or the State's control strategies and whether the SIP relaxation would not interfere with NAAQS attainment, reasonable further progress, or otherwise meet any other requirement of the Act.

Therefore, we are proposing to disapprove the submitted Qualified Facilities State Program as not meeting sections 110(a)(2)(C) and 110(l) of the Act and 40 CFR 51.160.

II. What Is EPA's Evaluation of the Submitted General Definitions?

A. Which Submitted General Definitions Meet the NSR SIP Requirements?

We are proposing to approve the following provisions of the SIP submittals as meeting 40 CFR Part 51 and the CAA.

30 TAC 116.10(8)—''grandfathered facility.''

This submitted definition is approvable because it defines which facilities are exempt from the NSR requirements, *i.e.,* those that were constructed or modified before the date that TCEQ began permitting new and modified facilities, which was August 30, 1971. This submitted definition is independent of and severable from the other submitted definitions. We are proposing to approve this submitted definition as meeting the Federal requirements.

30 TAC 116.10(10)—''maximum allowable emissions rate table (MAERT).''

The submitted definition is approvable because it is the same as the SIP-codified 30 TAC 116.115(b)(2)(G). This submitted definition is independent of and severable from the other submitted definitions. We are proposing to approve this submitted definition as meeting the Federal SIP requirements.

30 TAC 116.10(12)—''new facility.''

This submitted definition is approvable because it establishes the date of August 30, 1971 for when facilities that commence construction or modification must obtain preconstruction authorization. This submitted definition is independent of and severable from the other submitted definitions. We are proposing to approve this submitted definition as meeting the Federal requirements.

B. Which Submitted General Definitions Do Not Meet the NSR SIP Requirements?

30 TAC 116.10(3)—''BACT.''

The submittals include a new regulatory definition for ''BACT,'' defining it as BACT with consideration given to the technical practicability and economical reasonableness of reducing or eliminating emissions. TCEQ revised its January 1972 permitting rules, then Regulation VI at rule 603.16, on July 27, 1972, to add the requirement that a proposed new facility and proposed modification utilize BACT, with consideration to the technical practicability and economical reasonableness of reducing or eliminating the emissions from the facility. EPA approved the revised 603.16 into the Texas SIP, presently codified in the Texas SIP at 30 TAC 116.111(a)(2)(C).

It is not clear whether EPA approved this State BACT requirement as part of the Texas NSR SIP on July 6, 1977 (42 FR 34517) or August 13, 1982 (47 FR 35193). Approval of the original 1972 Texas SIP on May 31, 1972 (37 FR 10896) included State SIP submittals of January 28, February 25, May 2, and May 3, 1972. Since the State revised its rules to add the BACT requirement after May 3, 1972, EPA could not have approved this Texas BACT requirement as part of the original 1972 SIP.

EPA's approval on July 6, 1977 included action on the State SIP revision submittals of 1973, 1974, 1975, and 1977 revisions to Section X: The Permit System. The 1973 SIP revision submittal that included the 1973 revised Section X discussed the application forms and included copies of them. Revised Section X also describes the permit review process and states that the ''review will answer the following questions.'' The list of seven questions includes the following and tracks the State's July 27, 1972 rules:

A. Will the new facility or the modification comply with all Rules and Regulations and the intent of the TCAA?

B. Will the new facility or the modification prevent the maintenance or attainment of the NAAQS?

C. Will the new facility or the modification cause significant deterioration of existing ambient air quality in an area?

D. Will the new facility or modifications have provisions for measuring the emission of significant air contaminants?

E. Will the new facility or modification be located in accordance with proper land use planning?

F. Will the new facility or modification utilize the best available

[13] The State may be able to provide additional information during the public comment period showing how the exemption meets all the requirements of the Act, including enforceability, protecting all NAAQS, RFP, and control strategies. For example, there may be information enabling a reliable estimate of the exempted changes over the life thus far of the Program, e.g., the average percentage of participating Qualified Facilities that require a preconstruction review because of their permit's conditions. This percentage may be a high percentage of the participating universe, and the State could provide documentation of how many of these pre-notification changes it reviews and authorizes as a revised permit, within the 45 days. This could be broken down into the tpy of exempted changes. EPA also notes that under the submitted Program's rules, the change cannot be a physical change that creates a discrete or identifiable structure, device, item, equipment, or enclosure, that constitutes or contains a stationary source. Texas may be able to provide information that this prohibition reduces the numbers and types of changes that are authorized under the submitted Program. There also could be available information illustrating the changes before netting, are truly de minimis for a minor NSR SIP program, taking into account the nonattainment and near-nonattainment areas within the State of Texas. The State will need to provide a thorough account of future growth potential. Modeling may be required to show the expected impacts on ambient air quality (particularly for sources in complex terrain areas). EPA is willing to work with the State on what is an approvable enforceable permitting limitations process and what is an approvable exemption for this Texas Qualified Facilities State Program.

control technology with consideration to the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility?

G. Will the design criteria for the new facility or modification achieve the performance specified in the application?

The 1982 SIP approval included action on Texas SIP revision submittals of May 9, 1975, October 13, 1978, April 13, 1979, and July 20, 1981. These submittals included revisions to the July 27, 1972 Regulation VI, as revised March 27, 1975, August 15, 1975, February 12, 1978, March 6, 1979, November 25, 1979, August 20, 1980, and April 16, 1981. The 1981 rules as submitted and approved by EPA in this 1982 rulemaking recodified the minor NSR and NNSR SIP requirements from Regulation VI into a new Chapter 116. Regardless of which year, it is clear that the State BACT requirement was approved as part of the Texas NSR SIP, either in 1977 or 1982.

The Federal definition for BACT for PSD is part of the Texas SIP as codified in the SIP at 30 TAC 116.160(a). (This current SIP rule citation was adopted by the State on October 10, 2001, and EPA approved this recodified SIP rule citation on July 22, 2004 (69 FR 43752).) EPA approved the Texas PSD program SIP revision submittals, including the State's incorporation by reference of the Federal definition of BACT, in 1992. *See* proposal and final approval of the Texas PSD SIP at 54 FR 52823 (December 22, 1989) and 57 FR 28093 (June 24, 1992). EPA specifically found that the SIP BACT requirement (now codified in the Texas SIP at 30 TAC 116.111 (a)(2)(C)) did not meet the Federal PSD BACT definition. To meet the PSD SIP Federal requirements, Texas chose to incorporate by reference the Federal PSD BACT definition and submit it for SIP approval by EPA. Upon EPA's approval of the Texas PSD SIP submittals, both EPA and Texas interpreted the SIP BACT provision, now codified in the SIP at 30 TAC 116.111(a)(2)(C), as a minor NSR SIP requirement for minor NSR permits.

As discussed earlier in section I.B of this preamble, in another Federal Register notice, EPA is proposing disapproval of the Texas NSR SIP submittals for PSD, NNSR for the 1997 8-hour ozone NAAQS, NSR Reform, and a Standard Permit. One of the bases for proposed disapproval of the PSD SIP revision submittals is that Texas has removed from its state rules the Federal PSD definition of BACT. Those interested in this proposed action are encouraged to review and comment on it.

While we continue to approve the inclusion of Texas' minor NSR BACT requirement in the Texas SIP to establish emissions limitations or operational restrictions requirements for minor NSR permits, Texas must revise the submitted BACT definition at 30 TAC 116.10(3) to clearly apply only in the minor NSR SIP and only for minor sources and minor modifications.

30 TAC 116.10(11)(A) and 30 TAC 116.10(11)(B)—Insignificant increases are not a modification requiring a permit.

The submittals include a new regulatory definition for ''Modification of existing facility'' in which insignificant increases of emissions are not modifications requiring a permit. Pursuant to the TCAA of 1971, Texas was required to establish a NSR program. The TCAA required that any person intending to construct a new facility or modify a facility that may emit air contaminants first apply for an air quality permit, which must be granted before that person could begin construction or make any changes. On the other hand, the TCAA allowed Texas to ''*exempt*'' certain facilities or types of facilities from the permitting requirements if it found that the facilities or types of facilities ''would not make a *significant contribution* of air contaminants to the atmosphere.'' The 1971 TCAA, however, did not authorize Texas to set a threshold in its NSR program below which no preconstruction authorization was required. The TCAA required Texas to regulate all new emissions. To complicate matters further, the statutory definition for what was a modification of an existing facility excluded ''*insignificant increases*'' of emissions.

To reconcile the statutory provision requiring regulation of new emissions, the statutory provision requiring permits for construction and modifications causing new emissions, the statutory definition excluding new (insignificant) emissions from obtaining a permit to construct or modify, and yet implement the exemption from permitting authority, Texas adopted rules that allowed it to make determinations whether construction of, or modification to, a facility or type of facilities, would make a *significant contribution* of emissions. If the Agency determined that the emissions from construction of, or modification to, a facility or type would be *insignificant, i.e., not significant (contribution*), it issued an *exemption* for a facility or a type of facilities. These ''*exempted*'' facilities or types of facilities were ''*insignificant*'' sources of emissions. EPA approved into the Texas SIP on May 31, 1972 (37 FR 10896) the TCAA provisions described above, particularly the TCAA provision that excluded the increase of ''insignificant emissions'' from being a modification, and the regulations in Rules 606 and 607 (EPA later approved their recodification into Chapter 116, and they now are codified in the Texas SIP at 30 TAC Chapter 106), allowing the State to issue so-called ''exemptions'' and to maintain a List of the Exemptions. Consequently, any exemption issued by Texas automatically became part of the Texas SIP. Any new facility or modification was subject to federal enforcement action if it failed to have an exemption before it began to construct or make any changes. It was subject to federal enforcement if it violated the terms and conditions of any applicable exemption(s).

Although not approved as part of the Texas SIP, Texas in 1985 adopted through rulemaking the SIP Exemptions contained in the SIP List of Standard Exemptions, and adopted general requirements for the issuance of Exemptions. As part of this 1985 State rulemaking, the State added emission limitations for the first time defining by Texas regulation the minimum level of emissions above which there would be a ''*significant contribution*'' requiring a NSR permit rather than an Exemption. Moreover, under the State's rules, no proposed new facility or modification under any Exemption could be a major source or major modification subject to NNSR and PSD. Later the State moved these Exemption State rules of general requirements and the State-codified Exemptions from Chapter 116 to a new Chapter 106, entitled Exemptions. In early 2000, the State renamed Chapter 106 to Permits by Rule, because the TCAA was revised in 1999 to allow the State to establish standard permits for similar facilities and to adopt permits by rule or exempt sources by rule if it determines the increased emissions will not make a significant contribution of air contaminants to the atmosphere. EPA approved the general requirements for Permits by Rule in Subchapter A of Chapter 106 on November 14, 2003 (68 FR 64543), as meeting the NSR requirements for a minor NSR SIP program. EPA recognized that each State-codified Permit by Rule in the remaining Subchapters of Chapter 106 was already part of the SIP since each was an Exemption previously issued by the State under the SIP Exemption requirements. *See* page 64545.

The following provisions of the TCAA are not part of the Texas SIP and Texas

has not submitted them for approval by EPA into the SIP. Under section 382.05196 of the TCAA enacted in 1999, the Commission may not adopt a Permit by Rule authorizing any facility defined as a ''major facility'' under any applicable preconstruction permitting requirements of the Federal CAA or regulations adopted under that Act. Under section 382.057 of the TCAA, the Commission may not adopt any Exemption by Rule or Standard Permit for any modification of an existing facility defined as a ''major modification'' under any applicable preconstruction permitting requirements of the Federal CAA or regulations adopted under that Act.

The TCAA seems to be clear that a Permit by Rule, Standard Permit, or an Exemption by Rule cannot be used for a major source or major modification. EPA is aware that in the past the State has reasonably interpreted and applied the SIP term ''insignificant'' for allowing only minor modifications and minor sources. Because of the history of the two agencies' interpretations, ordinarily the State's submittal of its relevant 1999 statutory provisions for approval into the SIP would prove sufficient to support that modifications under the submitted 30 TAC 116.10(11)(A) and (B) would apply only to minor modifications and minor sources. There is information; however, *e.g.,* the State's adoption of a Permit by Rule for Startup, Shutdown, and Maintenance Emissions that belies the EPA being able to rely upon such a submittal of the relevant statutory provisions. This type of Permit by Rule cannot be construed to apply only to minor modifications and construction of minor sources. A submittal by the State of the applicable statutory sections for EPA to approve as part of the Texas SIP no longer seems sufficient in view of the issuance of this particular Permit by Rule.

There is another ground for proposing disapproval of the two portions of the submitted definition ''modification of existing facility.'' The public, the regulated community, and governmental agencies consistently over the years have not had a clear and common understanding of the term, ''insignificant'' and its inter-relationship with the SIP rules for Standard Permits and Permits by Rule, in which ''insignificant increases'' are delineated. Very few people even are aware of the history of the TCAA, the State's interpretation and implementation of the TCAA over more than three decades, EPA's history of the Texas SIP approvals over more than three decades, and EPA's legal interpretations over three decades of the State's implementing regulations. If the public, the regulated community, and governmental agencies do not share, a clear and common understanding of the term, ''insignificant,'' the submittals will not perform according to what we believe is the original intent.

With the State's issuance of the Startup, Shutdown, and Maintenance Permit by Rule that is not clearly limited to minor modifications and the continued expressions by the public, regulated entities, and government entities on the lack of clarity in the submittals' language of (A) and (B), EPA is proposing to disapprove the submittals for 30 TAC 116.10(11)(A) and (B) because they are vague and unenforceable.

30 TAC 116.10(11)(G).

The submittals provide that changes at certain natural gas processing, treating, or compression facilities are not modifications if the change does not result in an annual emissions rate of any air contaminant in excess of the volume emitted at the maximum design capacity for grandfathered facilities. The ''annual emissions rate'' is the same as the ''volume emitted at the maximum design capacity''; therefore, this would provide an exemption for these sources from permit review for any emission increases at these facilities. 40 CFR 51.160(e) allows States to identify facilities which will be subject to review under their minor NSR program and requires the minor NSR SIP to discuss the basis for determining which facilities will be subject to review.

The submittals, however, do not contain an applicability statement or regulatory provision limiting this type of change to minor NSR. There is no explanation of the reason for exempting this type of change from the permitting SIP requirements. Without the submittal by the State of an analysis describing how this exemption does not negate the major NSR SIP requirements and meets the minor NSR SIP requirements in 40 CFR 51.160 and the Act's anti-backsliding requirements in section 110(l), EPA proposes to disapprove this submitted definition.

C. What Is the Administrative Correction Related to the Submitted General Definition of ''Facility?''

This definition was initially submitted March 13, 1996, and revisions submitted July 22, 1998. On September 6, 2006 (71 FR 52698), EPA approved the definition of ''Facility,'' as codified at 30 TAC 116.10(4) in the July 22, 1998, submittal. In a SIP revision submitted September 4, 2002, Texas revised 30 TAC 116.10 to add two new definitions and to renumber several existing definitions to accommodate the new definitions. In that revision, the definition of ''facility'' was renumbered from 30 TAC 116.10(4) to 30 TAC 116.10(6). On August 28, 2007 (72 FR 49198), EPA approved portions of the revisions to 30 TAC 116.10 to add the two new definitions and to approve the renumbering of the previously approved definitions. However, EPA's August 28, 2007, approval included a typographical error that identified 30 TAC 116.10(6) ''facility'' as not being in the SIP. The definition of ''facility'' is severable from the other submitted definitions. Accordingly, in this action, EPA proposes to correct the typographical error in 72 FR 49198 to clarify that the definition of ''facility'' as codified at 30 TAC 116.10(6) was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP.

D. Why Are We Not Taking Any Action on the Severable Submitted Portion of the Definition of Federally Enforceable?

30 TAC 116.10(7)(F)—''federally enforceable.''

The submitted paragraph (F) in the definition of ''federally enforceable'' identifies as federally enforceable requirements, any permit requirements established under Subchapter C [14] of Chapter 116. This paragraph implements the CAA section 112(g) program. This program is implemented separately from the SIP and is outside the scope of the SIP; therefore, we are proposing to take no action. *See* 67 FR 58699–58700 (September 18, 2002) for further information on why we are proposing no action on this provision. Paragraphs (A) through (E) in the definition of ''federally enforceable'' remain part of the Texas SIP, as codified at 30 TAC 116.10(7). EPA approved them on September 18, 2002 (67 FR 58697).

VIII. Why is EPA Proposing To Take No Action on a Severable Submitted Provision?

This submitted added provision to 30 TAC 116.116(f) is not in the SIP and it addresses the use of discrete emission reduction credits. It includes a cross-reference to a State rule that no longer exists. Moreover, both the State and the Texas SIP contain the Emissions Trading and Banking rules in Subchapter H of Chapter 116. To date, Texas has not submitted a SIP revision revising this cross-reference appropriately. EPA proposes to take no action today on the submitted 30 TAC

[14] In a SIP revision submitted February 1, 2006, the provisions on Subchapter C were redesignated to a new Subchapter E. EPA intends to take action on the new Subchapter E later in a separate action.

116.116(f) and intends to take action later in a separate action.

IX. Proposed Action

EPA is proposing disapproval of revisions to the SIP submitted by the State of Texas that relate to the Modification of Qualified Facilities, identified in the Tables in Section III of this preamble. These affected provisions include regulatory provisions and definitions and a severable portion of the definition at (E) ''modification of existing facility,'' under Texas' General Definitions in Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. EPA is proposing to find that these submitted provisions and definitions in the submittals affecting the Texas Qualified Facilities State Program are not severable from each other.

EPA is proposing disapproval of the submitted Texas Qualified Facilities State Program, as a substitute major NSR SIP revision, because it does not meet the Act and EPA's regulations. We also are proposing disapproval of the submitted Qualified Facilities Texas State Program as a minor NSR SIP revision because it does not meet the Act and EPA's regulations.

EPA also proposes to take action on revisions to the SIP submitted by Texas that relate to the General Definitions in Chapter 116. EPA proposes to approve three of these severable submitted definitions, ''grandfathered facility,'' ''maximum allowable emissions rate table (MAERT),'' and ''new facility.'' We propose to disapprove the severable submitted definition, ''best available control technology (BACT)'' and to disapprove two severable portions, subparagraphs (A) and (B), in the submitted definition of ''modification of existing facility,'' and the severable portion subparagraph (G) in the submitted definition of ''modification of existing facility.'' The subparagraphs (A) and (B) are not severable from each other. EPA proposes to make an administrative correction to the severable submittal for the SIP-approved definition of ''facility.'' EPA proposes to take no action on the severable submitted subparagraph (F) for the SIP-approved severable definition of ''federally enforceable'' because the submitted paragraph relates to a Federal program that is implemented separately from the SIP. In addition, EPA is proposing to take no action on the severable submitted portion of a provision that includes, among other things, a trading provision containing a cross-reference that no longer is in Texas' rules; EPA will act upon it later in a separate notice.

We will accept comments on this proposal for the next 60 days. After review of public comment, we will take final action on the SIP revision submittals that are identified herein.

EPA will take final action on the State's Public Participation SIP revision submittal in November 2009. EPA intends to take final action on the submitted Texas Qualified Facilities State Program by March 31, 2010, the submitted Texas Flexible Permits State Program by June 30, 2010, and the NSR SIP by August 31, 2010. These dates are expected to be mandated under a Consent Decree, currently under public comment (see, Notice of Proposed Consent Decree and Proposed Settlement Agreement, 74 FR 38015, July 30, 2009). Sources are reminded that they remain subject to the requirements of the Federally-approved Texas SIP and subject to potential enforcement for violations of the SIP (See EPA's Revised Guidance on Enforcement During Pending SIP Revisions, dated March 1, 1991).

X. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (*58 FR 51735,* October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's 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 which 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 impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 ''for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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 action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (*59 FR 22951,* November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (*62 FR 19885,* April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (*62 FR 19885,* April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (*66 FR 28355,* May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 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.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 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 lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 8, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–22805 Filed 9–22–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0133; FRL–8958–7]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD), Nonattainment NSR (NNSR) for the 1997 8-Hour Ozone Standard, NSR Reform, and a Standard Permit

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing disapproval of submittals from the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), to revise the Texas Major and Minor NSR SIP. We are proposing to disapprove the submittals because they do not meet the 2002 revised Major NSR SIP requirements. We are proposing to disapprove the submittals as not meeting the Major Nonattainment NSR SIP requirements for implementation of the 1997 8-hour ozone national ambient air quality standard (NAAQS) and the 1-hour ozone NAAQS. Additionally, EPA is proposing to disapprove the submittals to revise the Texas Major PSD NSR SIP. Finally, EPA proposes disapproval of the submitted Standard Permit (SP) for Pollution Control Projects (PCP) because it does not meet the requirements for a minor NSR SIP revision.

EPA is taking comments on this proposal and intends to take final action. EPA is proposing these actions under section 110, part C, and part D,

of the Federal Clean Air Act (the Act or CAA).

DATES: Any comments must arrive by November 23, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2006–0133, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Stanley M. Spruiell at *spruiell.stanley@epa.gov.*
- *Fax:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), at fax number 214–665–7263.
- *Mail:* Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 am and 4 pm weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2006–0133. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number 214–665–7263; e-mail address *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document, the following terms have the meanings described below:

- ''We,'' ''us,'' and ''our'' refer to EPA.
- ''Act'' and ''CAA'' means Clean Air Act.
- ''40 CFR'' means Title 40 of the Code of Federal Regulations—Protection of the Environment.
- ''SIP'' means State Implementation Plan as established under section 110 of the Act.
- ''NSR'' means new source review, a phrase intended to encompass the statutory and regulatory programs that regulate the construction and modification of stationary sources as provided under CAA section 110(a)(2)(C), CAA Title I, parts C and D, and 40 CFR 51.160 through 51.166.
- ''Minor NSR'' means NSR established under section 110 of the Act and 40 CFR 51.160.
- ''NNSR'' means nonattainment NSR established under Title I, section 110 and part D of the Act and 40 CFR 51.165.
- ''PSD'' means prevention of significant deterioration of air quality established under Title I, section 110 and part C of the Act and 40 CFR 51.166.
- ''Major NSR'' means any new or modified source that is subject to NNSR and/or PSD.
- ''TSD'' means the Technical Support Document for this action.
- ''NAAQS'' means national ambient air quality standards promulgated under section 109 of that Act and 40 CFR part 50.
- ''PAL'' means ''plantwide applicability limitation.''
- ''PCP'' means ''pollution control project.''
- ''TCEQ'' means ''Texas Commission on Environmental Quality.''

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I. What Action is EPA Proposing?

We are proposing to disapprove the SIP revisions submitted by Texas on June 10, 2005, and February 1, 2006, as not meeting the 1997 8-hour ozone major nonattainment NSR SIP requirements, and as not meeting the Act and Major Nonattainment NSR SIP requirements for the 1-hour ozone NAAQS. We are proposing to disapprove the SIP revision submitted by Texas on February 1, 2006, as not meeting the Major NSR Reform SIP requirements for PAL provisions and the Major NSR Reform SIP requirements without the PAL provisions. We are proposing to disapprove the February 1, 2006, SIP revision submittal as not meeting the Act and the Major NSR PSD SIP requirements. Finally, we are proposing to disapprove the Standard Permit (SP) for PCP submitted February 1, 2006, as not meeting the Minor NSR SIP requirements. It is EPA's position that each of these six identified portions in the SIP revision submittals, 8-hour ozone, 1-hour ozone, PALs, non PALs, PSD, and PCP Standard Permit is severable from each other.

We are taking no action on the portions of the June 10, 2005, submittal concerning 30 TAC 101.1 Definitions, section 112(g) of the Act, and Emergency Orders.

We have evaluated the SIP submissions for whether they meet the Act and 40 CFR Part 51, and are consistent with EPA's interpretation of the relevant provisions. Based upon our evaluation, EPA has concluded that each of the six portions of the SIP revision submittals does not meet the requirements of the Act and 40 CFR part 51. Therefore, each portion of the State submittals is not approvable. As authorized in sections 110(k)(3) and 301(a) of the Act, where portions of the State submittal are severable, EPA may approve the portions of the submittal that meet the requirements of the Act, take no action on certain portions of the submittal,[1] and disapprove the portions of the submittal that do not meet the requirements of the Act. When the deficient provisions are not severable from the all of the submitted provisions, EPA must propose disapproval of the submittals, consistent with section 301(a) and 110(k)(3) of the Act. Each of the six portions of the State submittals is severable from each other. Therefore, EPA is proposing to disapprove each of the following severable provisions of the submittals: (1) The submitted 1997 8-hour ozone NAAQS Major Nonattainment NSR SIP revision, (2) the submitted 1-hour ozone NAAQS Major NNSR SIP revision, (3) the submitted Major NSR reform SIP revision with PAL provisions, (4) the submitted Major NSR reform SIP revision with no PAL provisions, (5) the submitted Major NSR PSD SIP revision, and (6) the submitted Minor NSR Standard Permit for PCP SIP revision.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a mandatory requirement of the Act starts a sanctions clock and a Federal Implementation Plan (FIP) clock. The provisions in these submittals were not submitted to meet a mandatory requirement of the Act. Therefore, if EPA takes final action to disapprove any provision of the submittals, no sanctions and FIP clocks will be triggered.

II. What are the Other Relevant Proposed Actions on the Texas Permitting SIP Revision Submittals?

This proposed action should be read in conjunction with two other proposed actions appearing elsewhere in today's **Federal Register**, (1) proposed action on the Texas NSR SIP, the Flexible Permits Program, and (2) proposed action on the Texas NSR SIP, the Qualified Facilities Program and the General Definitions.[2] Also, on November 26, 2008, EPA proposed limited approval/limited disapproval of the Texas submittals relating to public participation for air permits of new and modified facilities (73 FR 72001). EPA believes these actions should be read in conjunction with each other because the permits issued under these State programs are the vehicles for regulating a significant universe of the air emissions from sources in Texas and thus directly impact the ability of the State to achieve and maintain attainment of the NAAQS and protect the health of the communities where these sources are located. The basis for proposing these actions is outlined in each notice and accompanying technical support document (TSD). Those interested in any one of these actions are encouraged to review and comment on the other proposed actions as well.

EPA intends to take final action on the State's Public Participation SIP revision submittals in November 2009. EPA intends to take final action on the submitted Texas Qualified Facilities State Program by March 31, 2010, the submitted Texas Flexible Permits State Program by June 30, 2010, and the NSR SIP on August 31, 2010. These dates are expected to be mandated under a Consent Decree (*see,* Notice of Proposed Consent Decree and Proposed Settlement Agreement, 74 FR 38015, July 30, 2009).

III. What has the State Submitted?

This notice provides a summary of our evaluation of Texas' June 10, 2005, and February 1, 2006, SIP revision submittals. We provide our reasoning in general terms in this preamble, but provide a more detailed analysis in the TSD that has been prepared for this proposed rulemaking. Because we are proposing to disapprove the submittals based on the inconsistencies discussed herein, we have not attempted to review and discuss all of the issues that would need to be addressed for approval of these submittals as Major NSR SIP revisions.

On June 10, 2005, Texas submitted revisions to Title 30 of the Texas Administrative Code (30 TAC) Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, revising 30 TAC 116.12—Nonattainment Definitions [3]—and 30 TAC 116.150—New Major Source or Major Modification in Ozone Nonattainment Areas, to meet the Major Nonattainment NSR requirements for Phase I of the 1997 8-hour NAAQS for ozone as promulgated April 30, 2004 (69 FR 23951). The June 10, 2005, submittal also includes revisions to the definitions in 30 TAC 101.1—Definitions.

On February 1, 2006, Texas submitted revisions to 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, to implement the Major NSR Reform SIP requirements with the PAL provisions and without the PAL provisions. The submittal also included revisions for the Texas PSD SIP and a new Minor NSR Standard Permit for Pollution Control Projects. This submittal includes the following changes:

[1] In this action, we are taking no action on certain provisions that are either outside the scope of the SIP or which revise an earlier submittal of a base regulation that is currently undergoing review for appropriate action.

[2] In that proposed action, the submitted definition of BACT is not severable from the proposed action on the PSD SIP revision submittals. EPA may choose to take final action on the definition of BACT in the NSR SIP final action rather than in the Qualified Facilities and the General Definitions final actions. EPA is obligated to take final action on the submitted definitions in the General Definitions for those identified as part of the Texas Qualified Facilities State Program, the Texas Flexible Permits State Program, Public Participation, Permit Renewals (there will be a proposed action published at a later date), and this BACT definition as part of the NSR SIP.

[3] In the Texas SIP and in the June 10, 2005, SIP submittal, the title of 30 TAC 116.12 is ''Nonattainment Review Definitions.'' In the February 1, 2006, SIP submittal, 30 TAC 116.12 was renamed ''Nonattainment and Prevention of Significant Deterioration Review Definitions.''

• *Revisions to the following sections:* 30 TAC 116.12—Nonattainment and Prevention of Significant Deterioration Review Definitions, 30 TAC 116.150—New Major Source or Major Modification in Ozone Nonattainment Areas, 30 TAC 116.151—New Major Source or Major Modification in Nonattainment Areas Other Than Ozone, 30 TAC 116.160—Prevention of Significant Deterioration Requirements, and 30 TAC 116.610(a), (b), and (d)—Applicability;

• *Addition of the following new sections:* 30 TAC 116.121—Actual to Projected Actual Test for Emissions Increases, 30 TAC 116.180—Applicability, 30 TAC 116.182—Plant-Wide Applicability Limit Application, 30 TAC 116.184—Application Review Schedule, 30 TAC 116.186—General and Special Conditions, 30 TAC 116.188—Plantwide Applicability Limit, 30 TAC 116.190—Federal Nonattainment and Prevention of Significant Deterioration Review, 30 TAC 116.192—Permit Amendments and Alterations, 30 TAC 116.194—Public Notice and Comment, 30 TAC 116.196—Renewal of Plant-Wide Applicability Limit Permit, and 30 TAC 116.198—Expiration or Voidance.

• *Removal of 30 TAC 116.617*—Standard Permit for Pollution Control Projects and replacement with new 30 TAC 116.617—State Pollution Control Project Standard Permit.

The table below summarizes the changes that are in the two SIP revisions submitted June 10, 2005, and February 1, 2006. A summary of EPA's evaluation of each section and the basis for this proposal is discussed in sections IV, V, VI, and VII of this preamble. The TSD includes a detailed evaluation of the submittals.

TABLE—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION

Section	Title	Submittal dates	Description of change	Proposed action
Chapter 116—Control of Air Pollution by Permits for New Construction or Modification Subchapter A—Definitions				
30 TAC 116.12	Nonattainment Review Definitions.	6/10/2005	Changed several definitions to implement Federal phase I rule implementing 8-hour ozone standard.	Disapproval.
	Nonattainment Review and Prevention of Significant Deterioration Definitions.	2/1/2006	Renamed section and added and revised definitions to implement Federal NSR Reform regulations.	Disapproval.
Subchapter B—New Source Review Permits Division 1—Permit Application				
30 TAC 116.121	Actual to Projected Actual Test for Emissions Increase.	2/1/2006	New Section	Disapproval.
Division 5—Nonattainment Review				
30 TAC 116.150	New Major Source or Major Modification in Ozone Nonattainment Area.	6/10/2005	Revised section to implement Federal phase I rule implementing 8-hour ozone standard.	Disapproval.
		2/1/2006	Revised section to implement Federal NSR Reform regulations.	Disapproval.
30 TAC 116.151	New Major Source or Major Modification in Nonattainment Areas Other Than Ozone.	2/1/2006	Revised section to implement Federal NSR Reform regulations.	Disapproval.
Division 6—Prevention of Significant Deterioration Review				
30 TAC 116.160	Prevention of Significant Deterioration Requirements.	2/1/2006	Revised section to implement Federal NSR Reform regulations.	Disapproval.
Subchapter C—Plant-Wide Applicability Limits Division 1—Plant-Wide Applicability Limits				
30 TAC 116.180	Applicability	2/1/2006	New Section	Disapproval.
30 TAC 116.182	Plant-Wide Applicability Limit Permit Application.	2/1/2006	New Section	Disapproval.
30 TAC 116.184	Application Review Schedule	2/1/2006	New Section	Disapproval.
30 TAC 116.186	General and Special Conditions.	2/1/2006	New Section	Disapproval.
30 TAC 116.188	Plant-Wide Applicability Limit	2/1/2006	New Section	Disapproval.
30 TAC 116.190	Federal Nonattainment and Prevention of Significant Deterioration Review.	2/1/2006	New Section	Disapproval.
30 TAC 116.192	Amendments and Alterations	2/1/2006	New Section	Disapproval.
30 TAC 116.194	Public Notice and Comment	2/1/2006	New Section	Disapproval.

TABLE—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Submittal dates	Description of change	Proposed action
30 TAC 116.196	Renewal of a Plant-Wide Applicability Limit Permit.	2/1/2006	New Section	Disapproval.
30 TAC 116.198	Expiration and Voidance	2/1/2006	New Section	Disapproval.
Subchapter E—Hazardous Air Pollutants: Regulations Governing Constructed and Reconstructed Sources (FCAA, § 112(g), 40 CFR Part 63)[a]				
30 TAC 116.400	Applicability	2/1/2006	Recodification from section 116.180.	No action.
30 TAC 116.402	Exclusions	2/1/2006	Recodification from section 116.181.	No action.
30 TAC 116.404	Application	2/1/2006	Recodification from section 116.182.	No action.
30 TAC 116.406	Public Notice Requirements	2/1/2006	Recodification from section 116.183.	No action.
Subchapter F—Standard Permits				
30 TAC 116.610	Applicability	2/1/2006	Revised paragraphs (a), (a)(1) through (a)(5), (b), and (d).[b]	Disapproval, No action on paragraph (d).
30 TAC 116.617	State Pollution Control Project Standard Permit.	2/1/2006	Replaced former 30 TAC 116.617—Standard Permit for Pollution Control Projects.[c]	Disapproval.
Subchapter K—Emergency Orders[d]				
30 TAC 116.1200	Applicability		Recodification from 30 TAC 116.410.	No action.

[a] Recodification of former Subchapter C. These provisions are not SIP-approved.
[b] 30 TAC 116.610(d) is not SIP-approved.
[c] 30 TAC 116.617 is not SIP-approved.
[d] Recodification of former Subchapter E. These provisions are not SIP-approved.

IV. Do the Submitted SIP Revisions Meet the Major NSR PSD SIP Requirements?

A. What are the Requirements for EPA's Review of a Submitted Major NSR SIP Revision?

Before EPA's 1980 revised major NSR SIP regulations, 45 FR 52676 (August 7, 1980), States were required to adopt and submit a major NSR SIP revision where the State's provisions and definitions were identical to or individually more stringent than the Federal rules. Under EPA's 1980 revised major NSR SIP regulations, States could submit provisions in a major NSR SIP revision different from those in EPA's major NSR rules, as long as the State provision was equivalent to a rule identified by EPA as appropriate for a ''different but equivalent'' State rule. If a State chose to submit *definitions* that were not verbatim, the State was required to *demonstrate any different definition* has the effect *of being as least as stringent.* (Emphasis added.) *See* 45 FR 52676, at 52687. The demonstration requirement was *explicitly* expanded to include not just different definitions *but also different programs* in the EPA's revised major NSR regulations, as promulgated on December 31, 2002 (67 FR 80186) and reconsidered with minor changes on November 7, 2003 (68 FR 63021). Therefore, to be approved as meeting the 2002 revised major NSR SIP requirements, a State submitting a customized major NSR SIP revision *must demonstrate why its program and definitions* are in fact at least as stringent as the major NSR revised base program. (Emphasis added). *See* 67 FR 80186, at 80241.

Moreover, because there is an existing Texas Major NSR SIP, the submitted Program must meet the anti-backsliding provisions of the Act in section 193 and meet the requirements in section 110(l) which provides that EPA may not approve a SIP revision if it will interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Furthermore, any submitted SIP revision must meet the applicable SIP regulatory requirements and the requirements for SIP elements in section 110 of the Act, and be consistent with applicable statutory and regulatory requirements. These can include, among other things, enforceability, compliance assurance, replicability of an element in the program, accountability, test methods, and whether the submitted rules are vague. There are four fundamental principles for the relationship between the SIP and any implementing instruments, *e.g.,* Major NSR permits. These four principles as applied to the review of a major or minor NSR SIP revision include: (1) The baseline emissions from a permitted source be quantifiable; (2) the NSR program be enforceable by specifying clear, unambiguous, and measurable requirements, including a legal means for ensuring the sources are in compliance with the NSR program, and providing means to determine compliance; (3) the NSR program's measures be replicable by including sufficiently specific and objective provisions so that two independent entities applying the permit program's procedures would obtain the same result; and (4) the major NSR permit program be accountable, including means to track emissions at sources resulting from the issuance of permits and permit amendments. *See* EPA's April 16, 1992, ''General Preamble for

the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498) (General Preamble). A discussion illustrating the principles and elements of SIPs that apply to sources in implementing a SIP's control strategies begins on page 13567 of the General Preamble.

B. Do the Submitted SIP Revisions Meet the Act and the PSD SIP requirements?

Texas submitted a revision to 30 TAC 116.160(a) and a new section 116.160(c)(1) and (2) on February 1, 2006, as a SIP revision to the Texas PSD SIP. This SIP revision submittal removed from the State rules the incorporation by reference of the Federal PSD definition of ''best available control technology (BACT)'' as defined in 40 CFR 51.166(b)(12) [4]. The currently approved PSD SIP requires that a State include the Federal definition of BACT. *See* 30 TAC 116.160(a).

The 2006 submittal also removed from the State rules, the PSD SIP requirement at 40 CFR 52.21(r)(4) that the State previously had incorporated by reference. The currently approved PSD SIP mandates this requirement. *See* 30 TAC 116.160(a). This provision specifies that if a project becomes a major stationary source or major modification solely because of a relaxation of an enforceable limitation on the source or modification's capacity to emit a pollutant, then the source or modification is subject to PSD applies as if construction had not yet commenced. The State's action in eliminating that requirement means the State's rules will not regulate these types of major stationary sources or modifications as stringently as the Federal program.

Section 165 of the Act provides that ''No major emitting facility * * * may be constructed [or modified] in any area to which this part applies unless— (1) a permit has been issued for such proposed facility in accordance with this part setting forth *emission limitations* for such facility *which conform to the requirements of this part*'' * * * (4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter * * *.'' *Id.* 7475(a). Accordingly, under the plain language of Section 165 a facility may not be constructed unless it will comply with BACT limits, which conform to the requirements of the Act. As BACT is a defined term in the Act, see CAA 169(3), we interpret this to mean that a facility may not be constructed unless the permit it has been issued conforms to the Act's definition of BACT.

The removal of these two provisions is not approvable as a SIP revision. The BACT requirement is a basic tenet of a permitting program. Our conclusion that the BACT and emission limitation requirements are a statutory minimum flows from the Act itself. *See* CAA section 165. These two provisions are required for a SIP revision to meet the PSD SIP requirements.

Not only is BACT a defined statutory and regulatory term, but it also constitutes a central requirement of the Act. Accordingly, a state's submission of a revision that would remove the requirement that all new major stationary sources or major modifications meet, at a minimum, BACT as defined by the Act creates a situation where the submitted SIP revision would be a relaxation of the requirements of the previous SIP.

Our evaluation considers whether a submitted SIP revision that removes a statutory requirement can still meet the Act. It is EPA's position that the removal of a statutory requirement from a State's program cannot be approved as a SIP revision because the removal does not meet the requirements of the Act. Additionally, as a SIP relaxation, we would look to the requirements of section 110(l). Section 110(l) of the Act prohibits EPA from approving any revision of a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. The State did not provide any demonstration showing how the submitted SIP revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

As the mechanism in Texas for ensuring that permits contain such a requirement, the State PSD SIP must both require BACT and apply the federal definition of BACT (or one that is more stringent) to be approved pursuant to part C and Section 110*(l)* of the Act.

Since Texas' approach fails to ensure that all of the statutory relevant criteria contained in the statutory BACT definition are contained in the Texas SIP revision submittal, and the State failed to submit a demonstration showing how the relaxation would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA requirement, we are proposing to disapprove this removal pursuant to part C and Section 110*(l)* of the Act, as well as failing to meet the Major NSR SIP requirements.

V. Do the Submitted SIP Revisions Meet the Major Non-attainment NSR Requirements for the 1-Hour and the 1997 8-Hour Ozone NAAQS?

A. What are the Anti-Backsliding Major Nonattainment NSR SIP Requirements for the 1-hour Ozone NAAQS?

On July 18, 1997, EPA promulgated a new NAAQS for ozone based upon 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38865).[5] On April 30, 2004 (69 FR 23951), we published a final rule that addressed key elements related to implementation of the 1997 8-hour ozone NAAQS including, but not limited to: revocation of the 1-hour NAAQS and how anti-backsliding principles will ensure continued progress toward attainment of the 1997 8-hour ozone NAAQS. We codified the anti-backsliding provisions governing the transition from the revoked 1-hour ozone NAAQS to the 1997 8-hour ozone NAAQS in 40 CFR 51.905(a). The 1-hour ozone major nonattainment NSR SIP requirements indicated that certain 1-hour ozone standard requirements were not part of the list of anti-backsliding requirements provided in 40 CFR 51.905(f).

On December 22, 2006, the DC Circuit vacated the Phase 1 Implementation Rule in its entirety. *South Coast Air*

[4] The January 1972 Texas NSR rules, as revised in July 1972, require a proposed new facility or modification to utilize the best available control technology, with consideration to the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility. The Federal definition for PSD BACT is part of the Texas SIP as codified in the SIP at 30 TAC 116.160(a). (This current SIP rule citation was adopted by the State on October 10, 2001, and EPA approved this recodified SIP rule citation on July 22, 2004 (69 FR 43752).) EPA approved the Texas PSD program SIP revision submittals, including the State's incorporation by reference of the Federal definition of BACT, in 1992. See proposal and final approval of the Texas PSD SIP at 54 FR 52823 (December 22, 1989) and 57 FR 28093 (June 24, 1992). EPA specifically found that the SIP BACT requirement (now codified in the Texas SIP at 30 TAC 116.111(a)(2)(C)) did not meet the Federal PSD BACT definition. To meet the PSD SIP Federal requirements, Texas chose to incorporate by reference, the Federal PSD BACT definition, and submit it for approval by EPA as part of the Texas PSD SIP. Upon EPA's approval of the Texas PSD SIP submittals, both EPA and Texas interpreted the SIP BACT provision now codified in the SIP at 30 TAC 116.111(a)(2)(C) as being a minor NSR SIP requirement for minor NSR permits.

[5] On March 12, 2008, EPA significantly strengthened the 1997 8-hour ozone standard, to a level of 0.075 ppm. EPA is developing rules needed for implementing the 2008 revised 8-hour ozone standard and has received the States' submittals identifying areas with their boundaries they identify to be designated nonattainment. EPA is reviewing the States' submitted data.

Quality Management District, et al., v. *EPA,* 472 F.3d 882 (DC Cir. 2006), *reh'g denied* 489 F.3d 1245 (2007) (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review). The EPA requested rehearing and clarification of the ruling and on June 8, 2007, the Court clarified that it was vacating the rule only to the extent that it had upheld petitioners' challenges. Thus, the provisions in 40 CFR 51.905(e) that waived obligations under the revoked 1-hour standard for NSR were vacated. The effect of this portion of the court's ruling is to restore major nonattainment NSR applicability thresholds and emission offsets pursuant to classifications previously in effect for areas designated nonattainment for the 1-hour ozone NAAQS.

On June 10, 2005 and February 1, 2006, Texas submitted SIP revisions to 30 TAC 116.12 and 30 TAC 116.150 which relate to the transition from the major nonattainment NSR requirements applicable for the 1-hour ozone NAAQS to implementation of the major nonattainment NSR requirements applicable to the 1997 8-hour ozone NAAQS. Texas' revisions at 30 TAC 116.12(18) (Footnote 6 under Table I under the definition of ''major modification'') and 30 TAC 116.150(d) introductory paragraph, effective as state law on June 15, 2005, provide that for ''the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Beaumont-Port Arthur eight hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for nonattainment new source review according to the area's one-hour standard classification,'' then ''each application will be evaluated according to that area's one-hour standard classification'' and ''* * * the de minimis threshold test (netting) is required for all modifications to existing major sources of VOC or NO_x in that area * * *.'' The footnote 6 and the introductory paragraph add a new requirement for an affirmative regulatory action by the EPA on the reinstatement of the 1-hour ozone NAAQS major nonattainment NSR requirements before the major nonattainment NSR requirements under the 1-hour standard will be implemented in the Texas 1-hour ozone nonattainment areas.

The currently approved Texas major nonattainment NSR SIP does not require such an affirmative regulatory action by the EPA before the 1-hour ozone major nonattainment NSR requirements come into effect in the Texas 1-hour ozone nonattainment areas. Our evaluation of a SIP revision generally considers whether a revision would be at least as stringent as the provision in the existing applicable implementation plan that it would supersede. If we cannot conclude that a SIP revision is at least as stringent as the corresponding provision in the existing SIP, we may approve the revision only if the revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. The Texas revision would relax the requirements of the approved SIP.

Texas submitted no section 110(l) analysis demonstrating that this relaxation would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. Therefore, we are proposing to disapprove the revisions as not meeting section 110(l) of the Act for the Major NNSR SIP requirements for the 1-hour ozone NAAQS.

B. What Are the Major Nonattainment NSR SIP Requirements for the 1997 8-hour Ozone NAAQS?

The Act and EPA's NSR SIP rules require that an applicability determination regarding whether Major NSR applies for a pollutant should be based upon the attainment or nonattainment designation of the area in which the source is located on the *date of issuance* of the Major NSR permit. *See* the following: sections 172(c)(5) and 173 of the Act; 40 CFR 51.165(a)(2)(i); and ''New Source Review (NSR) Program Transitional Guidance,'' issued March 11, 1991, by John S. Seitz, Director, Office of Air Quality Planning and Standard. An applicability determination for a Major NSR permit based upon the date of administrative completeness, rather than date of issuance, would allow more sources to avoid the Major NSR requirements where there is a nonattainment designation between the date of administrative completeness and the date of issuance, and thus this submitted revision will reduce the number of sources subject to Major NSR requirements.

Revised 30 TAC 116.150(a), as submitted June 10, 2005 and February 1, 2006, now reads as follows under state law:

(a) This section applies to all new source review authorizations for new construction or modification of facilities as follows:

(1) For all applications for facilities that will be located in any area designated as nonattainment for ozone under 42 United States Code (U.S.C.), §§ 7407 *et seq.* on the effective date of this section, the issuance date of the authorization; and

(2) For all applications for facilities that will be located in counties for which nonattainment designation for ozone under 42 U.S.C. 7407 *et seq.* becomes effective after the effective date of this section, the date the application is administratively complete.[6]

The submitted rule raises two concerns. First, the revised language in 30 TAC 116.150(a) is not clear as to when and where the applicability date will be set by the date the application is administratively complete and when and where the applicability date will be set by the issuance date of the authorization. The rule, adopted and submitted in 2005, applies the date of administrative completeness of a permit application, not the date of permit issuance, where setting the date for determination of NSR applicability after June 15, 2004 (the effective date of ozone nonattainment designations). The submitted 2006 rule adds the date of permit issuance. Unfortunately, the submitted 2006 rule by introducing a bifurcated structure creates vagueness rather than clarity. The effective date of this new bifurcated structure is February 1, 2006. It is unclear whether this means under subsection (1) that the permit issuance date is used in existing nonattainment areas designated nonattainment for ozone before and up through February 1, 2006. Thus, the proposed revision lacks clarity on its face and is therefore not enforceable.

Second, to the extent that the date of application completeness is used in certain instances to establish the applicability date, such use is contrary to the Act and EPA's interpretation thereof, as discussed above.

The State did not provide any information, which demonstrates that this revision is at least as stringent as the requirements of the Act and applicable Federal rules.

Thus, based upon the above and in the absence of any explanation by the State, EPA is proposing to disapprove the SIP revision submittals for not

[6] It is our understanding of State law, that a ''facility'' can be an ''emissions unit,'' *i.e.,* any part of a stationary source that emits or may have the potential to emit any air contaminant. A ''facility'' also can be a piece of equipment, which is smaller than an ''emissions unit.'' A ''facility'' can be a ''major stationary source'' as defined by Federal law. A ''facility'' under State law can be more than one ''major stationary source.'' It can include every emissions point on a company site, without limiting these emissions points to only those belonging to the same industrial grouping (SIP code). To comment on our understanding of the State definition of facility, see our proposed action regarding Modification of Existing Qualified Facilities Program and General Definitions, published elsewhere in today's **Federal Register**.

meeting the Major NNSR SIP requirements for the 1997 8-hour ozone standard.

VI. Do the Submitted SIP Revisions Meet the Major NSR SIP Requirements?

A. Do the SIP Revision Submittals Meet the Major NSR SIP Requirements With a PALs Provision?

We are proposing to disapprove the following non-severable revisions that address the revised Major NSR SIP requirements with a PALs provision: 30 TAC Chapter 116 submitted February 1, 2006: 30 TAC 116.12—Definitions; 30 TAC 116.180—Applicability; 30 TAC 116.182—Plant-Wide Applicability Limit Permit Application; 30 TAC 116.184—Application Review Schedule; 30 TAC 116.186—General and Special Conditions; 30 TAC 116.188—Plant-Wide Applicability Limit; 30 TAC 116.190—Federal Nonattainment and Prevention of Significant Deterioration Review; 30 TAC 116.192—Amendments and Alterations; 30 TAC 116.194—Public Notice and Comment; 30 TAC 116.196—Renewal of a Plant-Wide Applicability Limit Permit; 30 TAC 116.198—Expiration or Voidance.

Below is a summary of our evaluation. *Please see* the TSD for additional information.

The submittal lacks a provision which limits applicability of a PAL only to an *existing* major stationary source, and which precludes applicability of a PAL to a new major stationary source, as required under 40 CFR 51.165(f)(1)(i) and 40 CFR 51.166(w)(1)(i), which limits applicability of a PAL to an existing major stationary source. In the absence of such limitation, this submission would allow a PAL to be authorized for the construction of a new major stationary source. In EPA's November 2002 TSD for the revised Major NSR Regulations, we respond on pages I–7–27 and 28 that actual PALs are available only for existing major stationary sources, because actual PALs are based on a source's actual emissions. Without at least 2 years of operating history, a source has not established actual emissions upon which to base an actual PAL. However, for individual emissions units with less than two years of operation, allowable emissions would be considered as actual emissions. Therefore, an actual PAL can be obtained only for an existing major stationary source even if not all emissions units have at least 2 years of emissions data. Moreover, the development of an alternative to provide new major stationary sources with the option of obtaining a PAL based on allowable emissions was foreclosed by the Court in *New York* v. *EPA,* 413 F.3d 3 at 38–40 (DC Cir. 2005) (''New York I'') (holding that the Act since 1977 requires a comparison of existing actual emissions before the change and projected actual (or potential emissions) after the change in question is required).

The absence of the applicability limitation creates a provision less stringent than the Act as interpreted by the Court and the revised Major NSR SIP PAL requirements. Therefore, we are proposing to disapprove this submittal as not meeting the revised Major NSR SIP requirements.

The submittal has no provisions that relate to PAL re-openings, as required by 40 CFR 51.165(f)(8)(ii), (ii)(A) through (C), and 51.166(w)(8)(ii) and (ii)(a). Nor is there a mandate that failure to use a monitoring system that meets the requirements of this section renders the PAL invalid, as required by 40 CFR 51.165(f)(12)(i)(D) and 51.166(w)(12)(i)(d). The absence of these provisions renders the accountability of this Program inadequate and less stringent than the Federal requirements of Major NSR. Therefore, EPA is proposing to disapprove the submittal as not meeting the revised Major NSR SIP requirements.

The Texas submittal at 30 TAC 116.186 provides for an emissions cap that may not account for all of the emissions of a pollutant at the major stationary source. Texas requires the owner or operator to submit a list of *all facilities to be included in the PAL* see 30 TAC 116.182(1), such that not all of the facilities at the entire major stationary source may be specifically required to be included in the PAL. However, the Federal rules require the owner or operator to submit a list of *all emissions units at the source* see 40 CFR 51.166(f)(3)(i) and 40 CFR 51.166(w)(3)(i). The corresponding Federal rules provide that a PAL applies to all of the emission units at the *entire* major stationary source. Inclusion of all the emissions units subject to the enforceable PAL limit is an essential feature of the Plantwide Applicability Limit. The Texas submittal is unclear as to whether the PAL would apply to all of the emission units at the *entire* major stationary source and therefore appears to be less stringent than the Federal rules. In the absence of any demonstration from the State, EPA is proposing to disapprove 30 TAC 116.186 and 30 TAC 116.182(1) as not meeting the revised Major NSR SIP requirements.

Submitted 30 TAC 116.194 requires that an applicant for a PAL permit must provide for public notice on the draft PAL permit in accordance with 30 TAC Chapter 39—Public Notice—for all initial applications, amendments, and renewals or a PAL Permit.[7] *See* 73 FR 72001 (November 26, 2008) for more information on Texas' public participation rules and their relationship to PALs. The November 2008 proposal addressed the public participation provisions in 30 TAC Chapter 39, but did not specifically propose action on 30 TAC 116.194. Today, we propose to address 30 TAC 116.194. Because this section relates to the public participation requirements of the PAL program, this section is not severable from the PAL program. Because we are proposing to disapprove the PAL program, we propose to likewise disapprove 30 TAC 116.194.

The Federal definition of the ''baseline actual emissions'' provides that these emissions must be calculated in terms of ''the *average* rate, in tons per year at which the unit actually emitted the pollutant during any consecutive 24-month period.'' *See* 40 CFR 51.165(a)(1)(xxxv)(A), (B), (D) and (E) and 51.166(b)(47)(i), (ii), (iv), and (v). Emphasis added. The submitted definition of the term ''baseline actual emissions'' found at 30 TAC 116.12(3)(A), (B), (D), and (E) differs from the Federal definition by providing that the baseline shall be calculated as ''the rate, in tons per year at which the unit actually emitted the pollutant during any consecutive 24-month period.'' The submitted definition omits reference to the ''average rate.'' The definition differs from the Federal SIP definition but the State failed to provide a demonstration showing how the different definition is at least as stringent as the Federal definition. Therefore, EPA proposes to disapprove the different definition of ''baseline actual emissions'' found at 30 TAC 116.12(3) as not meeting the revised Major NSR SIP requirements. On the same grounds for lacking a demonstration, EPA proposes to

[7] ''The submittals do not meet the following public participation provisions for PALs: (1) For PALs for existing major stationary sources, there is no provision that PALs be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 51.161, including the requirement that the reviewing authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment, consistent with the Federal PAL rules at 40 CFR 51.165(f)(5) and (11) and 51.166(w)(5) and (11). (2) For PALs for existing major stationary sources, there is no requirement that the State address all material comments before taking final action on the permit, consistent with 40 CFR 51.165(f)(5) and 51.166(w)(5). (3) The applicability provision in section 39.403 does not include PALs, despite the cross-reference to Chapter 39 in Section 116.194.''

disapprove 30 TAC 116.182(2) that refers to calculations of the baseline actual emissions for a PAL, as not meeting the revised Major NSR SIP requirements.

The State also failed to include the following specific monitoring definitions: ''Continuous emissions monitoring system (CEMS)'' as defined in 40 CFR 51.165(a)(1)(xxxi) and 51.166(b)(43); ''Continuous emissions rate monitoring system (CERMS)'' as defined in 40 CFR 51.165(a)(1)(xxxiv) and 51.166(b)(46); ''Continuous parameter monitoring system (CPMS)'' as defined in 40 CFR 51.165(a)(1)(xxxiii) and 51.166(b)(45); and ''Predictive emissions monitoring system (PEMS)'' as defined in 40 CFR 51.165(a)(1)(xxxii) and 51.166(b)(44). All of these definitions concerning the monitoring systems in the revised Major NSR SIP requirements are essential for the enforceability of and providing the means for determining compliance with a PALs program. Therefore, we are proposing to disapprove the State's lack of these four monitoring definitions as not meeting the revised Major NSR SIP requirements.

Additionally, where, as here, a State has made a SIP revision that does not contain definitions that are required in the revised Major NSR SIP program, EPA may approve such a revision only if the State specifically demonstrates that, despite the absence of the required definitions, the submitted revision is more stringent, or at least as stringent, in all respects as the Federal program. *See* 40 CFR 51.165(a)(1) (non-attainment SIP approval criteria); 51.166 (b) (PSD SIP definition approval criteria). Texas did not provide such a demonstration. Therefore, EPA proposes to disapprove the lack of these definitions as not meeting the revised Major NSR SIP requirements.

None of the provisions and definitions in the February 1, 2006, SIP revision submittal pertaining to the revised Major NSR SIP requirements for PALs is severable from each other. Therefore, we are proposing to disapprove the portion of the February 1, 2006, SIP revision submittal pertaining to the revised Major NSR PALs SIP requirements as not meeting the Act and the revised Major NSR SIP regulations.

B. Do the Submitted SIP Revisions Meet the Non-PAL Aspects of the Major NSR SIP Requirements?

The submitted NNSR non-PAL rules do not explicitly limit the definition of ''facility'' [8] to an ''emissions unit'' as do the submitted PSD non-PAL rules. It is our understanding of State law that a ''facility'' can be an ''emissions unit,'' *i.e.*, any part of a stationary source that emits or may have the potential to emit any air contaminant, as the State explicitly provides in the revised PSD rule at 30 TAC 116.160(c)(3). A ''facility'' also can be a piece of equipment, which is smaller than an ''emissions unit.'' A ''facility'' can include more than one ''major stationary source.'' It can include every emissions point on a company site, without limiting these emissions points to only those belonging to the same industrial grouping (SIP code). In our proposed action on the Texas Qualified Facilities State Program, EPA specifically solicits comment on the definition for ''facility'' under State law. We encourage anyone interested in this issue to review and comment on the other proposed action on the submitted Qualified Facilities State Program, as well.

Regardless, the State clearly thought the prudent legal course was to limit ''facility'' explicitly to ''emissions unit'' in its PSD SIP non-PALs revision. TCEQ did not submit a demonstration showing how the lack of this explicit limitation in the NNSR SIP non-PALs revision is at least as stringent as the revised Major NSR SIP requirements. Therefore, EPA is proposing to disapprove the submitted definition and its use as not meeting the revised Major NNSR non-PALs SIP requirements.

Under the Major NSR SIP requirements, for any physical or operational change at a major stationary source, a source must include emissions resulting from startups, shutdowns, and malfunctions in its determination of the baseline actual emissions (see 40 CFR 51.165(a)(1)(xxxv)(A)(1) and (B)(1) and 40 CFR 51.166(b)(47)(i)(*a*) and (ii)(a)) and the projected actual emissions (see 40 CFR 51.165(a)(1)(xxviii)(B) and 40 CFR 51.166(b)(40)(ii)(*b*)). The definition of the term ''baseline actual emissions,'' as submitted in 30 TAC 116.12(3)(E), does not require the inclusion of emissions resulting from startups, shutdowns, and malfunctions.[9] Our understanding of State law is that the use of the term ''may'' ''creates discretionary authority or grants permission or a power. See Section 311.016 of the Texas Code Construction Act. Similarly, the submitted definition of ''projected actual emissions'' at 30 TAC 116.12(29) does not require that emissions resulting from startups, shutdowns, and malfunctions be included. The submitted definitions differ from the Federal SIP definitions and the State has not provided information demonstrating that these definitions are at least as stringent as the Federal SIP definitions. Therefore, based upon the lack of a demonstration from the State, EPA proposes to disapprove the definitions of ''baseline actual emissions'' at 30 TAC 116.12(3) and ''projected actual emissions'' at 30 TAC 116.12(29) as not meeting the revised Major NSR SIP requirements.

The Federal definition of the ''baseline actual emissions'' provides that these emissions must be calculated in terms of ''the average rate, in tons per year at which the unit actually emitted the pollutant during any consecutive 24-month period.'' The submitted definition of the term ''baseline actual emissions'' found at 30 TAC 116.12 (3)(A), (B), (D), and (E) differs from the Federal definition by providing that the baseline shall be calculated as ''the rate, in tons per year at which the unit actually emitted the pollutant during any consecutive 24-month period.''

Texas has not provided any demonstration showing how this different definition is at least as stringent as the Federal SIP definition. Therefore, EPA proposes to disapprove the submitted definition of ''baseline actual emissions'' found at 30 TAC 116.12(3) as not meeting the revised major NSR SIP requirements.

None of the provisions and definitions in the February 1, 2006, SIP revision submittal pertaining to the revised Major NSR SIP requirements for non-PALs is severable from each other. Therefore, we are proposing to disapprove the portion of the February 1, 2006, SIP revision submittal pertaining to the revised Major NSR non-PALs SIP requirements as not meeting the Act and the revised Major NSR SIP regulations.

VII. Does the Submitted PCP Standard Permit Meet the Minor NSR SIP Requirements?

EPA approved Texas' general regulations for Standard Permits in 30 TAC Subchapter F of 30 TAC Chapter 116 on November 14, 2003 (68 FR 64548) as meeting the minor NSR SIP requirements. The November 14, 2003

[8] ''Facility'' is defined in the SIP approved 30 TAC 116.10(6) as ''a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment.''

[9] The submitted definition of ''baseline actual emissions,'' is as follows: Until March 1, 2016, emissions previously demonstrated as emissions events or historically exempted under Chapter 101 of this title * * * *may* be included to the extent they have been authorized, or are being authorized, in a permit action under Chapter 116. 30 TAC 116.12(3)(E) (emphasis added).

action describes how these rules meet EPA's requirements for new minor sources and minor modifications. A Standard Permit provides a streamlined mechanism with all permitting requirements for construction and operation of certain sources in categories that contain numerous similar sources. It is not a case-by-case minor NSR SIP permit. Therefore, each minor NSR SIP Standard Permit must contain all terms and conditions on the face of it (combined with the SIP general requirements) and it cannot be used to address site-specific determinations. This particular type of minor NSR permit is required to be applicable to narrowly defined categories of emission sources [10] rather than a category of *emission types*. A Standard Permit is a minor NSR permit limited to a particular narrowly defined source category for which the permit is designed to cover and cannot be used to make site-specific determinations that are outside the scope of this type of permit.[11]

EPA did not approve the Standard Permit for PCPs (30 TAC 116.617) in the November 14, 2003 action as part of the Texas minor NSR SIP. *See* 68 FR 64547. On February 1, 2006, Texas submitted a repeal of the previously submitted PCP Standard Permit and submitted the adoption of a new PCP Standard Permit at 30 TAC 116.617—State Pollution Control Project Standard Permit.[12] One of the main reasons Texas adopted a new PCP Standard Permit was to meet the new Federal requirements to explicitly limit this PCP Standard Permit only to Minor NSR. In *State of New York, et al.* v. *EPA,* 413 F.3d 3 (DC Cir. June 24, 2005), the Court vacated the federal pollution control project provisions for NNSR and PSD. The new PCP Standard Permit explicitly prohibits the use of the PCP Standard Permit for new major sources and major modifications. Still the new PCP Standard Permit is a generic permit that applies to numerous types of pollution control projects, which can be used at *any* source that wants to use a PCP. The definition in this Standard Permit for what is a PCP is overly broad. For example, it does not delineate what type of pollution control equipment is authorized.

The PCP Standard Permit, as adopted and submitted by Texas to EPA for approval into the Texas Minor NSR SIP, is not limited in its applicability to a single category of industrial sources, but to a broad class of pollution control techniques at all source categories. An individual Standard Permit must be limited to a single source category, which consists of numerous similar sources that can meet standardized permit conditions. In addition to EPA's concerns that this submitted PCP Standard Permit is not limited in its applicability, another major concern is that this Standard Permit is designed for case-by-case additional authorization, source-specific review, and source-specific technical determinations. For case-by-case additional authorization, source-specific review, and source specific technical determinations, under the minor NSR SIP rules, if these types of determinations are necessary, the State must use its minor NSR SIP case-by-case permit process under 30 TAC 116.110(a)(1).

There are no replicable conditions in the PCP Standard Permit that specify how the Director's discretion is to be implemented for the individual determinations. Of particular concern is the provision that allows for the exercise of the Executive Director's discretion in making case-specific determinations in individual cases in lieu of generic enforceable requirements. Because EPA approval will not be required in each individual case, specific replicable criteria must be set forth in the Standard Permit establishing equivalent emissions rates and ambient impact. Similarly, the PCP Standard Permit is not the appropriate vehicle in the case-by-case establishing of recordkeeping, monitoring, and recordkeeping requirements because it requires the Executive Director to make case-by-case determinations and to establish case specific terms and conditions for the construction or modification of each individual PCP that are outside the terms and conditions in the PCP Standard Permit.

Because the PCP Standard Permit, in 30 TAC 116.617, does not meet the SIP requirements for Minor NSR, EPA proposes to disapprove the PCP Standard Permit, as submitted February 1, 2006.

VIII. What Is Our Evaluation of Other SIP Revision Submittals?

We are proposing to take no action upon the June 10, 2005 SIP revision submittal addressing definitions at 30 TAC Chapter 101, Subchapter A, section 101.1, because previous revisions to that section are still pending review by EPA. We will take appropriate action on the submittals concerning 30 TAC 101.1 in a separate action. As noted previously, these definitions are severable from the other portions of the two SIP revision submittals.

Second, Texas originally submitted a new Subchapter C—Hazardous Air Pollutants: Regulations Governing Constructed and Reconstructed Sources (FCAA, § 112(g), 40 CFR Part 63) on July 22, 1998. EPA has not taken action upon the 1998 submittal. In the February 1, 2006, SIP revision submittal, this Subchapter C is recodified to Subchapter E and sections are renumbered. This 2006 submittal also includes an amendment to 30 TAC 116.610(d) to change the cross-reference from Subchapter C to Subchapter E. These SIP revision submittals apply to the review and permitting of constructed and reconstructed major sources of hazardous air pollutants (HAP) under section 112 of the Act and 40 CFR part 63, subpart B. The process for these provisions is carried out separately from the SIP activities. SIPs cover criteria pollutants and their precursors, as regulated by NAAQS. Section 112(g) of the Act regulates HAPs, this program is not under the auspices of a section 110 SIP, and this program should not be approved into the SIP. These portions of the 1998 and

[10] Examples of narrowly defined categories of emission sources include oil and gas facilities, asphalt concrete plants, and concrete batch plants.

[11] *See Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and section 112 rules and General permits*, Memorandum from Kathie A Stein, Office of Enforcement and Compliance Assurance, January 25, 1995, *Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act*, Memorandum from John S. Seitz, Office of Air Quality Planning and Standards (OAQPS), January 25, 1995, *Approaches to Creating Federally-Enforceable Emissions Limits*, Memorandum from John S. Seitz, OAQPS, November 3, 1993, *Potential to Emit (PTE) Guidance for Specific Source Categories*, Memorandum from John S. Seitz, OAQPS and Eric Schaeffer, OECA, April 14, 1998, *EPA Region 7 Permit by Rule Guidance for Minor Source Preconstruction Permits*. See also, rulemakings related to general permits: 61 FR 53633, final approval of Tennessee SIP Revision, October 15, 1996; 62 FR 2587, final approval of Florida SIP revision, January 17, 1997; 71 FR 5979, final approval of Wisconsin SIP revision, February 6, 2006; 71 FR 14439, proposed conditional approval of Missouri SIP revision, March 22, 2006. EPA guidance documents set out specific guidelines: (1) General permits apply to a specific and narrow category of sources, (2) For sources electing coverage under general permits where coverage is not mandatory, provide notice or reporting to the permitting authority, reporting or notice to permitting authority, (3) General permits provide specific and technically accurate (verifiable) limits that restrict potential to emit, (4) General permits contain specific compliance requirements, (5) Limits in general permits are established based on practicably enforceable averaging times, and (6) Violations of the permit are considered violations of state and federal requirements and may result in the source being subject to major source requirements.

[12] The 2006 submittal also included a revision to 30 TAC 116.610(d), that is a rule in Subchapter F, Standard Permits, to change an internal cross reference from Subchapter C to Subchapter E, consistent with the re-designation of this Subchapter by TCEQ. See section IX for further information on this portion of the 2006 submittal.

2006 submittals are severable. For these reasons we propose to take no action on this portion relating to section 112(g) of the Act.

Third, the February 1, 2006, SIP revision submittal includes a new 30 TAC Chapter 116, Subchapter K (as recodified from Subchapter E), that relates to the issuance of Emergency Orders, and is severable from all the other portions of the 2006 submittal. EPA is currently reviewing the SIP revision submittals that relate to Emergency Orders, including this submittal and will take appropriate action on the Emergency Order requirements in a separate action, according to the Consent Decree schedule.

IX. Proposed Action

Under section 110(k)(3) of the Act and for the reasons stated above, EPA is proposing disapproval of revisions to the Texas Major NSR SIP that relate to implementation of Major NSR in areas designated nonattainment for the 1997 8-hour ozone NAAQS, implementation of Major NSR in areas designated nonattainment for the 1-hour ozone NAAQS, and implementation of Major NSR SIP requirements in all of Texas. We are proposing to disapprove the SIP revision submittals for the Texas Major NSR SIP. Finally, we are proposing to disapprove the submittals for a Minor Standard Permit for PCP. EPA is also proposing to take no action on certain severable revisions submitted June 10, 2005, and February 1, 2006.

Specifically, we are proposing:

- Disapproval of revisions to 30 TAC 30 TAC 116.12 and 116.150 as submitted June 10, 2005;
- Disapproval of revisions 30 TAC 116.12, 116.150, 116.151, 116.160; and disapproval of new sections at 30 TAC 116.121, 116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, 116.198, and 116.617, as submitted February 1, 2006.

We are also proposing to take no action on the provisions identified below:

- The revisions to 30 TAC 101.1—Definitions, submitted June 10, 2005;
- The recodification of the existing Subchapter C under 30 TAC Chapter 116 to a new Subchapter E under 30 TAC Chapter 116; and
- The recodification of the existing Subchapter E under 30 TAC Chapter 116 to a new Subchapter K under 30 TAC Chapter 116.

We will accept comments on this proposal for the next 60 days. After review of public comments, we will take final action on the SIP revisions that are identified herein.

EPA intends to take final action on the State's Public Participation SIP revision submittal in November 2009. EPA intends to take final action on the submitted Texas Qualified Facilities State Program by March 31, 2010, the submitted Texas Flexible Permits State Program by June 30, 2010, and the NSR SIP by August 31, 2010. These dates are expected to be mandated under a Consent Decree (*see* Notice of Proposed Consent Decree and Proposed Settlement Agreement, 74 FR 38015, July 30, 2009). Sources are reminded that they remain subject to the requirements of the federally approved Texas Major NSR SIP and subject to potential enforcement for violations of the SIP (*See* EPA's Revised Guidance on Enforcement During Pending SIP Revisions, dated March 1, 1991).

X. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (*58 FR 51735*, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in and of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's 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 which 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 impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in and of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (*e.g.*, higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 ''for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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 action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (*59 FR 22951*, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (*62 FR 19885*, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (*62 FR 19885*, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (*66 FR 28355*, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 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.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 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 lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 8, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–22806 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0359; FRL–8960–8]

Approval and Promulgation of Implementation Plans, Alabama: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a portion of the State Implementation Plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), on March 7, 2007. This action proposes to approve the portion of the March 7, 2007, submittal that addresses State reporting requirements under the Nitrogen Oxide (NO_X) SIP Call and the Clean Air Interstate Rule (CAIR) found in 40 CFR 51.122 and 51.125 as amended by the CAIR rulemakings. Specifically, in this action EPA is proposing to approve revisions to Chapter 335–3–1 ''General Provisions.'' In previous rulemakings, EPA took action on the other portions of the March 7, 2007, SIP submittal, which included revisions to Chapters 335–3–5, and 335–3–8 (October 1, 2007, 72 FR 55659) and Chapter 335–3–17 (March 26, 2009, 74 FR 13118). Although the DC Circuit Court found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. Thus, EPA is continuing to approve CAIR provisions into SIPs as appropriate. CAIR, as promulgated, requires States to reduce emissions of sulfur dioxide (SO_2) and NO_X that significantly contribute to, or interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. CAIR establishes budgets for SO_2 and NO_X for States that contribute significantly to

nonattainment in downwind States and requires the significantly contributing States to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 23, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0359, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2007–0359,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2007–0359.'' 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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* 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 in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.* For information pertaining to the Alabama State SIP, please contact Mr. Zuri Farngalo, by phone at (404) 562–9152, or electronic mail at *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Proposing To Take?
II. What Is the Regulatory History of CAIR?
III. What Is EPA's Analysis of Alabama's Submission?
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing To Take?

EPA is proposing to approve a SIP revision submitted by ADEM, on March 7, 2007, pertaining to rules for CAIR. The revisions include changes to Chapter 335–3–1 ''General Provisions.'' Specifically, ADEM is amending Section 335–3–1–.14 ''Emissions Reporting Requirements Relating to Budgets for NOx Emissions,'' and adding a new Section 335–3–1–.16 ''Emissions Reporting Requirements Relating to Budgets for SO_2 and NO_X Emissions.'' These revisions became State effective on April 3, 2007.

II. What Is the Regulatory History of CAIR?

EPA published CAIR on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the NAAQS for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.,* budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements or budgets for NO_X for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIP) in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court

thereby left CAIR in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to ''remedy CAIR's flaws'' consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

According to 40 CFR 51.125, each state submitting a CAIR SIP revision must provide for emissions reporting requirements of SO_2 and NO_X emissions data. EPA is proposing to approve revisions to Alabama's Section 335–3–1–.14 and addition of Section 335–3–1–.16 to fulfill this requirement. Consistent with 40 CFR 51.121, these rule revisions allow the State to make the transition from the NO_X budget trading program (NO_X SIP Call) to the CAIR NO_X ozone season trading program, beginning with the 2009 ozone season. Alabama's NO_X budget trading program does not apply to any ozone season after the 2008 ozone season.

This proposed action is consistent with the Court's decision in North Carolina v. EPA discussed above. While the Court identified several issues with CAIR, the rule was not vacated because of the loss of environmental benefit generated by the rule. As EPA works to remedy CAIR to satisfy the Court, CAIR remains in effect, including its trading programs. Currently, Alabama's NO_X SIP Call trading program ends after the 2008 ozone season, and so to continue the environmental benefits of the trading program, consistent with CAIR and the Court's opinion, Alabama must revise its SIP, as proposed, to transition into the CAIR NO_X trading program.

IV. Proposed Action

EPA is proposing to approve the aforementioned revisions, specifically, Chapter 335–3–1, Sections 335–3–1–.14, and 335–3–1–.16 into the Alabama SIP. These revisions were submitted by ADEM on March 7, 2007, and are consistent with EPA regulations, policy, and guidance.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 CAA. Accordingly, this proposed 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 proposed action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 11, 2009.

J. Scott Gordon,

Acting Regional Administrator, Region 4.

[FR Doc. E9–22904 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0032; FRL–8958–6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Flexible Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing disapproval of submittals from the State of Texas, through the Texas Commission on Environmental Quality (TCEQ) to revise the Texas SIP to include a new type of NSR permitting program, Flexible Permits (the Texas Flexible Permits State Program or the Program). EPA proposes disapproval of the Texas Flexible Permits State Program because it does not meet the Minor NSR SIP requirements nor does it meet the NSR SIP requirements for a substitute Major NSR SIP revision. We are proposing action under section 110, part C, and part D, of the Federal Clean Air Act (the Act or CAA). EPA is taking comments on this proposal and intends to take a final action.

DATES: Any comments must arrive by November 23, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2005–TX–0032 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Stanley M. Spruiell at *spruiell.stanley@epa.gov.*
- *Fax:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), at fax number 214–665–7263.
- *Mail:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency,

1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2005–TX–0032. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are also part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number (214) 665–7263; e-mail address *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the following terms have the meanings described below:

- ''We,'' ''us,'' and ''our'' refer to EPA.
- ''Act'' and ''CAA'' mean the Clean Air Act.
- ''40 CFR'' means Title 40 of the Code of Federal Regulations—Protection of the Environment.
- ''SIP'' means State Implementation Plan established under section 110 of the Act.
- ''NSR'' means new source review, a phrase intended to encompass the statutory and regulatory programs that regulate the construction and modification of stationary sources as provided under CAA section 110(a)(2)(C), CAA Title I, parts C and D, and 40 CFR 51.160 through 51.166.
- ''Minor NSR'' means NSR established under section 110 of the Act and 40 CFR 51.160.
- ''NNSR'' means nonattainment NSR established under Title I, section 110 and part D of the Act and 40 CFR 51.165.
- ''PSD'' means prevention of significant deterioration of air quality established under Title I, section 110 and part C of the Act and 40 CFR 51.166.
- ''Major NSR'' means any new or modified source that is subject to NNSR and/or PSD.
- ''Program'' means the SIP revision submittals from the TCEQ concerning the Texas Flexible Permits State Program.
- ''TSD'' means the Technical Support Document for this action.
- ''NAAQS'' means any national ambient air quality standard established under 40 CFR part 50.

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VII. Proposed Action
VIII. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing?

We are proposing to disapprove the Texas Flexible Permits State Program, as

submitted by Texas in Title 30 of the Texas Administrative Code (30 TAC) at 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, because it does not meet certain provisions of the Act and EPA's NSR regulations. This includes the following regulations under Chapter 116: 30 TAC 116.110(a)(3), 30 TAC Subchapter G—Flexible Permits, the definitions in 30 TAC 116.13, Flexible Permits, and the definition in 30 TAC 116.10(11)(F) of ''modification of existing facility.'' It is EPA's position that none of these identified elements is severable from each other.

We are proposing to disapprove the submitted Texas Flexible Permits State Program as not meeting the requirements for a substitute Major NSR SIP revision. Our grounds for proposing disapproval as a substitute Major NSR SIP revision include the following:

- It is not clearly limited to Minor NSR thereby allowing new major stationary sources to construct without a Major NSR permit;
- It has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements thereby allowing sources to use a Flexible Permit to avoid the requirement to obtain preconstruction permit authorizations for projects that would otherwise require a Major NSR preconstruction permit;
- It does not require that first an applicability determination be made whether the construction or modification is subject to Major NSR thereby exempting new major stationary sources and major modifications from the EPA Major NSR SIP requirements;
- It does not include a demonstration from the TCEQ showing how the use of ''modification'' is at least as stringent as the definition of ''modification'' in the EPA Major NSR SIP program;
- It does not include the requirement to make Major NSR applicability determinations based on actual emissions and on emissions increases and decreases (netting) that occur within a major stationary source;
- It fails to meet the statutory and regulatory requirements for a SIP revision;
- It is not consistent with applicable statutory and regulatory requirements as interpreted in EPA policy and guidance on SIP revisions; and
- It fails to include, among other things, adequate accountability provisions, compliance determination procedures, replicable implementation procedures, sufficient monitoring, recordkeeping, and reporting requirements so that issued permits incorporate emission limitations and other requirements of the Texas SIP that ensure protection of the national ambient air quality standards (NAAQS), and noninterference with the Texas SIP control strategies and reasonable further progress (RFP).

We are proposing to disapprove the submitted Program as not meeting the Minor NSR SIP requirements. It is not clearly limited to Minor NSR. It has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements. This Program does not require that first an applicability determination be made whether the construction or modification is subject to Major NSR. The Program does not ensure that a Major NSR permit's requirements are retained.

In addition to the failures to protect Major NSR SIP requirements, EPA cannot find that the submitted Program, as a Minor NSR SIP program, will ensure protection of the NAAQS, and noninterference with the Texas SIP control strategies and RFP. We are proposing to disapprove this Program as a Minor NSR SIP revision because it does not meet certain provisions of the Act and EPA's Minor NSR SIP requirements. Our grounds for proposing disapproval as a Minor NSR SIP revision include the following:

- It is not clearly limited to Minor NSR thereby allowing new major stationary sources to construct without a Major NSR permit;
- It has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements thereby allowing sources to use a Flexible Permit to avoid the requirement to obtain preconstruction permit authorizations for projects that would otherwise require a Major NSR preconstruction permit;
- It does not require that first an applicability determination be made whether the construction or modification is subject to Major NSR thereby exempting new major stationary sources and major modifications from the EPA Major NSR SIP requirements;
- It fails to meet the statutory and regulatory requirements for a SIP revision;
- It is not consistent with applicable statutory and regulatory requirements as interpreted in EPA policy and guidance on SIP revisions;
- It lacks replicable, specific, established implementation procedures for establishing the emission cap in a Minor NSR Flexible Permit;
- It is not an enforceable Minor NSR permitting program;
- It allows the issuance of Flexible Permits that do not incorporate emission limitations and other requirements of the Texas SIP; and
- It lacks the necessary more specialized monitoring, recordkeeping, and reporting (MRR) requirements required for this type of Minor NSR program, as selected by Texas, to ensure accountability and provide a means to determine compliance.

We have evaluated the submitted Texas Flexible Permits State Program, submitted in a series of packages dating back to 1994. Based upon our evaluation, EPA has concluded that the portions of the submitted SIP revisions specifically applicable to the Program do not meet the requirements of the Act and 40 CFR part 51. All these portions of the submittals for the Program are not severable and therefore are not approvable. As authorized in sections 110(k)(3) and 301(a) of the Act, where portions of the State submittals are severable, EPA may approve the portions of the submittals that meet the requirements of the Act, take no action on certain portions of the submittals, and disapprove the portions of the submittals that do not meet the requirements of the Act. When the deficient provisions are not severable from all of the submitted provisions, EPA must propose disapproval of the submittals, consistent with sections 301(a) and 110(k)(3) of the Act. The submitted provisions work together to form the Texas Flexible Permits State Program and are not severable from each other. Therefore, EPA is proposing disapproval of the submitted Program.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a mandatory requirement of the Act starts a sanctions clock and a Federal Implementation Plan (FIP) clock. The provisions in these submittals relating to the Texas Flexible Permits State Program were not submitted to meet a mandatory requirement of the Act. Therefore, if EPA takes final action to disapprove this submitted Program, no sanctions and FIP clocks will be triggered.

II. What Are the Other Relevant Proposed Actions on the Texas Permitting SIP Revision Submittals?

This proposed action should be read in conjunction with two other proposed actions appearing elsewhere in today's **Federal Register**, (1) proposed action on the Texas NSR SIP, including PSD, NNSR for the 1997 8-Hour Ozone Standard, NSR Reform, and a Minor NSR Standard Permit (NSR SIP), and (2)

proposed action on the Texas NSR SIP, the Qualified Facilities Program and the General Definitions.[1] On November 26, 2008, EPA proposed limited approval/limited disapproval of the Texas submittals relating to public participation for air permits of new and modified facilities (73 FR 72001). EPA believes these actions should be read in conjunction with each other because the permits issued under these State programs are the vehicles for regulating a significant universe of the air emissions from sources in Texas and thus directly impact the ability of the State to achieve and maintain attainment of the NAAQS and to protect the health of the communities where these sources are located. Our proposal is based upon our interpretation of the Texas preconstruction permitting program which is outlined in each notice and accompanying technical support document (TSD). Those interested in any one of these actions are encouraged to review and comment on the other proposed actions as well.

EPA intends to take final action on the State's Public Participation SIP revision submittals in November 2009. EPA intends to take final action on the submitted Texas Qualified Facilities State Program by March 31, 2010, the submitted Texas Flexible Permits State Program by June 30, 2010, and the NSR SIP on August 31, 2010. These dates are expected to be mandated under a Consent Decree (see, Notice of Proposed Consent Decree and Proposed Settlement Agreement, 74 FR 38015, July 30, 2009).

III. What Has the State Submitted?

This notice provides a summary of our evaluation of Texas' November 29, 1994 SIP revision submittal, as revised by severable portions in the March 13, 1996, SIP revision submittal, and severable portions of the July 22, 1998 SIP revision submittal that repealed and replaced portions of, as well as revised, the 1994 submittal and repealed and replaced all of the 1996 submittal; and as revised by severable portions in the October 25, 1999, September 11, 2000, April 12, 2001, September 4, 2002, October 4, 2002, and September 25, 2003, SIP revision submittals. We provide our reasoning in general terms in this preamble, but provide a more detailed analysis in the TSD that has been prepared for this proposed rulemaking. Because we are proposing to disapprove this submitted Program based on the inconsistencies and deficiencies discussed herein, we have not attempted to review and discuss all of the issues that would need to be addressed for approval of this submitted Program as a Major NSR SIP revision.

On November 29, 1994, Texas submitted revisions adding a new Subchapter G—Flexible Permits, to 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, adding a new 30 TAC 116.13, Flexible Permit Definitions, to Subchapter A, Definitions, and a revision to Subchapter B, New Source Review Permits, Division 1, Permit Applications at 30 TAC 116.110(a), authorizing the use of a Flexible Permit for construction of any new facility and modification of any existing facility. Texas submitted on March 13, 1996, a severable revision to Subchapter A, Definitions, in 30 TAC 116.10, General Definitions, which included, among other things, a definition for ''modification of existing facility,'' at (F) in 30 TAC 116.10 addressing modifications under Flexible Permits. On July 22, 1998, Texas submitted severable revisions that included the repeal of the contents of the 1996 submittal and some of the contents of the 1994 submittal. Among other things, the 1998 submittal included a new 30 TAC 116.13, Flexible Permit Definitions, a new 30 TAC 116.10, General Definitions, ''modification of existing facility,'' at (9)(F), and a new 30 TAC 116.110 (a). In the September 4, 2002, SIP submittal, Texas submitted a redesignation of 30 TAC 116.10(9)(F) to 30 TAC 116.10(11)(F). Texas submitted revisions to Subchapter G—Flexible Permits—in a severable portion of the July 22, 1998 SIP revision submittal, and more revisions to Subchapter G in SIP revision submittals on October 25, 1999; September 11, 2000; April 12, 2001; September 4, 2002; October 4, 2002; and September 25, 2003.

Tables 1 and 2 below summarize the changes that are in the SIP revision submittals. A summary of EPA's evaluation of each section and the basis for this proposal is discussed in sections V, VI, and VII of this preamble. The TSD includes a detailed evaluation of the submittals.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION

Title of SIP submittal	Date submitted to EPA	Date of state adoption	Regulations affected
Flexible Permits	11/29/1994	11/16/1994	Revision to 30 TAC 116.110. Adoption of New 30 TAC 116.13 and New Subchapter G, 30 TAC 116.710, 116.711, 116.714, 116.715, 116.716, 116.717, 116.718, 116.720, 116.721, 116.722, 115.730, 116.740, 116.750, and 116.760.
Qualified Facilities and Modifications to Existing Facilities.	3/13/1996	2/14/1996	Revision of 30 TAC 116.10 to add new definition of ''modification of existing facility'' at (F).
NSR Rule Revisions; section 112(g) Rule Review for Chapter 116.	7/22/1998	6/17/1998	Repeal and new 30 TAC 116.10 (9) (F), 116.13 and 116.110(a)(3) adopted. Revisions to Subchapter G, 30 TAC 116.710, 116.711, 116.714, 116.715, 116.721, 116.730, and 116.750.
Public Participation (HB 801)	10/25/1999	9/2/1999	Revision to Subchapter G, 30 TAC 116.740.
Air Permits (SB–766)—Phase II	9/11/2000	8/9/2000	Revisions to Subchapter G, 30 TAC 116.710, 116.715, 116.721, 116.722, and 116.750.
Emissions Banking and Trading	4/12/2001	3/7/2001	Revisions to Subchapter G, 30 TAC 116.711 and 116.715.
House Bill 3040: Shipyard Facilities and NSR Maintenance Emissions.	9/4/2002	8/21/2002	Revision to 30 TAC 116.10, redesignating 30 TAC 116.10(9)(F) to 116.10(11)(F). Revisions to Subchapter G, 30 TAC 116.711 and 116.715.
Air Fees	10/4/2002	9/25/2002	Revisions to Subchapter G, 30 TAC 116.750.

[1] In that proposed action, the submitted definition of BACT is not severable from the proposed action on the PSD SIP revision submittals. EPA may choose to take final action on the definition of BACT in the NSR SIP final action rather than in the final action on the Qualified Facilities and the General Definitions. EPA is obligated to take final action on the submitted definitions in the General Definitions for those identified as part of the Texas Qualified Facilities State Program, the Texas Flexible Permits State Program, Public Participation, Permit Renewals (there will be a proposed action published at a later date), and this BACT definition as part of the NSR SIP.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION—Continued

Title of SIP submittal	Date submitted to EPA	Date of state adoption	Regulations affected
Offset Certification, New Source Review Permitting Processes and Extensions for Construction.	9/25/2003	8/20/2003	Revision to Subchapter G, 30 TAC 116.715.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION

Section	Title	Date submitted	Date adopted by state	Comments
Chapter 116—Control of Air Pollution by Permits for New Construction or Modification Subchapter A—Definitions				
Section 116.10(11)(F)	General Definitions	3/13/1996	2/14/1996	Revised to add new definition of ''modification of existing facility.''
		7/22/1998	6/17/1998	Repealed and Adopted new 30 TAC 116.10(9)(F).
		9/04/2002	8/21/2002	Redesignated 30 TAC 116.10(11(F).
Section 116.13	Flexible Permit Definitions	11/29/1994	11/16/1994	Initial Adoption.
		7/22/1998	6/17/1998	Repealed and Adopted new 30 TAC 116.13.
Subchapter B—New Source Review Permits Division 1—Permit Application				
Section 116.110	Applicability	11/29/1994	11/16/1994	Revised (a) to add reference to Flexible Permits.
		7/22/1998	6/17/1998	Repealed and adopted a new 30 TAC 116.110. Included reference to Flexible Permits in new 30 TAC 116.110(a)(3).
Subchapter G—Flexible Permits				
Section 116.710	Applicability	11/29/1994	11/16/1994	Initial adoption.
		7/22/1998	6/17/1998	Revised subsection (a). Removed subsection (b) and Redesignated existing subsections (c)–(e) to subsections (b)–(d). Revised subsections (b)–(d) as redesignated.
		9/11/2000	8/09/2000	Revised subsection (b).
Section 116.711	Flexible Permit Application.	11/29/1994	11/16/1994	Initial adoption.
		7/22/1998	6/17/1998	Revised introductory paragraph and paragraphs (1)–(5); Added new paragraphs (6) and (11): Redesignated existing paragraphs (6)–(9) to paragraphs (7)–(10) and existing paragraphs (10)–(11) to paragraphs (12)–(13); and Revised paragraphs (8)–(10) as redesignated.
		4/12/2001	3/07/2001	Added new paragraph (12); and Redesignated existing paragraphs (12)-(13) to paragraphs (13)–(14).
		9/4/2002	8/21/2002	Designated existing as subsection (a); Added new subsection (b); and Revised paragraphs (a)(8)–(11) as redesignated.
Section 116.714	Application Review Schedule.	11/29/1994	11/16/1994	Initial adoption.
		7/22/1998	6/17/1998	Revised introductory paragraph.
Section 116.715	General and Special Conditions.	11/29/1994	11/16/1994	Initial adoption.
		7/22/1998	6/17/1998	Revised subsection (a), and paragraphs (c)(3)–(6), and (9)–(10).
		9/11/2000	8/9/2000	Revised subsection (a).
		4/12/2001	3/7/2001	Revised paragraph (c)(3).
		9/4/2002	8/21/2002	Revised paragraph (c)(9).
		9/25/2003	8/20/2003	Revised paragraphs (c)(1) and (c)(9).
Section 116.716	Emission Caps and Individual Limitations.	11/29/1994	11/16/1994	Initial adoption.
Section 116.717	Implementation Schedule for Addition Controls.	11/29/1994	11/16/1994	Initial adoption.
Section 116.718	Significant Emission Increase.	11/29/1994	11/16/1994	Initial adoption.
Section 116.720	Limitation on Physical and Operational Changes.	11/29/1994	11/16/1994	Initial adoption.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Date submitted	Date adopted by state	Comments
Section 116.721	Amendments and Alterations.	11/29/1994	11/16/1994	Initial adoption.
		7/22/1998	6/17/1998	Revised paragraphs (b)(2) and (d)(1)–(2).
		9/11/2000	8/9/2000	Revised subsection (d) and paragraph (d)(1).
Section 116.722	Distance Limitations	11/29/1994	11/16/1994	Initial adoption.
		9/11/2000	8/9/2000	Revised introductory paragraph.
Section 116.730	Compliance History	11/29/1994	11/16/1994	Initial adoption.
		7/22/1998	6/17/1998	Revised introductory paragraph.
Section 116.740	Public Notice and Comment.	11/29/1994	11/16/1994	Initial adoption.
		7/22/1998	6/17/1998	Designated existing text as subsection (a); and Added new subsection (b).
		10/25/1999	9/2/1999	Revised subsections (a)–(b).
Section 116.750	Flexible Permit Fee	11/29/1994	11/16/1994	Initial adoption.
		7/22/1998	6/17/1998	Revised subsections (b)–(d).
		9/11/2000	8/9/2000	Revised subsection (d).
		10/4/2002	9/25/2002	Revised subsections (b)–(c).
Section 116.760	Flexible Permit Renewal	11/29/1994	11/16/1994	Initial adoption.

IV. Is the Texas Flexible Permits State Program Submittal for a Major or Minor NSR SIP Revision?

A. Description of the Submitted Program

This part of today's action describes the Program submitted by Texas to EPA for approval into the State's SIP. The submitted Program adds a new permit option under State law for any person who plans to construct any new facility or to engage in the modification of any existing facility, which may emit air contaminants into the air. See submitted 30 TAC 116.110(a)(3). Under the program submitted by Texas, any person planning the construction of a new facility or a modification to an existing facility may satisfy the conditions of 30 TAC Subchapter G—Flexible Permits, rather than obtaining a NSR SIP case-by-case permit or satisfying the conditions for a minor NSR SIP Standard Permit or Permit by Rule.[2] *See* submitted 30 TAC 116.110(a)(3). The submitted Program is one component of Texas' current preconstruction permit program, but the Program is not a part of the federally approved Texas SIP.

Under the submitted Program, a Flexible Permit allows for flexibility in managing operations by staying under an overall emission cap or individual unit specific emission limitation. 30 TAC 116.716. Texas adopted the use of Flexible Permits for construction of new facilities, modifications of existing facilities, and grandfathered facilities.[3] When Texas adopted its Program in 1994, the State did not have the statutory authority to impose controls on or require permits for grandfathered facilities. In particular, the State expected this new Program to provide a mechanism for placing controls on grandfathered refinery and petrochemical sites. The Program did result in grandfathered facilities voluntarily imposing emission controls and limiting their emissions using a Flexible Permit. However, the current regulatory structure does not fit neatly within the parameters of the Texas minor NSR SIP and the Texas major NSR SIP or within the Federal minor or major NSR SIP requirements.

The following discussion provides a summary of some of the specific components of Texas' Flexible Permits State Program. For more information about the Program, please see the SIP revisions submitted by Texas and the TSD for this proposed action, which are available in the docket for this action.

Pursuant to the submitted Program, only one Flexible Permit may be issued at an account site.[4] *See* submitted 30 TAC 116.710(a)(1). Therefore, a Flexible Permit cannot cover sources at more than one account site. See submitted 30 TAC 116.710(a)(4). A person may qualify for a Flexible Permit for construction of a new facility[5] at the account site. 30 TAC 116.110(a)(3) and 30 TAC 116.710(a)(1). A person may qualify for a Flexible Permit for a modification of an existing facility at the account site. 30 TAC 116.110(a)(3) and 116.710(a)(1).

If a person has a Flexible Permit and wishes to make a change, he can obtain a minor or major NSR SIP case-by-case permit amendment (codified in the SIP at 30 TAC 116.116(b)) or qualify for a *Flexible Permit amendment. See* submitted 30 TAC 116.710(a)(2). In lieu of either of these two options, the holder of the Flexible Permit making the change may qualify for a minor NSR SIP permit by rule, codified in the SIP at 30 TAC 116.116(d).

[2] The Texas NSR SIP provides for three types of NSR permits for construction of new minor sources and for minor modifications of existing major stationary sources and minor sources: A case-by-case minor NSR SIP permit (30 TAC 116.110(a)(1)), satisfying the conditions for a minor NSR SIP standard permit (30 TAC 116.110(a)(2)), and satisfying the conditions for a minor NSR SIP permit by rule (30 TAC 116.110(a)(4)). There are two types of permits available for minor modifications to existing permitted major stationary sources and minor facilities, a case-by-case minor NSR SIP permit amendment (30 TAC 116.110(b)) and 30 TAC 116.116(b)) and a minor NSR SIP permit by rule (30 TAC 116.116(d)). A case-by-case minor NSR SIP permit alteration (30 TAC 116.116(c)) or a minor NSR SIP permit by rule (30 TAC 116.116(d)) are allowed for changes among which includes a decrease in allowable emissions. *See* SIP rule 30 TAC 116.116(c)(1)(A) –(B) for the changes that may be authorized by a minor NSR SIP permit amendment/minor NSR SIP permit by rule. The SIP requires that any issued permit is subject for review every ten years after the date of issuance. *See* 30 TAC 116.311(c).

[3] Grandfathered facilities are facilities that were once exempt from most State air permitting requirements because the facilities predated the 1971 Texas Clean Air Act that required preconstruction review and operating permits for construction of any new source and modification of any existing source that may emit air contaminants into the atmosphere of the State.

[4] ''Account'' for NSR purposes is defined at 30 TAC 101.1(1), second sentence, as ''any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.'' This definition is approved as part of the Texas SIP (March 30, 2005 (70 FR 16129)).

[5] ''Facility'' is defined in the SIP approved 30 TAC 116.10(6) as ''a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment.''

If a person does not have a Flexible Permit and wishes to make a change but have only the change covered under a Flexible Permit, he can obtain a minor or major NSR SIP case-by-case permit amendment or qualify for a *Flexible Permit.* In lieu of either of these two options, he may qualify for a minor NSR SIP permit by rule.

If the holder of a Flexible Permit wishes to construct a new facility, he may qualify for a Flexible Permit amendment. *See* submitted 30 TAC 116.710(a)(3). This is analogous to the minor and major NSR SIP process of using a minor NSR SIP Permit by Rule or a minor NSR SIP permit, for authorization to construct a new facility on the site. See footnote 1 for further explanation.

Under the approved Texas NSR SIP, a change to an existing facility is defined as one that would cause a change in the method of control of emissions; a change in the character of the emissions; or an increase in the emission rate of any air contaminant. 30 TAC 116.116(b)(1). Such a change is required under the SIP to be authorized under a minor or major NSR SIP permit amendment or a minor NSR SIP permit by rule. 30 TAC 116.116(b) and (d). If the change is a decrease in allowable emissions; or any change from a representation in an application, general condition, or special condition in a permit that does not cause a change in the method of control of emissions; a change in the character of emissions; or an increase in the emission rate of any air contaminant (30 TAC 116.116(c)(1)), the change must be authorized by a minor or major NSR SIP permit alteration or a minor NSR SIP permit by rule. 30 TAC 116.116(c) and (d). The submitted Program at 30 TAC 116.721(a) has the same first two definitions for a change to an existing facility: one that would cause a change in the method of control of emissions; a change in the character of the emissions. It, however, has a different definition for the third type of change. Rather than the change being ''an increase in the emission rate,'' it is a change that is a ''significant increase in emissions.'' Submitted 30 TAC 116.718 defines a ''significant increase in emissions.'' First, the increase in emissions must come from a facility with a Flexible Permit and second, there is no significant increase if the increase does not exceed either the emission cap or individual emission limitation.

The submitted Subchapter G establishes an aggregated emission limit, based upon the application of minor NSR SIP BACT [6] at expected maximum capacity (or the application of a more stringent required control) for each covered facility, i.e., an emission cap. The cap for a specific criteria pollutant includes each covered facility with its individually calculated emission rates. The total sum of the covered facilities' calculated emission rates is the emission cap. In other words, the emission cap is a limit on the potential to emit (PTE).

An emission cap established in a Flexible Permit enables the holder to operate facilities with less technical and administrative effort than would be required under the minor and major NSR SIP Permits, minor NSR SIP Standard Permits, and minor NSR SIP Permits by Rule, which impose unit-specific mass emission limits. See submitted 30 TAC 116.716. Under the submitted 30 TAC 116.716(a), Texas may establish an emission cap for a specific pollutant by calculating the total emissions for all of the facilities covered by a Flexible Permit, using the application of minor NSR SIP BACT at expected maximum capacity for each covered facility. Nevertheless, where the existing control for a facility is more stringent than the application of minor NSR SIP BACT, e.g., NSPS, NESHAPS, control strategy rule, then that level of control for that facility is used in the calculation methodologies. *See* submitted 30 TAC 116.715(c)(9) and (10). Alternatively, Texas will set an individual emission limitation in the same Flexible Permit for each pollutant not covered by an emission cap for the covered facilities. See submitted 30 TAC 116.716(b). In some cases, a single unit may be required by a state or federal rule to meet an emissions limitation, which does not allow flexibility under the cap. In these cases, individual emission limitations are set. *See* submitted 30 TAC 116.716(b), second sentence. Moreover, in the calculation methodologies for the cap and the individual emission limitations, an ''Insignificant Emissions Factor'' (of up to nine percent) may be included in the summation. *See* submitted 30 TAC 116.716(d).

Under the submitted Program, a pollutant's cap must be readjusted downward if one of the facilities under the Flexible Permit shuts down for longer than 12 months. See submitted 30 TAC 116.716(c), first sentence. If a new facility is brought into the Flexible Permit, the cap must be readjusted to accommodate its calculated emission rates. See submitted 30 TAC 116.716(c), second sentence. The cap must be readjusted downward for any facility covered by a Flexible Permit if that facility becomes subject to any new State or Federal regulation. *See* submitted 30 TAC 116.716(e), first sentence. A readjustment of the cap required by any new State or Federal regulation must be made either at the time the Flexible Permit is amended or altered. 30 TAC 116.716(e), second sentence. If an amendment to a Flexible Permit is not required to meet the new regulation, the permittee must submit a request for a permit alteration within sixty days of making the change, describing how compliance with the new requirement will be demonstrated. *See* submitted 30 TAC 116.716(e), third sentence.

Under submitted 30 TAC 116.717, a Flexible Permit may include an implementation schedule for the installation of additional controls to meet an emissions cap for a pollutant. Submitted 30 TAC 116.715(c)(8) provides that if a schedule to install additional controls is included in the Flexible Permit and a facility subject to such a schedule is taken out of service, the emission cap contained in the Flexible Permit will be readjusted downward for the period the unit is out of service. Unless a special provision in the Flexible Permit specifies the method of readjustment of the emission cap, the facility must obtain a permit amendment.

B. Is the Submitted Program Clearly a Minor NSR SIP Revision?

Our evaluation of Texas' submitted SIP revisions is guided by whether the

[6] Texas adopted a revised NSR State rule on July 27, 1972, to add the requirement that a proposed new facility and proposed modification utilize at least best available control technology (BACT), with consideration to the technical practicability and economical reasonableness of reducing or eliminating the emissions from the facility. EPA approved the revised 603.16 into the Texas SIP, presently codified in the Texas SIP at 30 TAC 116.111(a)(2)(C). For more information, please see the **Federal Register** published today concerning the Texas Qualified Facilities State Program and the General Definitions. The Federal definition for PSD BACT is part of the Texas SIP as codified in the SIP at 30 TAC 116.160(a). (This current SIP rule citation was adopted by the State on October 10, 2001, and EPA approved this recodified SIP rule citation on July 22, 2004 (69 FR 43752).) EPA approved the Texas PSD program SIP revision submittals, including the State's incorporation by reference of the Federal definition of BACT, in 1992. *See* proposal and final approval of the Texas PSD SIP at 54 FR 52823 (December 22, 1989) and 57 FR 28093 (June 24, 1992). EPA specifically found that the SIP BACT requirement (now codified in the Texas SIP at 30 TAC 116.111(a)(2)(C)) did not meet the Federal PSD BACT definition. To meet the PSD SIP Federal requirements, Texas chose to incorporate by reference, the Federal PSD BACT definition, and submit it for approval by EPA as part of the Texas PSD SIP. Upon EPA's approval of the Texas PSD SIP submittals, both EPA and Texas interpreted the SIP BACT provision now codified in the SIP at 30 TAC 116.111(a)(2)(C) as being a minor NSR SIP requirement for minor NSR permits.

submitted Flexible Permits State Program applies to major NSR or minor NSR, or both. In correspondence and other materials, Texas has expressed an intent that its submitted Flexible Permits State Program applies only to construction of minor sources, existing grandfathered sources, and to minor modifications. *See* e.g., 19 Tex. Reg. 7336 (September 20, 1994), 19 Tex. Reg 9366 (November 25, 1994), the Texas Clean Air Act (TCAA) Section 382.003(9), introductory paragraph and (A)–(G), January 2001 ''Flexible Permit Application Guidance'' by the Air Permits Division of the TCEQ (*see* in particular, NOTE on page 4), Interoffice Memorandum dated December 31, 1998, from Victoria Hsu, P.E., Division Director, NSR Permits, to New Source Review (NSR) Permit Engineers, entitled ''Flexible Permits and the Plantwide Applicability Limit (PAL)'' (see in particular the last paragraph in ''Federal Enforceability Policy for Flexible Permits'', immediately preceding ''Plantwide Applicability Limit (PAL),'' and Interoffice Memorandum dated March 17, 1999, from Johnny Vermillion, P.E., Technical Specialist, NSRPD Chemical Section and David Howell, P.E., Team Leader, NSRPD Core Section to NSRPD Permit Engineers, entitled ''Permit Renewals during Flexible Permit Reviews'' (see in particular the first sentence in the second paragraph). We find, however, that Texas State law and the regulatory text submitted by the State is inconsistent with this expressed intent.

The Texas statutory definition for ''modification of existing facility'' at Section 382.003, Health and Safety Code, was revised by the legislature in 1995 to add, among other things, subsection (F) addressing modification of an existing facility through a Flexible Permit. It provides that increases in emissions are not modifications if they are authorized by a Flexible Permit. This statutory definition for ''modification of existing facility'' on its face, however, does not prohibit the use of a Flexible Permit for a major modification as defined by the CAA and EPA's major NSR SIP regulations. It has never been explicitly revised to prohibit major modifications. Furthermore, in contrast to the statutory prohibition against the use of a Permit by Rule for the construction of a major stationary source added in 1999, there are no statutory prohibitions against the use of a Flexible Permit for construction of a major stationary source. *See* TCAA section 382.05196. Finally, Texas State law does not contain any explicit prohibition against using a Flexible Permit for major modifications, notwithstanding provisions prohibiting the use of an Exemption or Permit by Rule or a Standard Permit for major modifications, as added in 1999. *See* TCAA Section 382.057. There are no statutory provisions in the TCAA that clearly limit modifications under the submitted Program to minor sources and/or minor modifications and construction of new sources to minor sources and/or minor modifications.

Similarly, the regulatory provisions submitted by Texas also do not prohibit the use of the submitted Program for construction of new major stationary sources and major modifications of existing major stationary sources and minor sources. The submitted rules do not limit the use of the submitted Program to minor NSR. For example, the title for the submitted Subchapter G is ''Flexible Permits,'' not ''Minor NSR Flexible Permits, and Flexible Permits for Grandfathered Facilities.'' The submitted Subchapter G does not contain any emissions limitations, applicability statement, or regulatory provision restricting the construction to minor sources and minor modifications as do the Texas minor NSR SIP rules for Permits by Rule in Chapter 106 and Standard Permits in Chapter 116, Subchapter F. Moreover, unlike the minor NSR SIP rules for Standard Permits in 30 TAC 116.610(b) and Permits by Rule in 30 TAC 106.4(a)(3) and (4), the submitted rules do not require that construction of a major stationary source or a major modification, as defined in the Major NSR SIP regulations, must meet the Major NSR permitting requirements.

If Texas truly intends for the submitted Flexible Permits State Program to apply only to minor NSR, at a minimum Texas must amend Subchapter G to include additional provisions that clearly limit its applicability to minor NSR as it did in the Texas minor NSR SIP at 30 TAC Chapter 106 for Permits by Rule and 30 TAC Chapter 116 Subchapter F for Standard Permits.

Without a clear statement of the applicability of the Program, the Program as submitted is confusing to the public, regulated sources, government entities, or a court, because it can be interpreted as an alternative to evaluating the new source or modification as a new major stationary source or major modification under Major NSR. The submitted Program fails to limit clearly the use of it to only the Texas minor NSR SIP requirements. Because of the overly broad nature of the regulatory language in the State's SIP revision submittal and the lack of any Texas statutory prohibitions, we propose to find that the State has failed to limit the submitted Program only to minor NSR.

Consequently, we are compelled to evaluate this submitted Program as being a substitute for the Texas Major NSR SIP. Accordingly, as discussed below in Section V, we evaluated whether the submitted Program meets the requirements for a Major NSR SIP revision, the general requirements for regulating construction of any stationary sources contained in Section 110(a)(2)(C) of the CAA, and the applicable statutory and regulatory requirements for an approvable SIP revision. Below is a summary of our evaluation of the submitted Program as a Substitute Major NSR SIP revision submittal. Section VI contains a summary of our evaluation of the submitted Program as a Minor NSR SIP revision submittal.

V. What Is EPA's Evaluation of the Submitted Texas Flexible Permits State Program as a Substitute Major NSR SIP Revision?

A. What Are the Requirements for EPA's Review of a Submitted Major NSR SIP Revision?

Before EPA's 1980 revised Major NSR SIP regulations, 45 FR 52676 (August 7, 1980), States were required to adopt and submit a Major NSR SIP revision where the State's provisions and definitions were identical to or individually more stringent than the Federal rules. Under EPA's 1980 revised Major NSR SIP regulations, States could submit provisions in a Major NSR SIP revision different from those in EPA's Major NSR rules, as long as the State provision was equivalent to a rule identified by EPA as appropriate for a ''different but equivalent'' State rule. If a State chose to submit *definitions* that were not verbatim to the Federal definitions, the State was required to *demonstrate any different definition* has the effect *of being as least as stringent.* (Emphasis added.) *See* 45 FR 52676, at 52687. The demonstration requirement was expanded to *explicitly* include not just different definitions *but also different programs* in the EPA's revised Major NSR regulations, as promulgated on December 31, 2002 (67 FR 80186) and reconsidered with minor changes on November 7, 2003 (68 FR 63021). Therefore, to be approved as meeting the 2002 revised Major NSR SIP requirements, a State submitting a customized Major NSR SIP revision *must demonstrate why its program and definitions* are in fact at least as stringent as the Major NSR revised base

program. (Emphasis added). *See* 67 FR 80186, at 80241.

Moreover, because there is an existing Texas Major NSR SIP, the submitted Program must meet the anti-backsliding provisions of the Act in section 193 and meet the requirements in section 110(l) where EPA may not approve a SIP revision if it will interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Furthermore, any submitted SIP revision must meet the applicable SIP regulatory requirements and the requirements for SIP elements in section 110 of the Act, and be consistent applicable statutory and regulatory requirements as interpreted in EPA SIP policy and guidance. These can include, among other things, enforceability, compliance assurance, accountability, test methods, a program element's replicability, and whether the submitted rules are vague. There are four fundamental principles for the relationship between the SIP and any implementing instruments, e.g., Major NSR permits. These four principles as applied to the review of a major or minor NSR SIP revision include: (1) The baseline emissions from a permitted source be quantifiable; (2) the NSR program be enforceable by specifying clear, unambiguous, and measurable requirements, including a legal means for ensuring the sources are in compliance with the NSR program, and providing means to determine compliance; (3) the NSR program's measures be replicable by including sufficiently specific and objective provisions so that two independent entities applying the permit program's procedures would obtain the same result; and (4) the Major NSR permit program be accountable, including means to track emissions at sources resulting from the issuance of permits and permit amendments. *See* EPA's April 16, 1992, ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498) (''General Preamble''). In particular, there is a specific discussion illustrating the principles and elements of SIPs that apply to sources in implementing a SIP's control strategies beginning on page 13567 of the General Preamble.

B. Does the Submitted Program Prohibit Circumvention of Major NSR?

There is no express provision in the submitted Subchapter G similar to the Texas minor NSR SIP provisions for minor NSR SIP Permits by Rule and minor NSR SIP Standard Permits that prohibit circumvention of the Major NSR requirements. *See* 30 TAC 106.4(b) and 30 TAC 116.610(c). Both the SIP-codified Chapter 106, Subchapter A for Permits by Rule and the SIP-codified Chapter 116, Subchapter F for Standard Permits [7] contain clear regulatory applicability requirements limiting their use to minor NSR, clear regulatory requirements prohibiting their use for any project that constitutes a new major stationary source or major modification subject to Major NSR, and clear regulatory provisions prohibiting the use of these minor NSR permits from circumventing Major NSR. There are no similar regulatory applicability requirements prohibiting the use for Major NSR, and no regulatory provisions prohibiting circumvention of Major NSR in the submitted Chapter 116, Subchapter G, for Flexible Permits.

There is no express provision clearly requiring that this submitted Program cannot be used to circumvent the requirements of major NSR. We are proposing to find that the State failed to demonstrate that the submitted Program prevents the circumvention of major NSR. Therefore, we are proposing to disapprove the Program as not meeting the major NSR SIP requirements to prevent circumvention of Major NSR.

C. Does the Submitted Program Meet the Major NSR Applicability Determination Criteria?

Because there is no express provision in the TCAA and/or in the submitted Program clearly limiting this Program to minor NSR, and there is no explicit provision prohibiting circumvention of the Major NSR SIP requirements, we must evaluate the submitted Program with respect to the criteria for Major stationary source NSR applicability determinations. This includes the absence of a requirement to evaluate if a project triggers Major NSR pursuant to the applicability criteria of the applicable regulations.

We do not find any provisions in the submitted Program that require a Major NSR applicability determination for the changes prior to construction and modification. The submitted Program's rules and definitions are not clear on their face that *first* one must determine the threshold question of whether the construction or change is a major stationary source or a major modification subject to Major NSR. The construction and modifications that would be authorized under the submitted Subchapter G can include new major stationary sources or major modifications. The change that could be a major modification or be a major stationary source could bypass the Major NSR SIP requirements, including the application of PSD BACT or NNSR LAER control requirements, in the absence of an express requirement to perform the Major NSR SIP applicability review.

The submitted Program fails to require that the applicability of the Major NSR requirements be evaluated prior to considering whether the construction of a new source or making a change can be authorized under a Flexible Permit. We are proposing to find that the State failed to demonstrate that the Program requires an evaluation of Major source NSR applicability based on the currently approved SIP provisions or upon the current federal rules. Therefore, we are proposing to disapprove the Program as not meeting the Major NSR SIP requirements that require the Major NSR applicability requirements be met.

D. Does the Submitted Program Meet the CAA and Major NSR SIP Requirements for a Major Modification?

In evaluating Major NSR SIP revision submittals impacting ''major modifications,'' that differ from EPA's, our review is primarily guided by section 111(a)(4) of the Act that describes when a ''source'' is to be considered modified: ''The term 'modification' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.'' Texas did not submit any demonstration showing how its use of the definition ''modification'' was at least as stringent as the definition of ''modification'' in EPA's Major NSR SIP rules.

In conducting our review, we particularly were mindful of the United States Court of Appeals for the District of Columbia Circuit regarding the scope and requirements of Section 111(a)(4) for determining whether a change is a ''major modification.'' *See* e.g., *New York* v. *EPA,* 413 F.3d 3 (D.C. Cir. 2005) (''New York I'') (evaluating EPA's 2002 revised major NSR rules and interpreting Section 111(a)(4)). As discussed below, there are a number of principles associated with Section 111(a)(4) that the Program appears to violate. Moreover, the State failed to

[7] The Texas SIP does not include the State Pollution Control Project Standard Permit. In a separate action in today's **Federal Register**, EPA is proposing action upon this individual Standard Permit. Please see the proposal notice concerning the Texas NSR SIP submittals for PSD, NNSR for the 1997 8-hour ozone NAAQS, NSR Reform, and a Standard Permit. Those interested in this other action are encouraged to review and comment on it as well.

submit a demonstration showing how its use of ''modification'' is at least as stringent as the definition of ''modification'' in EPA's Major NSR SIP rules.

1. Does the Submitted Program require an evaluation of Emission Increases from the Major Stationary Source?

As noted above, Section 111(a) (4) requires an evaluation of whether a project has resulted in an increase in emissions from ''such source.'' Under this requirement, an evaluation of whether a physical change has resulted in an emission increase must be evaluated based on whether the project resulted in an emission increase across the major stationary source, not by an evaluation of increases outside the major stationary source or a subset of units at the major stationary source. *See Alabama Power* v. *Costle,* 636 F.2d 323, 401–403 (D.C. Cir. 1980) (holding that Agency appropriately allowed consideration of emission increases across the stationary source); *Asarco* v. *EPA,* 578 F.2d 320 (D.C. Cir. 1978) (holding that EPA inappropriately allowed a determination if a modification had occurred based on emission decreases from outside of the facility).[8] We are concerned that the submitted Program in certain circumstances, may allow an emission increase to be avoided by taking into account emission decreases outside of the major stationary source and, in other circumstances, allow an evaluation of emissions of a subset of units at a major stationary source.

First, we are concerned that the submitted Program violates the requirements of the Act and the Major NSR SIP rules, because applicability can be determined based on decreases outside of the major stationary source. This submitted Program establishes an emissions cap over a group of one or more emissions points located at an ''account'' site. 30 TAC 101.1(1). In this way and as discussed above in B and C, the submitted Flexible Permits State Program allows facilities to avoid triggering Major NSR requirements. The Texas SIP defines an ''account'' to include an entire company site, which could include more than one plant and certainly more than one major stationary source. SIP rule 30 TAC 101.1(1), second sentence. Accordingly, under a Flexible Permit, a single emissions limitation in the emission cap could apply to multiple major stationary sources,[9] and if emissions remain below the emissions limitations in the emission cap, Major NSR preconstruction review is not triggered.

By allowing an emission cap to be established for an account, which can include multiple major stationary sources, the submitted SIP revisions may allow a major stationary source to net a significant emissions increase against a decrease occurring outside the major stationary source, from facilities on the account's site that are covered under the Flexible Permit. This approach is not consistent with the Court's findings in *Alabama Power* and *Asarco,* and it does not meet the CAA's definition of modification and the Major NSR SIP requirements.

Second, we are concerned that the submitted Program may allow an emission increase to be determined based on an evaluation of a subset of facilities within a major stationary source. There are no regulatory provisions addressing how one meets the applicable major NSR netting requirements at a site when some of the units are under a Flexible Permit and others are not. Under the submitted Program, not all emission points, units, facilities, major stationary sources, minor modifications to an existing major stationary source, and so forth, at a site are required to be included in the site's Flexible Permit. The submitted regulations state, ''A person may obtain a flexible permit * * * for a facility, a group of facilities, or account * * *'' *See* submitted 30 TAC 116.710(a). Although such a requirement is not necessarily *per se* inconsistent with the CAA and EPA's Major NSR SIP requirements, we propose to find that the submitted Program lacks the necessary accountability and replicability required for an approvable SIP revision under the Act and EPA's interpretations of it, because the submitted regulations and the supporting record from the State fail to explain how physical and operational changes that occur under a Flexible Permit emission cap, which may cause emissions changes outside of the emission cap, are evaluated for Major NSR applicability. Likewise, the submitted regulations and supporting record fail to explain how physical or operational changes that occur outside an emission cap, that cause emissions changes within the emission cap, are evaluated for Major NSR applicability. In essence, neither the submitted regulations nor the supporting documentation from Texas explain how emissions increases are calculated (both the significant emissions increase from a project, and a significant net emissions increase over the contemporaneous period) for the entire major stationary source if the major stationary source is subject to two different permitting regulations, the Flexible Permit regulations and the Major NSR SIP regulations. As a result, the regulated community may apply these regulations inconsistently and in a way that fails to evaluate emissions changes at the entire major stationary source correctly as required by the Major NSR SIP regulations. This approach is not consistent with the Court's finding in *Alabama Power,* and it does not meet the CAA's definition of modification and the Major NSR SIP requirements.

Therefore, we propose to find that the State has failed to demonstrate the approaches are consistent with the Court's findings in *Alabama Power and Asarco,* meet the Act, and include the necessary replicability and accountability for approval as a SIP revision. Therefore, we are proposing to disapprove the submitted Program as not meeting the Major NSR SIP requirements that require an evaluation of emission increases from the major stationary source.

2. Does the Submitted Program require the Use of Actual Emissions, rather than Allowables?

Under Section 111(a)(4) of the Act since the 1977 CAA Amendments, a comparison of existing actual emissions before the change and projected actual (or potential emissions) after the change in question is required. *See* New York I at 38–40. Therefore, to determine whether a change at a unit will be subject to Major NSR requires an evaluation that, after netting, an actual

[8] While the court's analysis regarding the scope of what constitutes a source in these two cases was rejected by the Supreme Court in *Chevron* that decision did not call into question the holding that once the EPA has defined what constitutes a ''source'' (facility for Major Stationary Source) that this is the unit of analysis for applicability. See *Chevron U.S.A. Inc.* v. *NRDC,* 467 U.S. 837 (1984).

Given the plain language of Section 111, EPA agrees that the appropriate unit of analysis for determining if there is an emission increase is the ''source'' as section 111(a)(4) provides that a modification occurs if the project ''increases the amount * * * emitted by such source.''

[9] The Federal regulations define a stationary source as, among other things, all of the pollutant emitting activities that belong to the same industrial grouping. An industrial grouping is defined based on the Standard Industrial Classification (SIC code). *See,* e.g. 40 CFR 51.166(b)(5) and (6). If a stationary source has the potential to emit or actually emits at certain specified levels then the stationary source is a ''major stationary source'' for purposes of major NSR applicability. *See Id.* at 166(b)(1). By not limiting an ''account'' to pollutant-emitting activities within the same SIC code, an account can include pollutant-emitting activity that includes one or more major stationary sources. While under certain circumstances it may be appropriate to lump units/facilities from differing SIC codes into a single stationary source, this is generally based on an interdependence of the various units. Texas's rule does not require such interdependence.

to projected actual test or an actual to potential emissions test (or alternatively a PAL based on actual emissions) be used. *See* 40 CFR 51.165(f) and 51.166(w). EPA lacks the authority to approve any submitted Program that does not meet this statutory requirement. We therefore are proposing disapproval because the submitted Program would authorize existing allowable, rather than actual emissions to be used to determine applicability in violation of the Act and the Major NSR SIP requirements.

Our concerns arise because the submitted Program fails to show how the Flexible Permit program procedures, which use expected maximum capacity as a component in establishing the level of control for each covered facility's emission limit, assure that a Flexible Permit's emission cap is set at a level that is equivalent to or more stringent than one based on existing actual emissions. As discussed previously in section IV. A, the cap is essentially a combined PTE for the emissions units covered by the cap. Subchapter G establishes an aggregated emission limit, based upon the application of minor NSR SIP BACT at expected maximum capacity (or the application of the required control that is more stringent than minor NSR SIP BACT; *see* submitted 30 TAC 116.711(3)) for each covered facility, i.e., an emission cap. This means the cap is set at a level not based on actual emissions. Additionally, there is nothing in the submitted Program that prevents a proposed change at a major stationary source with a Flexible Permit to use allowable, rather than actual emissions, as a baseline to calculate the project's proposed emissions increase. Thereby the change could circumvent the major modification applicability requirements under the Major NSR rules, rules that are based upon using actual emissions to calculate baseline emissions.

We propose to find that the State's procedures for establishing a Flexible Permit emission cap do not meet the CAA and EPA's Major NSR SIP requirements that emissions increases from facility changes must be measured in terms of changes from existing baseline actual emissions and, rather than source-specific allowable emissions.

E. Does the Submitted Program Meet the Major NSR SIP Requirements for Enforceability?

Any SIP revision to be approved must have adequate recordkeeping, reporting, testing, and monitoring requirements to assure there can be compliance with the submitted plan and to ensure the plan is enforceable, as well as to ensure each affected entity can be easily identified and there are means to determine its compliance. The more intricate a plan, the greater the need for detailed requirements. *See* New York I, 413 F.3d at 33–36 (remanding EPA's recordkeeping and reporting requirements since they did not provide adequate assurances that the Major Source NSR modification requirements were complied with). There is the CAA's requirement in section 110(a)(2)(A) that a SIP revision submittal must include enforceable emission limitations and control measures. There is further discussion in the General Preamble about EPA's interpretation of the Act's requirements for enforceability and that submitted rules must ''specify clear, unambiguous, and measurable requirements.'' 57 FR at 13567. The SIPs must contain means to track emission changes at sources and provide for corrective action if they do not achieve the emissions reductions. There must be legal means for ensuring compliance with the control measures. These principles are consistent with the required ability of both EPA and citizens to enforce against violations of both major and minor NSR SIP requirements because absent such requirements, compliance cannot be determined.

We are concerned with the adequacy of the recordkeeping, reporting, tracking, and monitoring requirements in the submitted Program.[10] This submitted Program is an intricate program and therefore, for approvability as a Major NSR SIP revision, there is a greater need for detailed recordkeeping, reporting, tracking, and monitoring requirements whether to ensure that a project triggering the Major NSR SIP requirements is covered under Major NSR or to ensure that there are adequate means for ensuring compliance of each affected entity. These are needed additionally to ensure that the issuance of the Flexible Permits does not cause or contribute to a NAAQS violation, violate PSD increments or the Texas control strategy, or violate any other CAA requirement. For example, due to the lack of a program requirement for records with detailed crosswalks and of tracking and reporting requirements, one cannot determine which grandfathered units on a site are covered or not by a Flexible Permit, or which pre-existing minor NSR permitted units are covered or not by a Flexible Permit, much less which permit terms, limits, and conditions are covered, are not covered, are retained, or not.

A Texas Flexible Permit may apply to hundreds of dissimilar units. These covered emissions units can vary in size and type of operations as well as having widely different regulatory requirements and different applicable testing requirements. Yet for this submitted intricate Program, there are no program requirements for the tracking of existing SIP permits' major and minor NSR terms, limits, and conditions, and whether such requirements are incorporated into a Flexible Permit or they remain outside the coverage of the Flexible Permit. Minor and Major NSR SIP permits, as well as minor NSR SIP Permits by Rule and Standard Permits, can be incorporated into a Flexible Permit without any program requirement in place that ensures the SIP permits' terms, limits, and conditions are included in the Flexible Permit. There are no program requirements in the submitted intricate Program for specific recordkeeping and monitoring that ensures a holder of a Flexible Permit maintains sufficient records and performs sufficient monitoring such that each term, limitation, and condition in an existing SIP permit that is incorporated into the Flexible Permit and the rationale for removing any such term, limitation, or condition from the contents of the Flexible Permit is available.

EPA therefore is proposing to disapprove this Program as a Major NSR SIP revision because it does not meet the Act's requirements for an enforceable program.

F. Does the Submitted Program meet the Major NSR SIP Public Participation Requirements?

On November 26, 2008 (73 FR 72001), EPA proposed limited approval and limited disapproval of the Chapter 39 public participation rules, including 30 TAC 39.403(b)(8)(A) and (B) for Flexible Permits. 30 TAC 39.403(b)(8)(A) and (B) formed the part of the basis for the proposed limited disapproval. *See* 73 FR 72008 and 72013. We intend to take final action on the Chapter 39 rules prior to final action on this submitted Program.

In the November 2008 proposal, we also took no action on submitted 30 TAC 116.740, Public Notice. This section is in the submitted Subchapter G and relates to the public participation requirements for the submitted SIP revisions for Flexible Permits. We

[10] EPA's letter of March 12, 2008, on pages 12 to 13 of the Enclosure provides some examples of, and concepts on how to establish replicable recordkeeping, reporting, tracking, and monitoring requirements up-front in a NSR program without requiring every director discretion decision to be adopted and submitted to EPA for approval as a source-specific SIP revision.

proposed no action in the November 2008 proposal on submitted 30 TAC 116.740 because we were still reviewing the submitted Program, including 30 TAC 116.740. We stated in the November 2008 proposal that we would address the submitted 30 TAC 116.740 in a separate action on the submitted Texas Flexible Permits State Program.

Today, we propose to address 30 TAC 116.740. Because this submitted rule relates to the public participation requirements of the submitted Program, this rule is not severable from the Program. Because we are proposing to disapprove the Program, we propose likewise to disapprove 30 TAC 116.740, Public Notice, for the Program.

G. Does the Submitted Program Meet Section 110(l) of the Act for a Major NSR SIP Revision?

Section 110(l) of the Act prohibits EPA from approving any revision of a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

The State did not provide any demonstration showing how the submitted SIP revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA requirement.

H. What is EPA's Summary of whether the Submitted Program Meets the Requirements for a Substitute Major NSR SIP Revision?

The submitted Program does not require that first one must determine whether a change is subject to major NSR and that actual emissions be used as the baseline for determining whether a change is subject to Major NSR. It does not prevent circumvention of the Major NSR SIP requirements. The submitted Program allows emission decreases from outside a major stationary source to count in complying with a cap in a Flexible Permit, as well as allowing emission decreases from within a subset of units within the major stationary source. Yet the submitted Program lacks any regulatory provisions ensuring that netting for Major NSR applicability purposes is conducted only within the major stationary source and across the entire major stationary source. The Program is an extremely complex permitting program that lacks specialized regulatory provisions that include monitoring, testing, recordkeeping, and reporting requirements specifically to ensure that compliance can be determined, and that triggering of Major NSR can be easily identified and applicable Major NSR requirements are met. The Program does not include any assurances that the NAAQS, control strategies, reasonable further progress, and the PSD increments will not be violated.

These are requirements of the Act and EPA's Major NSR SIP requirements that the submitted Program does not meet. Furthermore, there is no information to determine whether the Program would not interfere with any applicable requirement concerning attainment and RFP, or any other requirement of the Act, thus violating section 110(l) of the Act. Consequently, EPA is proposing to find that the Program does not meet the requirements for a substitute Major NSR SIP revision.

VI. What is EPA's Evaluation of the Submitted Texas Flexible Permits State Program as a Minor NSR SIP Revision?

We evaluated the submitted Program using the federal regulations under CAA section 110(a)(2)(C), which require each State to include a minor NSR program in its SIP. EPA regulations require that a plan include ''legally enforceable procedures that enable'' the permitting agency to determine whether a minor source will cause or contribute to violations of applicable portions of the control strategy, 40 CFR 51.160(a)(1), or ''interference with a national ambient air quality standard,'' 40 CFR 51.160(a)(2), and to prevent the source from doing so. 40 CFR 51.160(b). The procedures must ''discuss the basis for determining which facilities will be subject to review,'' 40 CFR 51.160(e), and ''discuss the air quality data and the dispersion or other air quality modeling used'' to assess a source. 40 CFR 51.160(f). Generally, SIPs must be enforceable (see section 110(a) of the Act) and must not relax existing SIP requirements (see section 110(l) of the Act). Additionally, we reviewed and compared the Program with any other applicable SIP statutory and regulatory requirement.

A. Is the Submitted Program Clearly a Minor NSR SIP Revision?

There are no statutory and/or regulatory provisions that clearly prohibit the use of the Program for major stationary sources and major modifications. Nor are there any statutory and/or regulatory provisions clearly limiting the use of the Program to minor sources and/or minor modifications. There are no provisions that prohibit the use of the Program for construction of new major stationary sources and major modifications of existing major stationary sources and minor sources. There are no regulatory applicability requirements limiting use of the Program to minor NSR and no regulatory requirements prohibiting the using it for Major NSR, in the submitted Chapter 116, Subchapter G—Flexible Permits. There is no express provision in the submitted Subchapter G requiring that this submitted Program cannot be used to circumvent the requirements of Major NSR. There are no statutory and/or regulatory provisions clearly prohibiting circumvention of Major NSR. The Program further fails to require that the applicability of the Major NSR requirements be evaluated prior to considering whether the construction of a new source or making a change can be authorized under a minor NSR Flexible Permit. The regulatory provisions in the submitted Program fail to require that *first* one must determine the threshold question of whether the construction or change is a major stationary source or a major modification subject to Major NSR, based upon an actual emissions baseline. *See* section V and the TSD for additional discussion and information.

B. Does the Submitted Program Meet the Minor NSR SIP Requirements for Establishing the Emission Cap?

The submitted Program addresses how the cap is calculated. It, however, does not describe in sufficient detail the calculation methodologies and underlying technical analyses used to determine a cap. There are not specific, established, replicable procedures providing available means to determine independently, and for different scenarios, how the State will calculate a Flexible Permit's cap and/or individual emissions limitations for a company's site, plants on the site, major stationary sources on the site, a facility within a major stationary source on the site, facilities on the site, a group of units on the site, for one pollutant but not another, etc.

While facilities are limited to one Flexible Permit per site account, applicants can choose which facilities to include under a Flexible Permit. To be approvable, the submitted Program must include legally enforceable procedures for ensuring that both the permit application and the State's permitting processes (i.e., the State's review, supporting technical information, the public notice and comment process, the record, and most importantly the structuring of each Flexible Permit in such a manner as to be clear) will clearly inform the public, other governmental agencies, or a court, which facilities are included under the permit and cap, and which are included

under the permit but subject to individual limitations.

The submitted Program's legally enforceable procedures must ensure adequate enforcement of all applicable limitations for sources under an emission cap and for sources with individual emissions limits under a Flexible Permit. Since a Flexible Permit may contain an overall emission cap for all sources per pollutant, combination of multiple emission caps that cover groups of facilities, and/or individual emission limitations for individual facilities, the submitted Program also must contain enforceable procedures for determining what limits each facility is subject to, as well as enforcing each source's obligations regarding each limit applicable to that source, under the cap, multiple caps, and/or an individual limitation, for each pollutant in a Flexible Permit. Because applicants can choose to establish caps or individual emission limitations for just certain pollutants rather than for all pollutants emitted from the source(s) included in the Flexible Permit, the submitted Program also must contain legally enforceable procedures for determining both the cap and individual emissions limitations for each relevant pollutant for each source and address how sources or pollutants not included in the Flexible Permit will be regulated.

Finally, applicants may choose to combine grandfathered, existing permitted, and newer facilities to maximize flexibility at the site in a Flexible Permit. This requires that the submitted Program must contain legally enforceable procedures to ensure that both the permit application and the State's permitting processes (i.e., the State's review, supporting technical information, the public notice and comment process, the record, and most importantly the structuring of each Flexible Permit in such a manner as to be clear) clearly identify each covered point of emissions, which existing permits and their types (e.g., minor NSR SIP permit, minor NSR standard permit) and which of their permitted terms, limits, conditions and representations in the permit application, are moved into the Flexible Permit. The legally enforceable procedures must also ensure it is clear which existing permits and their types and terms, limits, conditions and representations in the permit application, are *not* being moved into the Flexible Permit.

In sum, the submittal lacks specific, established, replicable procedures providing available means to determine independently how the source or the State will calculate an emission cap, determine the coverage of a Flexible Permit, establish individual emissions limitations for each site, a facility on the site, a group of units on the site, or for one pollutant but not another. It also is not clear to EPA what the process is and how the emission cap is adjusted for the addition of new facilities. *See* submitted 30 TAC 116.716(c). Furthermore, the submitted regulations include a term, ''multiple emission caps,'' with an ambiguous meaning. *See* submitted 30 TAC 116.715(b). It is not clear whether this term means multiple emission caps because there is one cap for each pollutant, or whether there can be more than one cap for one pollutant.

C. Does the Submitted Program Meet the Minor NSR SIP Enforcement Requirements?

Section 110(a)(2)(A)—(C) of the Act requires that SIP revision submittals be enforceable. The September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency'' provides EPA's guidance for interpreting this provision in the Act. *See* also the General Preamble. Submitted rules that are clearly worded, clear as to who must comply, and explicit in their applicability to regulated sources are appropriate means for achieving the statutory enforcement requirement. Specific, objective, and replicable criteria are to be set forth for determining whether this new type of NSR permit will be truly equivalent to the other minor NSR SIP permits in terms of being consistent with the levels specified in the control strategies, including air quality impacts, etc. Appropriate testing, recordkeeping, reporting, and monitoring provisions are necessary to establish how compliance will be determined and be sufficient to ensure that the NAAQS and PSD increments are protected.

Under this Program as selected by Texas, there is an option to select which new facilities and/or new modifications to include under the umbrella of a Flexible Permit. Without the appropriate specialized MRR requirements, there is no way to determine for instance, which emission points are covered, which modifications of existing non-covered emission points are covered, etc. Texas also chose to allow both a cap and an individual emission limitation to apply to selected units, or just the cap, or just the individual emission limitation. Without the appropriate MRR requirements, there is no way to determine if a covered unit is subject to the cap or an individual emission limitation, if a unit is subject to both the cap and a limitation, or whether a cap or a limitation applies at what time. Further, there can be existing units on the site not covered under the Flexible Permit cap that may be modified, and use the provisions of the Flexible Permit program for the modification. Without replicable implementation procedures for establishing the emission cap and sufficient monitoring, recordkeeping, and reporting requirements, EPA cannot find that the submitted Program, as a minor NSR SIP program, will ensure protection of the NAAQS, and noninterference with the Texas SIP control strategies and RFP.

EPA proposes to find that the Program does not meet the requirements of section 110(a)(2)(A)–(C), which require that SIP revision submittals be enforceable.[11] There are no specific up-front methodologies in the submitted Program to be able to determine compliance. Nor did EPA find the testing, recordkeeping, reporting, and monitoring provisions necessary to establish how compliance will be determined and to ensure that the NAAQS are protected. For example, the Program could allow hundreds of unrelated emission sources to be subject to one emission cap and/or individual emission limitations. Yet the submitted Program contains no time period for the cap (e.g., hourly, monthly, and/or annual limits such as rolling limits). Submitted 116.117(7) is an illustration of our concerns. It states that initial compliance testing with ongoing compliance by engineering calculations ''may be required.'' This means that under the Program, compliance testing may not be required at all and provides no guidance for when monitoring will be required.

Emission units can vary in size and type or operation, as well as having widely different regulatory monitoring, and compliance requirements. Demonstrating compliance with a cap covering multiple emission points requires more detailed information than point-by-point compliance. To demonstrate compliance with a unit-by-unit emission limit, a source can often establish a parameter that if not met indicates the unit is out of compliance. For example, emissions from an incinerator may be shown to be in

[11] Section 116.117(2) of the submitted Program provides that emissions will be measured ''as determined by the executive director.'' This broad discretion lacks accountability, replicability and fails to provide for a full evaluation of the enforceability of permits issued under the Program.

compliance if the temperature stays above a certain level indicating thorough combustion. Under a cap program, it is necessary to know the actual emission rate from each unit so that the emission unit can be totaled to show compliance with the cap.

The submitted Program lacks provisions explicitly addressing the type of monitoring requirements that are necessary to ensure that all of the movement of emissions between the emission points, units, facilities, plants, etc., still meet the cap for the pollutant, still meet the individual emissions limitations, and still meet any other applicable state or federal requirement. In addition, there are no limits on the types of sources that can be included in the cap. It is also difficult to quantify emissions from some units, such as tanks, fugitive emissions from leaking valves, or wastewater emissions points that can be included in a Flexible Permit under this Program.

Because of the use of the Program to permit grandfathered facilities in the past and the continued use for new construction and modifications, as well as allowing a meticulous selection of which facilities and changes to include in a Flexible Permit, EPA is concerned with the enforceability of an emissions cap for each pollutant (combined with individual emissions limitations or not). Each pollutant's cap and individual emissions limitations may apply to a very large number of selective emission sources, with ongoing construction and modifications being selectively. Although the submitted Program requires the same monitoring, recordkeeping, reporting, and testing requirements at 30 TAC 116.711(2) and 116.715(c)(4)—(6), as do the SIP rules codified in Subchapter B of Chapter 116, the underpinnings of the submitted Program are so complex that EPA believes that even for a minor NSR SIP program, there should be more detailed MRR requirements to ensure that the emission cap and/or individual emissions limitations in the issued Flexible Permits are enforceable.

Without specialized testing, monitoring, recordkeeping and reporting requirements, it is difficult for EPA, Texas or the public to determine which units are covered by a flexible permit, which modifications to non-covered units are covered by a flexible permit, whether a covered unit is subject to the emission cap or an individual emission limitation, whether a unit is subject to both the cap and a limitation, or whether a cap or a limitation applies and at what time.

Finally, there are not sufficient provisions requiring the holder of a Flexible Permit to maintain recordkeeping sufficient to ensure that all terms and conditions of existing permits (including representations in the applications for such permits) that are incorporated into the Flexible Permit continue to be met. The submitted Program lacks adequate program requirements for the tracking of existing SIP permits' major and minor NSR terms, limits and conditions, and whether such requirements are incorporated into a Flexible Permit or they remain outside the coverage of the Flexible Permit. Minor and Major NSR permits, as well as minor NSR SIP Permits by Rule and Standard Permits, can be incorporated into a Flexible Permit without any program requirement in place that ensures the SIP permits' terms and conditions are included in the Flexible Permit.

D. Does the Submitted Program Meet the Minor NSR SIP Requirements for Revision of Existing Major NSR SIP Permits?

We also are proposing to disapprove the submitted Program because it would allow holders of a Flexible Permit to make de facto amendments of existing SIP permits, including changes in the terms and conditions (such as throughput, fuel type, hours of operation) of minor and major NSR permits, without a preconstruction review by Texas. While we have recognized that under certain circumstances changes to PSD permits may be appropriate, such changes are generally not allowed without a review of the new circumstances by the permitting authority. As EPA has explained, any time a change to a permit limit founded in BACT is being considered, a corresponding reevaluation (or reopening) of the original BACT determination may be necessary. *See,* ''Request for Determination on Best Available Control Technology (BACT) Issues—Ogden Martin Tulsa Municipal Waste Incinerator Facility,'' from Gary McCutchen, Chief of OAQPS NSR Section (Nov. 19, 1987).

E. Does the Submitted Program Meet the Minor NSR SIP Public Participation Requirements?

On November 26, 2008 (73 FR 72001), EPA proposed limited approval and limited disapproval of the Chapter 39 public participation rules, including 30 TAC 39.403(b)(8)(A) and (B) for Flexible Permits. 30 TAC 39.403(b)(8)(A) and (B) formed a part of the basis for limited disapproval. We intend to take final action on the Chapter 39 rules prior to final action on this submitted Program.

We also noted in the November 2008 proposal that Texas submitted 30 TAC 116.740—Public Notice. This rule was submitted November 29, 1994, as part of the Texas Flexible Permits State Program under 30 TAC Chapter 116, Subchapter G. Revisions were submitted July 22, 1998; and October 25, 1999. This submitted rule provides that any person who applies for a Flexible Permit shall comply with the provisions in Chapter 39, which relates to Public Notice. In the November 2008 proposal, we stated that we were reviewing the November 29, 1994, and July 22, 1998, submittals of 30 TAC 116.740 and would address these in a separate action. 73 FR 72015. We also indicated that we were taking no action on 30 TAC 116.740 as submitted October 24, 1999. 74 FR 72006.

In the November 2008 proposal, we stated that we would address 30 TAC 116.740 in a separate action. Because this new rule is not severable from the Texas Flexible Permits State Program, we are proposing to disapprove the submitted 30 TAC 116.740.

F. Does the Submitted Program Meet Section 110(l) of the Act for a Minor NSR SIP Revision?

Section 110(l) of the Act prohibits EPA from approving any revision of a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

The State did not provide any demonstration showing how the submitted SIP revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA requirement.

G. What is EPA's Summary of Whether the Submitted Program Meets the Requirements for a Minor NSR SIP Revision?

The submitted Program is not clearly limited to minor NSR and does not prevent circumvention of the Major NSR SIP requirements. The submitted Program does not require that first one must determine whether a change is subject to Major NSR and actual emissions are used as a baseline for determining whether a change is subject to Major NSR. It fails to meet the enforceability requirements as a program or of an affected entity, and it cannot assure compliance with the program or of the affected entity. It is an extremely complex permitting program but lacks specialized regulatory provisions tailoring monitoring, testing, recordkeeping, and reporting

requirements specifically to ensure that compliance can be determined, enforcement can be taken, and that triggering of minor (and major) NSR is easily identified and that the preconstruction requirements of the Act are met. The Program lacks requirements necessary for enforcement and assurance of compliance. Moreover, it does not ensure that existing and future minor NSR SIP permits' terms and conditions are retained. The methodologies for establishing the caps in the Flexible Permits provide too much director discretion and lack replicable procedures. Overall, the submitted Program fails to include sufficient enforceable safeguards to ensure that the NAAQS and control strategies are protected. Furthermore, there is no information to determine whether the submitted Program is as stringent as the existing Texas minor NSR SIP, and whether the revisions would not violate the NAAQS, PSD increments, the State's control strategies, interfere with reasonable further progress, or otherwise meet any other requirement of the Act, thus violating section 110(l) of the Act. Therefore, we are proposing to find that the submitted Texas Flexible Permits State Program does not meet the requirements for a minor NSR SIP revision.

VII. Proposed Action

EPA is proposing disapproval of the Texas Flexible Permits State Program submitted in a series of SIP revisions, identified in the Tables in section III of this preamble. These affected provisions are addressed in Texas' November 29, 1994, SIP revision submittal, as revised by severable portions in the March 13, 1996, SIP revision submittal, and severable portions of the July 22, 1998, SIP revision submittal that repealed and replaced portions of, as well as revised, the 1994 submittal and repealed and replaced all of the 1996 submittal; and as revised by severable portions in the October 25, 1999, September 11, 2000, April 12, 2001, September 4, 2002, October 4, 2002, and September 25, 2003, SIP revision submittals.

EPA is proposing disapproval of the submitted Texas Flexible Permits State Program, as a substitute Major NSR SIP revision, because it does not meet the Act and EPA's regulations and is not consistent with applicable statutory and regulatory requirements as interpreted in EPA guidance and policy. We also are proposing disapproval of the submitted Texas Flexible Permits State Program as a Minor NSR SIP revision because it does not meet the Act and EPA's regulations and is not consistent with applicable statutory and regulatory requirements as interpreted in EPA guidance and policy.

We will accept comments on this proposal for the next 60 days. After review of public comment, we will take final action on the SIP revision submittals that are identified herein.

EPA intends to take final action on the State's Public Participation SIP revision submittal in November 2009. EPA intends to take final action on the submitted Texas Qualified Facilities State Program by March 31, 2010, the submitted Texas Flexible Permits State Program by June 30, 2010, and the NSR SIP by August 31, 2010. These dates are expected to be mandated under a Consent Decree (see, Notice of Proposed Consent Decree and Proposed Settlement Agreement, 74 FR 38015, July 30, 2009). Sources are reminded that they remain subject to the requirements of the Federally-approved Texas SIP and subject to potential enforcement for violations of the SIP (*See* EPA's Revised Guidance on Enforcement During Pending SIP Revisions, dated March 1, 1991).

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (*58 FR 51735,* October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's 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 which 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 impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 ''for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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 action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (59 FR 22951, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 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., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 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 lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 8, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–22808 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0188; FRL–8960–6]

Determination of Attainment of the 1997 8-Hour Ozone Standard for Imperial County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the Imperial County, California moderate 8-hour ozone nonattainment area has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. The State of California has requested this determination, which is based upon three years of certified ambient air monitoring data that show the area has monitored attainment of the 8-hour ozone NAAQS since the 2006–2008 monitoring period. If this proposed determination is made final, the requirements for the State to submit certain reasonable further progress requirements, an attainment demonstration, contingency measures and other planning requirements of the Clean Air Act related to attainment of the 1997 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 8-hour ozone NAAQS.

DATES: Comments must be received on or before October 23, 2009. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2009–0188, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: tax.wienke@epa.gov.*
- *Fax:* 415–947–3579.
- *Mail:* Wienke Tax, Air Planning Office, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.
- *Hand Delivery:* Marty Robin, Air Planning Office, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:55 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2009–0188. 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 *http://www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office, Environmental Protection Agency, Region 9, (415) 947–4192, *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. What Action Is EPA Proposing to Take?

EPA is proposing to determine that the Imperial County moderate 8-hour ozone nonattainment area in California has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of certified ambient air monitoring data that show that the area has monitored attainment of the 8-hour ozone NAAQS of 0.08 parts per million (ppm) since the 2006–2008 monitoring period. Quality controlled and quality assured ozone data for 2009 that are available in the EPA Air Quality System (AQS) database, but not yet certified, also show that the area continues to attain the 8-hour ozone NAAQS.[1]

II. What Is the Effect of This Action?

If this determination is made final, under the provisions of EPA's ozone implementation rule (40 CFR section 51.918), the requirements for the State to submit certain reasonable further progress requirements, an attainment demonstration, and contingency measures under section 172(c)(9) of the Clean Air Act (CAA) and any other planning State Implementation Plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS in Imperial County will be suspended for so long as the area continues to attain the ozone NAAQS. This finding does not address the 2008 8-hour ozone standard of 0.075 ppm, which EPA promulgated on March 12, 2008 (*see* 73 FR 16435, March 27, 2008).

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register,** that the area has violated the 1997 8-hour ozone standard, the basis for the suspension of these requirements for that area would no longer exist, and the area would thereafter have to address the pertinent requirements within a reasonable period of time. EPA would establish that period taking into account the individual circumstances surrounding the particular submissions at issue.

This proposed action is not equivalent to the redesignation of the Imperial County area to attainment under CAA section 107(d)(3), because we would not yet have an approved maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The classification and designation status of the area would remain moderate nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

III. What Is the Background for This Action?

On April 30, 2004 (69 FR 23857), EPA designated as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. At that time, a number of areas in California, including Imperial County, were designated as nonattainment. See 40 CFR 81.305. Imperial County was initially classified as a marginal nonattainment area with a maximum attainment date of June 15, 2007. 69 FR 23858. On February 13, 2008, EPA determined that Imperial County had failed to attain the 1997 8-hour ozone NAAQS by the applicable attainment deadline and reclassified the area by operation of law as a moderate 8-hour ozone nonattainment area, with a maximum attainment date of June 15, 2010. 73 FR 8209 (final rule effective March 14, 2008). This determination was based on ambient air quality data from the 2004–2006 monitoring period. More recent air quality data, however, indicate that the Imperial County area is now attaining the 1997 8-hour ozone standard.

On February 19, 2009, the California Air Resources Board requested that EPA determine that the Imperial County area is attaining the 1997 8-hour ozone standard of 0.08 ppm, based on certified ambient air monitoring data from the 2006–2008 monitoring period.

IV. What Is EPA's Analysis of the Relevant Air Quality Data?

In California's request and a subsequent certification letter, the State certified that the air quality monitoring data it submitted for the years 2006, 2007, and 2008 was accurate and quality-assured, consistent with state

[1] *See* AQS Quicklook Report dated August 24, 2009 in the docket for today's action.

and EPA monitoring requirements.[2 3] California submitted these data to EPA's AQS, where it is available to the public via *http://www.epa.gov/ttn/airs/airsaqs/*. Table 1 summarizes the ozone air quality data for Imperial County, from 2006 to 2008.

TABLE 1—FOURTH HIGHEST 8-HOUR AVERAGE OZONE CONCENTRATIONS AND DESIGN VALUES (IN PARTS PER MILLION, PPM) IN IMPERIAL COUNTY, CALIFORNIA 2006–2008

Monitor site	2006	2007	2008	2006–2008 Design value
Calexico East	.078	.083	.078	.079
Calexico Ethel	.068	.087	.087	.080
El Centro	.091	.083	.074	.082
Niland	.072	.078	.075	.075
Westmorland	.086	.085	.077	.082

Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 ppm (*i.e.,* 0.084 ppm, based on the rounding convention in 40 CFR part 50, Appendix I). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm (84 parts per billion (ppb)) at each monitor within the area, then the area is meeting the NAAQS. *See* 69 FR 23857 (April 30, 2004) for further information. Also, the data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR part 50.

Table 1 shows the fourth highest daily maximum 8-hour average ozone concentrations for the Imperial County monitors for the years 2006–2008. EPA's review of these data indicate that the Imperial County nonattainment area has met and continues to meet the 8-hour ozone NAAQS.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. EPA will consider these comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA office listed in the **ADDRESSES** section of this **Federal Register.**

V. Proposed Action

EPA is proposing to determine that the Imperial County, California ozone nonattainment area has attained the 1997 8-hour ozone standard based on three years of certified ambient air monitoring data at all ozone monitoring sites in the area. Quality-assured data through the present demonstrate that the area continues to attain the standard through June 2009. As provided in 40 CFR 51.918, if EPA finalizes this determination, it would suspend the requirements for California to submit an attainment demonstration, a reasonable further progress plan, and contingency measures under section 172(c)(9), and any other planning SIP related to attainment of the 1997 8-hour ozone NAAQS for the Imperial County area. This suspension of requirements would be effective as long as the area continues to attain the 1997 8-hour ozone standard. Please note that this action addresses only the 1997 8-hour ozone standard of 0.08 ppm, and does not address the 2008 8-hour ozone standard of 0.075 ppm.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (*58 FR 51735*, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it 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).

This proposed rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (*59 FR 22951*, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of

[2] Letter from James Goldstene, Executive Officer, California Air Resources Board, to Laura Yoshii, Acting Regional Administrator, U.S. EPA Region 9, dated February 19, 2009.

[3] Letter from Karen Magliano, Chief, Air Quality Data Branch, California Air Resources Board, to Laura Yoshii, Acting Regional Administrator, EPA Region 9, dated March 4, 2009.

promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act.

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*)

Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 11, 2009.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. E9–22933 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2009–0638; FRL–8960–9]

Determinations of Attainment of the One-Hour and Eight-Hour Ozone Standards for Various Ozone Nonattainment Areas in New Jersey and Upstate New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that various ozone nonattainment areas in New York and New Jersey have attained the one-hour and eight-hour National Ambient Air Quality Standards for ozone. For the one-hour standard, the areas are: the Atlantic City and Warren County areas in New Jersey and the Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County, Jefferson County, and Poughkeepsie areas in New York. For the eight-hour standard, the areas are: Buffalo-Niagara Falls, Jamestown, Poughkeepsie and Essex County (Whiteface Mountain). The States requested these determinations, based upon three years of complete, quality-assured ambient air monitoring data and these areas have continued to attain these ozone standards based on examination of the most recent air quality data from 2006–2008. These data demonstrate that the one-hour and eight-hour ozone standards have been attained in these areas. If EPA makes these proposed determinations final for the one-hour standard, the areas subject to the one-hour standard will have completed their progress toward achieving the one-hour health standard. In the cases where EPA determines that areas have attained the eight-hour standard, the requirements for the state to submit certain reasonable further progress plans, attainment demonstrations, contingency measures and any other planning requirements of the Clean Air Act related to attainment of the ozone standards shall be suspended for as long as the areas continue to attain the eight-hour ozone standard. These proposed determinations of attainment are not redesignations of these areas to attainment. Redesignations must meet additional requirements, including an approved plan to maintain compliance with the air quality standard for ten years after redesignation.

DATES: Comments must be received on or before October 23, 2009. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2008–0638, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2009–0638. 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: Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

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I. What Are Today's Proposed Actions?

The EPA is proposing to determine that several areas designated as nonattainment for ozone have attained the standard. EPA proposes that the Atlantic City area and Warren County in New Jersey and the Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County, Jefferson County, and Poughkeepsie areas in New York be certified as attaining the one-hour ozone national ambient air quality standard (NAAQS).

EPA also proposes that four ozone nonattainment areas in New York, namely the Buffalo-Niagara Falls, Jamestown, Poughkeepsie and the Essex County nonattainment areas, be certified as attaining the eight-hour NAAQS established in 1997 for ozone.

All of these determinations are based upon three years of complete, quality-assured ambient air monitoring data for the years 2006–2008. In order to determine the area's air quality status, EPA reviewed ozone air quality data from the states, in accordance with 40 CFR 50.9 [1] and EPA policy guidance, as well as data processing, data rounding and data completeness requirements as discussed later in this proposal. These data demonstrate that the ozone NAAQS have been attained in these areas.

Pursuant to 40 CFR 51.918, if these proposed determinations are made final for the eight-hour ozone standard, the requirements for the state to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures and any other State Implementation Plans (SIPs) related to attainment of the eight-hour ozone NAAQS, will be suspended for so long as the area continues to attain the ozone NAAQS. However, other Clean Air Act requirements unrelated to the planning for attainment of the standard may still be required in some of these areas, such as development of emission inventory data and application of Reasonably Available Control Technology to certain sources of air pollution.

II. What Is the Background for These Actions?

A. When Were These Areas Designated?

The one-hour ozone designations in this proposed action were established by EPA following the enactment of the Clean Air Act (CAA) Amendments in 1990. Each area of the country that was designated nonattainment for the one-hour ozone NAAQS was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. (*See* CAA sections 107(d)(1)(C) and 181(a)).

EPA designated and classified most areas of the country under the eight-hour ozone NAAQS in an April 30, 2004 final rule (69 FR 23858). On April 30, 2004, EPA also issued a final rule (69 FR 23951) entitled ''Final Rule To Implement the 8–Hour Ozone National Ambient Air Quality Standard—Phase 1'', referred to as the Phase 1 Rule. Among other matters, this rule revoked the one-hour ozone NAAQS in most other areas of the country, effective June 15, 2005. (*See,* 40 CFR 50.9(b); 69 FR at 23996; and 70 FR 44470, August 3, 2005.) The Phase 1 Rule also set forth how anti-backsliding principles will ensure continued progress toward attainment of the eight-hour ozone NAAQS by identifying which one-hour requirements remain applicable in an area after revocation of the one-hour ozone NAAQS. On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated the Phase 1 Rule. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). Subsequently, in *South Coast Air Quality Management Dist.* v. *EPA,* 489 F.3d 1295 (DC Cir. 2007), in response to several petitions for rehearing, the Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. The court upheld the portions of the Phase 1 Rule relating to EPA's classification system under subpart 2. The portions of the rule that were vacated do not affect this proposed action.

B. How Does EPA Compute Whether an Area Complies With the One-hour Ozone Standard?

Although the one-hour ozone NAAQS as promulgated in 40 CFR 50.9 includes no discussion of specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the one-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 ppm. 40 CFR 50.9(a) states that: ''The level of the national one-hour primary and secondary ambient air quality standards for ozone * * * is 0.12 parts per million. * * * The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations of 0.12 parts per million * * * is equal to or less than 1, as determined by appendix H to this part.'' Thus, compliance with the NAAQS is based on comparison of air quality concentrations with the standard and on how many days that standard has been exceeded, adjusted for the number of missing days.

For comparison with the NAAQS, EPA has clearly communicated the data handling conventions for the one-hour ozone NAAQS in guidance documents. As early as 1979, EPA issued guidance stating that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded. The stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. (*See,* ''Guideline for the Interpretation of Ozone Air Quality Standards,'' EPA–450/4–79–003, OAQPS No. 1.2–108, January 1979.) EPA has consistently applied the rounding convention in this 1979 guideline. *See,* 68 FR 19111 April 17, 2003, 68 FR 62043 October 31, 2003, and 69 FR 21719 April 22, 2004. Then, EPA determines attainment status under the one-hour ozone NAAQS on the basis of the annual average number of expected exceedances of the NAAQS over a three-year period. (*See,* 60 FR 3349 January 17, 1995 and see, also, ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 57 FR 13506 April 16, 1992 (''General Preamble''). EPA's determination is based upon data that have been collected and quality-assured in accordance with 40 CFR 58, and recorded in EPA's Air Quality System (AQS) database, (formerly known as the Aerometric Information Retrieval System (AIRS)). To account for missing data, the procedures found in appendix H to 40 CFR 50 are used to adjust the actual number of monitored exceedances of the standard to yield the annual number of expected exceedances (''expected exceedance days'') at an air quality monitoring site. Under EPA's policies, we determine if an area has attained the one-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (*i.e.,* ''average number of expected exceedance days'') during the applicable 3-year period. *See,* generally, the General Preamble, 57 FR 13498, April 16, 1992 and

[1] CFR refers to the Code of Federal Regulations, in this case Title 40, part 50.9.

Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; ''Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' February 3, 1994. While the latter is explicitly applicable only to marginal areas, the general procedures for evaluating attainment in terms of the average number of expected exceedance days during the applicable 3-year period in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same CAA requirements in section 181(b)(2).

C. How Does EPA Compute Whether an Area Complies With the Eight-hour Ozone Standard?

As noted later in Table 2, an area achieves attainment of the eight-hour ozone standard when an area's monitoring sites all have a design value of less than 0.085 ppm, calculated as described in 40 CFR 50, Appendix I.

The design value is the average of each year's fourth highest concentration, over a three year period, as described in Appendix I to 40 CFR 50. From 40 CFR 50, Appendix I, Section 2.2:

> The standard-related summary statistic is the annual fourth-highest daily maximum 8-hour average ozone concentration, expressed in parts per million, averaged over three years. The 3-year average shall be computed using the three most recent, consecutive calendar years of monitoring data meeting the data completeness requirements described in this appendix. The computed 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations shall be expressed to three decimal places (the remaining digits to the right are truncated.)

As shown in Table 2, all of the sites have complete data and a design value less than 0.085 ppm. All of the sites have met the requirements of Appendix I of 40 CFR 50, which stipulates that in order to be used for showing attainment of the standard, the three years of data must have an average percent of days with valid ambient monitoring data of greater than 90%, and no single year with less than 75% data completeness.

This proposed action does not deal with the ozone standard that EPA established in 2008. A new set of requirements will be needed after areas are designated as not attaining this new standard. Therefore, today's proposed action, which affects requirements developed for the 1997 ozone standard, is not affected by the 2008 ozone standard, nor does it presume what air quality designations will be for the 2008 ozone standard or what measures an area may need to attain that standard.

D. Why Is EPA Determining If These Areas Are Attaining the Ozone Standards?

States have requested that EPA determine that certain areas have met the applicable ozone standard. Also, in the course of periodic reviews of air quality data, EPA has noted that several ozone nonattainment areas in New Jersey and New York are now attaining the one-hour and eight-hour standard. For the one-hour standard these areas and their constituent counties are: in New Jersey, Warren County of the Allentown-Bethlehem-Easton nonattainment area and Atlantic and Cape May Counties in the Atlantic City nonattainment area; in New York, Erie and Niagara Counties in the Buffalo-Niagara Falls area, Chautauqua County in the Jamestown nonattainment area, Dutchess and Orange Counties and the portion of Orange County[2] in the Poughkeepsie nonattainment area; and the portion of Essex County above 4500 feet[3] in the Whiteface Mountain area. Air quality data from the last three years from these areas is listed later in Table 1.

The Poughkeepsie one-hour nonattainment area was initially determined to attain the one-hour standard (59 FR 18967) but later violated the standard and was reclassified as nonattainment (59 FR 38000). New York State did not request that EPA make a determination regarding the Poughkeepsie one-hour ozone nonattainment area. However, EPA has sufficient air quality data that the Poughkeepsie nonattainment area has attained the one-hour standard and is proposing to determine that the area is in attainment of the one-hour ozone standard.

For the eight-hour ozone nonattainment areas, on March 19, 2007 the New York State Department of Environmental Conservation (New York) requested EPA to find that air monitoring data from 2004 to 2006 were showing attainment of the eight-hour ozone standard in various areas of upstate New York. These areas were the Albany-Schenectady-Troy, Jefferson County, Essex County and Rochester nonattainment areas. On June 14, 2007, New York updated its submittal to document its public review process, including notice and comment for the aforementioned areas. EPA determined that the Albany-Schenectady-Troy, Jefferson County, and Rochester nonattainment areas attained the eight-hour ozone standard on March 25, 2008. (*See* 73 FR 15672.) At that time, EPA deferred action on the Essex County area (the area around Whiteface Mountain over 1900 feet[4]) since the air quality data at that time were incomplete. EPA has reviewed additional air quality data since New York's original request and these areas are still recording attainment of the eight-hour ozone standard and the area in Essex County now has sufficient data to show it is attaining the standard, as shown later in Table 1. Recently, on July 30, 2009, New York submitted an updated petition requesting that EPA find that the Poughkeepsie, Buffalo-Niagara Falls and Jamestown areas have attained the eight-hour ozone standard. The request included certified air quality data through the 2008 ozone season.

New Jersey, in its *State Implementation Plan (SIP) Revision for the Attainment and Maintenance of the Ozone National Ambient Air Quality Standard,* submitted to EPA on October 29, 2007, requested that EPA find that the Atlantic City one-hour nonattainment area and Warren County (part of the Allentown-Bethlehem-Easton area) were attaining the one-hour standard.

E. What Are the Likely Effects of These Determinations of Attainment?

EPA's ozone implementation rule at 40 CFR 51.900–918, promulgated under sections 172 and 182 of the Clean Air Act, describes the Clean Air Act requirements for areas designated as not attaining the 1997 eight-hour ozone standard. For areas where air quality is attaining the standard, section 51.918 of the implementation rule provides that, upon a determination of attainment by EPA, the requirements for a state to submit certain required planning SIPs related to attainment of the eight-hour NAAQS, such as attainment demonstrations, reasonable further progress plans and contingency

[2] For the one-hour standard, the other portion of Orange County is in the New York City nonattainment area. The portions of Orange County in each nonattainment area are listed in 40 CFR 81.333.

[3] Note that at the time EPA designated one-hour ozone attainment areas for the 0.12 ppm standard, air monitoring data at the summit of Whiteface Mountain violated the air quality standard but an air quality monitor at the base of the mountain recorded attainment of the standard. Therefore, only the portion of Essex County above 4500 feet in the Whiteface Mountain area was designated as nonattainment. (*See* 40 CFR 81.333.)

[4] Note that at the time EPA designated these areas, two air monitoring monitors on Whiteface Mountain violated the air quality standard but other air quality monitors nearest to Whiteface Mountain, but sited at lower elevations than the monitors on Whiteface Mountain, did not violate the standard, so only the portion of Essex County above 1900 feet in the Whiteface Mountain area was designated as nonattainment. (*See* 40 CFR 81.333.)

measures, shall be suspended. EPA's action only suspends the requirements to submit the SIP revisions discussed above. If this rulemaking is finalized and EPA subsequently determines after notice and comment rulemaking in the **Federal Register** that any of these areas have violated the standard, the basis for the suspension of these requirements for that area would no longer exist, and the area would thereafter have to address the pertinent requirements within a reasonable period of time. EPA would establish that period taking into account the individual circumstances surrounding the particular submissions at issue.

F. How Are These Determinations of Attainment Different From a Redesignation to Attainment?

The determinations that EPA proposes with this **Federal Register** notice, that air quality data show attainment of the ozone standard, are not equivalent to the redesignation of the areas to attainment. Using monitoring data to show attainment of the ozone NAAQS is only one of the criteria set forth in CAA section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated, the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of section 107(d)(3)(E), including a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and a fully-approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully-approved maintenance plan.

III. Did These Areas Attain Their Respective Ozone Standards?

In New York's original request, it certified the air quality data submitted by the state for the years 2004, 2005 and 2006 was accurate and properly quality-assured and met state and EPA monitoring requirements. New York submitted these data to EPA's Air Quality System, where it is available to the public via *http://www.epa.gov/ttn/airs/airsaqs/*. After New York submitted its petition, New York supplied additional certified, quality-assured air quality data from 2007 and 2008 to EPA's Air Quality System database. EPA has reviewed these data to determine if the areas proposed by New York are in attainment when the additional data from 2007 and 2008 are included. Tables 1 and 2 summarize the ozone air quality data for areas in New York and include EPA's evaluation of whether these areas meet EPA's requirements for attaining the one- and eight-hour ozone NAAQS.

New Jersey's air quality data from 2006 through 2008 show that certain parts of the state are attaining the one-hour standard. These data have been certified by the State of New Jersey as being accurate and meeting EPA's requirements for quality. They are summarized in Table 1, along with EPA's evaluation of whether these areas meet EPA's requirements for attaining the one-hour ozone NAAQS. All of these data are also available to the public via *http://www.epa.gov/ttn/airs/airsaqs/*.

TABLE 1—FOURTH HIGHEST CONCENTRATIONS AND DESIGN VALUES FOR THE ONE-HOUR OZONE STANDARD

								Exceedences (Days over 0.124 ppm)		
EPA AQS ID	Site	Year	Valid/ total days **	Four highest daily peak one-hour ozone (ppm)				Actual	Adjusted for missing data	3-year average ***
Allentown-Bethlehem-Easton, PA-NJ Area (includes Warren County, NJ)										
42–077–0004	Allentown, PA ...	2006	214/214	.115	.100	.098	.094	0	0.0	0.0
		2007	213/214	.104	.102	.090	.090	0	0.0	Attainment.
		2008	214/214	.100	.098	.091	.088	0	0.0	
42–095–0025	Freemansburg, PA.	2006	209/214	.111	.100	.094	.091	0	0.0	0.0
		2007	214/214	.105	.105	.093	.091	0	0.0	Attainment.
		2008	214/214	.107	.095	.088	.086	0	0.0	
42–095–8000	Wilson, PA	2006	211/214	.118	.095	.093	.093	0	0.0	0.0
		2007	209/214	.105	.095	.094	.088	0	0.0	Attainment.
		2008	209/214	.106	.093	.085	.084	0	0.0	
Atlantic City, NJ										
34–001–0005	Brigantine, NJ *	2006	211/214	.107	.103	.102	.096	0	0.0	0.0
		2007	199/214	.086	.085	.084	.083	0	0.0	Attainment.
		2007	203/214	.109	.094	.089	.086	0	0.0	
		2008	203/214	.083	.081	.078	.078	0	0.0	
Albany-Schenectady-Troy, NY Area										
36–001–0012	Albany, NY	2006	211/214	.086	.081	.078	.077	0	0.0	0.0
		2007	212/214	.114	.111	.091	.089	0	0.0	Attainment.
		2008	198/214	.107	.096	.089	.082	0	0.0	
36–083–0004	Rensselaer, NY	2006	208/214	.085	.082	.080	.079	0	0.0	0.0
		2007	201/214	.099	.088	.087	.086	0	0.0	Attainment.
		2008	210/214	.097	.096	.090	.083	0	0.0	
36–091–0004	Saratoga, NY	2006	212/214	.099	.086	.083	.082	0	0.0	0.0
		2007	202/214	.113	.096	.095	.090	0	0.0	Attainment.
		2008	212/214	.100	.095	.093	.088	0	0.0	
36–093–0003	Schenectady, NY.	2006	214/214	.079	.076	.074	.074	0	0.0	0.0
		2007	208/214	.100	.097	.081	.077	0	0.0	Attainment.
		2008	211/214	.096	.092	.078	.078	0	0.0	

TABLE 1—FOURTH HIGHEST CONCENTRATIONS AND DESIGN VALUES FOR THE ONE-HOUR OZONE STANDARD—Continued

EPA AQS ID										
Buffalo-Niagara Falls, NY Area										
36–029–0002	Amherst, NY	2006	210/214	.093	.092	.090	.090	0	0.0	0.0
		2007	212/214	.100	.098	.095	.094	0	0.0	Attainment.
		2008	210/214	.088	.087	.082	.080	0	0.0	
36–063–1006	Middleport, NY ..	2006	183/214	.092	.088	.085	.081	0	0.0	0.0
		2007	214/214	.100	.097	.092	.090	0	0.0	Attainment.
		2008	212/214	.084	.081	.080	.079	0	0.0	
Essex Co, NY Area										
36–031–0002	Summit Whiteface Mtn., NY.	2006	196/214	.081	.081	.080	.076	0	0.0	0.0
		2007	197/214	.115	.107	.102	.094	0	0.0	Attainment.
		2008	203/214	.097	.085	.081	.080	0	0.0	
36–031–0003	Base, Whiteface Mtn., NY.	2006	211/214	.094	.083	.080	.077	0	0.0	0.0
		2007	212/214	.103	.092	.091	.086	0	0.0	Attainment.
		2008	212/214	.087	.083	.077	.074	0	0.0	
Jefferson Co, NY Area										
36–045–0002	Perch River, NY	2006	213/214	.104	.094	.092	.091	0	0.0	0.0
		2007	213/214	.081	.080	.079	.078	0	0.0	Attainment.
		2008	213/214	.094	.091	.091	.090	0	0.0	
Poughkeepsie, NY Area										
36–027–0007	Millbrook, NY	2006	205/214	.085	.076	.074	.071	0	0.0	0.0
		2007	214/214	.114	.106	.096	.090	0	0.0	Attainment.
		2008	210/214	.109	.099	.097	.091	0	0.0	
36–071–5001	Valley Central, NY.	2006	214/214	.099	.093	.093	.088	0	0.0	1.0
		2007	211/214	.145	.130	.116	.093	2	2.0	Attainment.
		2008	213/214	.129	.102	.098	.087	1	1.0	
36–079–0005	Mt. Ninham, NY	2006	199/214	.102	.096	.091	.087	0	0.0	0.33
		2007	209/214	.125	.110	.107	.107	1	1.0	Attainment.
		2008	207/214	.099	.097	.092	.090	0	0.0	

* A new site was established nearby the old site. Both sites collected data in 2007 for comparison.
** Each of the sites listed above recorded 75% or more of the required data each year and therefore met EPA's data completeness standards.
*** Attainment occurs when the number of days over 0.124 ppm, averaged over three years, is less than 1.1 days per year.
Note: Ozone concentration data are in parts per million (ppm).

TABLE 2—FOURTH HIGHEST CONCENTRATIONS AND DESIGN VALUES FOR THE EIGHT-HOUR OZONE STANDARD

EPA AQS ID	Site	% Data Collection 2006, 7, 8 (Avg.)	Ozone Concentration data in parts per million (ppm)				Attainment? (design value <85 ppb)
			Fourth highest 2006	Fourth highest 2007	Fourth highest 2008	3-year average (design value) *	
Jamestown, NY Area							
36–013–0006	Dunkirk, NY	96, 99, 99 ..... (98)	.083	.086	.084	.084	Attaining.
36–013–0011	Westfield , NY	97, 97, 97 ..... (97)	.075	.083	.072	.076	Attaining.
Buffalo-Niagara Falls, NY Area							
36–029–0002	Amherst	98, 99, 98 ..... (98)	.083	.085	.076	.081	Attaining.
36–063–1006	Middleport	85, 100, 100 ..... (95)	.074	.082	.074	.076	Attaining.
Essex Co (Whiteface Mtn), NY Area							
36–031–0002	Summit Whiteface Mtn.	88, 91, 94 ..... (91)	.071	.084	.084	.079	Attaining.

TABLE 2—FOURTH HIGHEST CONCENTRATIONS AND DESIGN VALUES FOR THE EIGHT-HOUR OZONE STANDARD—Continued

EPA AQS ID	Site	% Data Collection 2006, 7, 8 (Avg.)	Ozone Concentration data in parts per million (ppm)				Attainment? (design value <85 ppb)
			Fourth highest 2006	Fourth highest 2007	Fourth highest 2008	3-year average (design value)*	
36–031–0003	Base, Whiteface Mtn.	98, 98, 98 (98)	.071	.076	.073	.073	Attaining.
Poughkeepsie, NY Area							
36–027–0007	Millbrook	93, 100, 100 (97)	.064	.078	.081	.075	Attaining.
36–071–5001	Valley Central	100, 99, 99 (99)	.077	.083	.080	.080	Attaining.
36–079–0005	Mt. Ninham	92, 97, 97 (95)	.073	.085	.079	.079	Attaining.

*A design value of 0.08 ppm is the goal for attainment of the eight-hour ozone standard promulgated in 1997. Therefore, any design value less than 0.085 ppm shows attainment of the standard.

As noted in Table 2, an area achieves attainment of the eight-hour ozone standard when an area's monitoring sites all have a design value of less than 0.085 ppm, calculated as described in 40 CFR 50, Appendix I. In this case, all of the sites have a design value less than 0.085 ppm in 2008, which includes the most recent year of air quality data. As noted in a previous **Federal Register** [February 14, 2008 at 73 FR 8637], the monitor at the summit of Whiteface Mountain recorded 64 and 74 percent of the required data in 2004 and 2005, respectively, which was not sufficient to meet EPA's data completeness standards. Air quality data from each of the years 2006, 2007 and 2008 meet EPA's quality requirements and data completeness requirements and allow EPA to determine this area is in attainment.

Based on our review of the air quality data certified by the states, attainment of the eight-hour ozone standard has been reached in all of these areas in New York, and in all of the one-hour nonattainment areas in New York, except for the New York City nonattainment area. The areas in New Jersey outside the New York nonattainment areas have met the one-hour standard.

IV. What Is EPA Proposing?

EPA's review of air quality data from 2006 to 2008 shows that ozone nonattainment areas of Buffalo-Niagara Falls, Jamestown, Essex County (Whiteface Mountain), and Poughkeepsie in New York and, in New Jersey, the Atlantic City and the Warren County portion of the Allentown-Bethlehem-Easton areas attained the one-hour standard. Also, the Jamestown, Buffalo-Niagara Falls, Essex County and Poughkeepsie areas in New York have attained the 1997 eight-hour ozone standard.

EPA's determinations are based on the most recent three years of complete, quality-assured monitoring data at all ozone monitoring sites in each of the areas. Specifically, data through the 2008 ozone season demonstrates that these areas attain the standard. As provided in 40 CFR 51.918, if EPA's determinations that these areas have attained the eight-hour ozone standard are made final, they would suspend the requirements under section 182(b)(1) for submission of the reasonable further progress plan and ozone attainment demonstration, the requirements of section 172(c)(9) concerning submission of contingency measures and any other planning SIP relating to attainment of the eight-hour NAAQS. This suspension of requirements would be effective as long as the areas continue to attain the 1997 eight-hour ozone standard.

EPA emphasizes that its proposed determinations are contingent upon the continued monitoring and continued attainment and maintenance of the eight-hour ozone NAAQS in these affected areas. If these determinations are finalized and EPA subsequently determines, after notice and comment rulemaking, that an area violated the standard, the basis for the suspension of the planning requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

EPA is soliciting public comments on the issues discussed in this notice. EPA will consider these comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to EPA as discussed in the **ADDRESSES** section of this **Federal Register.**

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it 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).

This proposed rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does

not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act.

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 15, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

[FR Doc. E9–22932 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2009–0579, EPA–HQ–SFUND–2009–0580, EPA–HQ–SFUND–2009–0581, EPA–HQ–SFUND–2009–0582, EPA–HQ–SFUND–2009–0583, EPA–HQ–SFUND–2009–0586, EPA–HQ–SFUND–2009–0587, EPA–HQ–SFUND–2009–0590, EPA–HQ–SFUND–2009–0591; FRL–8961–5]

RIN 2050–AD75

National Priorities List, Proposed Rule No. 51

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add nine sites to the General Superfund Section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 23, 2009.

ADDRESSES: Identify the appropriate Docket Number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Salt Chuck Mine	Outer Ketchikan County, AK	EPA–HQ–SFUND–2009–0579
Millsboro TCE	Millsboro, DE	EPA–HQ–SFUND–2009–0580
JJ Seifert Machine	Ruskin, FL	EPA–HQ–SFUND–2009–0581
Kerr-McGee Chemical Corp—Jacksonville	Jacksonville, FL	EPA–HQ–SFUND–2009–0582
Chemetco	Madison County, IL	EPA–HQ–SFUND–2009–0583
Gratiot County Golf Course	St. Louis, MI	EPA–HQ–SFUND–2009–0586
Kerr-McGee Chemical Corp—Navassa	Navassa, NC	EPA–HQ–SFUND–2009–0587
Black Butte Mine	Cottage Grove, OR	EPA–HQ–SFUND–2009–0590
Van der Horst USA Corporation	Terrell, TX	EPA–HQ–SFUND–2009–0591

Submit your comments, identified by the appropriate Docket number, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: superfund.docket@epa.gov*
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460.
- *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW., EPA West, Room 3334, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays).

Instructions: Direct your comments to the appropriate Docket number (see table above). 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; that 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 Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT:

Terry Jeng, phone: (703) 603–8852, e-mail: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail Code 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC. metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and

requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known

boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What Is the Sitewide Ready for Anticipated Use Measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality while ensuring protectiveness for current and future land users. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Public Review/Public Comment

A. May I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in public Dockets located both at EPA Headquarters in Washington, DC, in the Regional offices and by electronic access at *http://www.regulations.gov* (*see* instructions in the **ADDRESSES** section above).

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional Dockets after the publication of this proposed rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional Dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW.; EPA West, Room 3334, Washington, DC 20004; 202/566–0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SMR–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mailcode SUPRERNB, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6463.

Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD–9–1, San Francisco, CA 94105; 415/972–3219.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

You may also request copies from EPA Headquarters or the Regional Dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may only be viewed in-person; however, EPA dockets are not equipped to either copy and mail out such maps

or scan them and send them out electronically.

You may use the Docket at *http://www.regulations.gov* to access documents in the Headquarters Docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters Docket for this rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional Dockets for this rule contain all of the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional Dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (DC Cir. 1988)). EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. May I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters Docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional Dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in the electronic public Docket at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the public Dockets system, select ''search,'' then key in the appropriate Docket ID number.

J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the Docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In today's proposed rule, EPA is proposing to add nine sites to the General Superfund section of the NPL. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in the table below.

State	Site name	City/county
AK	Salt Chuck Mine	Outer Ketchikan County.
DE	Millsboro TCE	Millsboro.
FL	JJ Seifert Machine	Ruskin.
FL	Kerr-McGee Chemical Corp—Jacksonville	Jacksonville.
IL	Chemetco	Madison County.
MI	Gratiot County Golf Course	St. Louis.
NC	Kerr-McGee Chemical Corp—Navassa	Navassa.
OR	Black Butte Mine	Cottage Grove.
TX	Van der Horst USA Corporation	Terrell.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one 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 otherwise

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 recipients thereof; 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.

2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

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; 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.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small-government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Proposed Rule?

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. Proposing a site on the NPL does not itself impose any costs. Proposal does not mean that EPA necessarily will undertake remedial action. Nor does proposal require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific

decisions regarding what actions to take, not directly from the act of proposing a site to be placed on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site proposal does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What Is Executive Order 13132?

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.''

2. Is Executive Order 13132 Applicable to This Proposed Rule?

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to States or other levels of government. Thus, the requirements of the Executive Order do not apply to this proposed rule.

EPA believes, however, that this proposed rule may be of significant interest to State governments. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA therefore consulted with State officials and/or representatives of State governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this proposed rule were referred to EPA by States for listing. For all sites in this rule, EPA received letters of support either from the Governor or a State official who was delegated the authority by the Governor to speak on their behalf regarding NPL listing decisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Proposed Rule?

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Proposing a site to the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What Is Executive Order 13045?

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.

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

Is this Rule Subject to Executive Order 13211?

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

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), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. What is Executive Order 12898?

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.

2. Does Executive Order 12898 Apply to This Rule?

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 does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, tribal or local governments, this rule will neither increase nor decrease environmental protection.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 17, 2009.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. E9–22936 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2009–0588; FRL–8961–4]

RIN 2050–AD75

National Priorities List, Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add the Newtown Creek site in Brooklyn/Queens, New York, to the General Superfund Section of the NPL.

DATES: Comments regarding this proposed listing must be submitted (postmarked) on or before November 23, 2009.

ADDRESSES: Submit your comments, identified by docket number EPA–HQ–SFUND–2009–0588, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: superfund.docket@epa.gov.*
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency, CERCLA Docket Office (Mail Code 5305T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters, U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW., EPA West, Room 3334, Washington, DC 20004. Such deliveries are only accepted during the docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays).

Instructions: Direct your comments to docket number EPA–HQ–SFUND–2009–0588. 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; that 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 docket addresses and further details on their contents, *see* section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, *phone:* (703) 603–8852, *e-mail: jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail Code 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (*see* 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends

dissociation of individuals from the release.

- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with States on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites from the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, *see* EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What Is the Sitewide Ready for Anticipated Use Measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. *See* Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality while ensuring protectiveness for current and future land users. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Public Review/Public Comment

A. May I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the site in this rule are contained in public dockets located both at EPA Headquarters in Washington, DC, in the Region 2 office and by electronic access at *http://www.regulations.gov* (*see* instructions in the **ADDRESSES** section above).

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Region 2 dockets after the publication of this proposed rule. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Region 2 docket for hours.

The following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW.; EPA West, Room 3334, Washington, DC 20004; 202/566–0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional 2 docket is as follows: Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

You may also request copies from EPA Headquarters or the Region 2 dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may only be viewed in-person; however, EPA dockets are not equipped to either copy and mail out such maps or scan them and send them out electronically.

You may use the docket at *http://www.regulations.gov* to access documents in the Headquarters docket (*see* instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters docket and the Regional dockets and those differences are outlined below.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains the following for the site proposed in this rule: HRS score sheets; Documentation Record describing the information used to compute the score; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Region 2 Docket?

The Region 2 docket for this rule contains all of the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Region 2 docket.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (DC Cir. 1988)). EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. May I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Region 2 docket approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in the electronic public docket at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the public dockets system, select ''search,'' then key in the appropriate docket ID number.

J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment

will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Addition to the NPL

In today's proposed rule, EPA is proposing to add the Newtown Creek site in Brooklyn/Queens, New York, to the General Superfund section of the NPL. This site is being proposed based on an HRS score of 28.50 or above.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one 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 otherwise 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 recipients thereof; 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.

2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

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; 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.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing a site on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative

was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small-government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Proposed Rule?

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. Proposing a site on the NPL does not itself impose any costs. Proposal does not mean that EPA necessarily will undertake remedial action. Nor does proposal require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of proposing a site to be placed on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site proposal does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What Is Executive Order 13132?

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.''

2. Is Executive Order 13132 Applicable to This Proposed Rule?

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to States or other levels of government. Thus, the requirements of the Executive Order do not apply to this proposed rule.

EPA believes, however, that this proposed rule may be of significant interest to State governments. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA therefore consulted with State officials and/or representatives of State governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. The site included in this proposed rule was referred to EPA by the State for listing. EPA received a letter of support from the State official who was delegated the authority by the Governor to speak on his behalf regarding NPL listing decisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

2. Does Executive Order 13175 Apply to This Proposed Rule?

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Proposing a site to the NPL does not impose any costs on a Tribe or require a Tribe to take remedial action. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What Is Executive Order 13045?

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.

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

Is This Rule Subject to Executive Order 13211?

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

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),

directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. What Is Executive Order 12898?

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.

2. Does Executive Order 12898 Apply to This Rule?

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 does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, Tribal or local governments, this rule will neither increase nor decrease environmental protection.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 17, 2009.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. E9–22935 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 74, No. 183

Wednesday, September 23, 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

September 17, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Federal and State Agreement.

OMB Control Number: 0584–0332.

Summary of Collection: The Women, Infants, and Children (WIC) and the Farmers' Market Nutrition Program (FMNP) are carried out by the U.S. Department of Agriculture under Section 17 of the Child Nutrition Act (CNA) of 1966, as amended. Form FNS–339, Federal-State Special Supplemental Nutrition Program Agreement, is the agreement between USDA and the State agency. The agreement empowers USDA to release funds to the State agency to operate the WIC, FMNP and the Senior Farmers' Market Nutrition (SFMNP) Programs.

Need and Use of the Information: The Food and Nutrition Service will collect information to authorize payment of cash grants to State agencies, which operate the programs locally through nonprofit organizations and must ensure coordination of the Programs among the appropriate agencies and organizations. Each FMNP, WIC or SFMNP State agency desiring to administer the programs shall annually enter into a written agreement with USDA for administration of the program in the jurisdiction of the State agency. If the information is not collected Federal funds cannot be provided to the State agency without a signed agreement.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 143.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 36.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–22863 Filed 9–22–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 17, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Tuberculosis.

OMB Control Number: 0579–0146.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, May 13 2002, the Farm Security and Rural Investment Act of 2002. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. In connection with this mission, the Animal and Plant Health Inspection Service (APHIS) participates in the Cooperative State-Federal Bovine

Tuberculosis Eradication Program, which is a national program to eliminate bovine tuberculosis from the United States. This program is conducted under the authorities of the various States supplemented by Federal authorities regulating interstate movement of affected animals.

Need and Use of the Information: APHIS will collect the following information for zoning, testing and animal movement: (1) Submission of a Tuberculosis Management Plan for eradicating the disease within a State or zone, thus avoiding a downgrade in the State or zone TB status; (2) submission of a formal request that a zone within a given State is given a different tuberculosis status than the rest of the State, (3) an epidemiological review of reports of all testing for all zones within the State within 30 days of testing, (4) the submission of an annual report to APHIS in order to qualify for renewal of State or zone status, (5) the completion of a certificate of tuberculin test that must accompany certain regulated animals that are moved interstate, (6) the retention, for 2 years of any certificates documenting the movement of regulated animals into and out of zones; and (7) a Memorandum of Understanding (MOU) with APHIS in which the States agrees to adhere to any conditions for zone recognition particular in that request. Without the information APHIS would not be able to operate an effective tuberculosis surveillance, containment, and eradication program.

Description of Respondents: Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 2,585.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 4,807.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–22864 Filed 9–22–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0121]

Notice of Determination of the Highly Pathogenic Avian Influenza Subtype H5N1 Status of Saxony, Germany

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination regarding the highly pathogenic avian influenza (HPAI) subtype H5N1 status of Saxony, Germany, following an outbreak in 2008. Based on our assessment of the animal health status of Saxony, Germany, which we made available to the public for review and comment through a previous notice, the Administrator has determined that the importation of live birds, poultry carcasses, parts or products of poultry carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds from Saxony, Germany, presents a low risk of introducing HPAI H5N1 into the United States.

DATES: *Effective Date:* This determination will be effective on October 8, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Julia Punderson, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2009, we published in the **Federal Register** (74 FR 28008–28009, Docket No. APHIS–2008–0121) a notice [1] in which we announced the availability for review and comment of an assessment of the animal health status of Saxony, Germany, relative to highly pathogenic avian influenza (HPAI) subtype H5N1. In the assessment, titled ''APHIS' Evaluation of the Status of High Pathogenicity Avian Influenza H5N1 (HPAI H5N1) in Saxony, Germany'' (February 2009), we presented the results of our evaluation of the prevalence of HPAI H5N1 in domestic poultry in light of the actions taken by German animal health authorities during and since the outbreak of HPAI H5N1 that occurred in Saxony in 2008.

Our assessment concluded that Germany had adequate detection and control measures in place at the time of the outbreak, that they have been able to effectively control and eradicate HPAI H5N1 in their domestic poultry populations at that time, and that German animal health authorities have control measures in place to rapidly identify, control, and eradicate the disease should it be reintroduced into Germany in either wild birds or domestic poultry.

[1] To view the notice and the assessment, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0121.*

In our June 2009 notice we stated that if, after the close of the comment period, we could identify no additional risk factors that would indicate that domestic poultry in Saxony, Germany, continue to be affected with HPAI H5N1, we would conclude that the importation of live birds, poultry carcasses, parts of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from Saxony, Germany, presents a low risk of introducing HPAI H5N1 into the United States.

We solicited comments on the notice for 30 days ending on July 13, 2009. We received no comments on our assessment by that date. Therefore we are removing certain restrictions on the importation of these products from Saxony, Germany, into the United States. Specifically:

- We are no longer requiring that processed poultry products from Saxony, Germany, be accompanied by a Veterinary Service import permit and government certification confirming that the products have been treated according to APHIS requirements;
- We are allowing unprocessed poultry products from Saxony, Germany, to enter the United States in passenger luggage; and
- We are removing restrictions regarding Saxony, Germany, from which processed poultry products may originate in order to be allowed entry into the United States in passenger luggage.

However, live birds from Saxony, Germany, are still subject to the inspections at ports of entry and post-importation quarantines set forth in 9 CFR part 93, unless granted an exemption by the Administrator or destined for diagnostic purposes and accompanied by a limited permit.

Done in Washington, DC, this 17th day of September 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–22931 Filed 9–22–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0015]

Notice of Determination of the Highly Pathogenic Avian Influenza Subtype H5N1 Status of Suffolk and Norfolk Counties in England

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination regarding the highly pathogenic avian influenza (HPAI) subtype H5N1 status of Suffolk and Norfolk Counties, England, following outbreaks in 2007. Based on an evaluation of the animal health status of Suffolk and Norfolk Counties, England, which we made available to the public for review and comment through a previous notice, the Administrator has determined that the importation of live birds, poultry carcasses, parts or products of poultry carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds from Suffolk and Norfolk Counties, England, presents a low risk of introducing HPAI H5N1 into the United States.

DATES: *Effective Date:* This determination will be effective on October 8, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Ingrid Kotowski, Import Risk Analyst, Regionalization Evaluation Services International, National Center for Import and Export, VS, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7732.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2009, we published in the **Federal Register** (74 FR 21312–21313, Docket No. APHIS–2009–0015) a notice [1] in which we announced the availability, for review and comment, of an evaluation of the animal health status of Suffolk and Norfolk Counties, England, relative to highly pathogenic avian influenza (HPAI) subtype H5N1. In the evaluation, titled ''Evaluation of the Highly Pathogenic Avian Influenza H5N1 Status of Suffolk and Norfolk Counties, England'' (January 2009), we presented the results of our evaluation of the status of HPAI H5N1 in domestic poultry in Suffolk and Norfolk Counties, England, in light of the actions taken by the United Kingdom's (UK) animal health authorities since the outbreaks in 2007.

Our evaluation concluded that the UK was able to effectively control and eradicate HPAI H5N1 in their domestic poultry populations and that animal health authorities have adequate control measures in place to rapidly identify, control, and eradicate the disease should it be reintroduced into the UK's wild birds or domestic poultry population.

In our May 2009 notice, we stated that if after the close of the comment period we could identify no additional risk factors that would indicate that domestic poultry in Suffolk and Norfolk Counties, England, continue to be affected with HPAI H5N1, we would conclude that the importation of live birds, poultry carcasses, parts of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from regions of Suffolk and Norfolk Counties, England, presents a low risk of introducing HPAI H5N1 into the United States.

We solicited comments on the evaluation for 30 days ending on June 9, 2009. We received one comment by that date, from a poultry breeding and genetics firm. The commenter agreed with the findings of our assessment.

Therefore we are removing our prohibition on the importation of these products from Suffolk and Norfolk Counties, England, into the United States. Specifically:

- We are no longer requiring that processed poultry products from Suffolk and Norfolk Counties, England, be accompanied by a Veterinary Service import permit and government certification confirming that the products have been treated according to APHIS requirements;
- We are allowing unprocessed poultry products from Suffolk and Norfolk Counties, England, to enter the United States in passenger luggage; and
- We are removing restrictions regarding the regions of Suffolk and Norfolk Counties, England, from which processed poultry products may originate in order to be allowed entry into the United States in passenger luggage.

However, live birds from Suffolk and Norfolk Counties, England, are still subject to the inspections at ports of entry and post-importation quarantines set forth in 9 CFR part 93, unless granted an exemption by the Administrator or destined for diagnostic purposes and accompanied by a limited permit.

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

Done in Washington, DC, this 17th day of September 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–22929 Filed 9–22–09; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, the evaluation, and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0015.*

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 84–20A12]

Export Trade Certificate of Review

ACTION: Notice of Issuance (#84–20A12) of an Amended Export Trade Certificate of Review to Northwest Fruit Exporters.

SUMMARY: On September 16, 2009, the Export Trading Company Affairs Office, International Trade Administration, U.S. Department of Commerce, issued an amended Export Trade Certificate of Review (''Certificate'') to Northwest Fruit Exporters (''NFE'').

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Acting Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2006).

Export Trading Company Affairs (''ETCA'') is issuing this notice pursuant to 15 CFR section 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act (15 U.S.C. sections 4001–21) and 15 CFR section 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate:

The original NFE Certificate (No. 84–00012) was issued on June 11, 1984 (49 FR 24581, June 14, 1984), and last amended on September 18, 2008 (73 FR 54561, September 22, 2008).

NFE's Export Trade Certificate of Review has been amended to:

1. *Add the following companies as new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.(1)):* Cervantes Orchards & Vineyards LLC, Grandview, WA; Columbia Valley Fruit, L.L.C., Yakima, WA; Conrad & Gilbert Fruit, Grandview, WA; Diamond Fruit Growers, Odell, OR; Orchard View Farms, Inc., The Dalles, OR; and Wenoka Sales LLC, Wenatchee, WA.

2. *Delete the following companies as Members of the Certificate:* Clasen Fruit

& Cold Storage Co., Union Gap, WA; Lotus Fruit Packing, Inc., Brewster, WA; Snokist Growers, Yakima, WA; and Tree To You, LLC, Chelan, WA.

3. *Change the listing of the following Member:* Change ''Congdon Orchards, Inc., Yakima, WA'' to the new listing ''Congdon Packing Co. L.L.C., Yakima, WA''.

Dated: September 17, 2009.

Jeffrey Anspacher,

Acting Director, Office of Competition and Economic Analysis.

[FR Doc. E9–22865 Filed 9–22–09; 8:45 am]

BILLING CODE P

COUNCIL ON ENVIRONMENTAL QUALITY

Interagency Ocean Policy Task Force—Interim Report

AGENCY: Council on Environmental Quality.

ACTION: Notice of Availability, ''Interim Report of the Interagency Ocean Policy Task Force.''

SUMMARY: On June 12, 2009, the President established an Interagency Ocean Policy Task Force, led by the Chair of the Council on Environmental Quality. The President's memorandum charged the Task Force with, within 90 days, developing recommendations that include: (1) A national policy for the oceans, our coasts, and the Great Lakes; (2) a United States framework for policy coordination of efforts to improve stewardship of the oceans, our coasts, and the Great Lakes; and (3) an implementation strategy that identifies and prioritizes a set of objectives the United States should pursue to meet the objectives of a national policy.

On September 10, 2009, the Task Force submitted its interim report to the President addressing the first three tasks outlined above. To allow for additional public engagement and comment before the President makes any final decision on the interim report, the Task Force is issuing it for a 30-day public comment period.

DATES: Comments should be submitted on or before October 17, 2009.

ADDRESSES: The Task Force Interim Report is available at *http://www.whitehouse.gov/oceans.*

Comments on the Task Force Interim Report should be submitted electronically to *http://www.whitehouse.gov/oceans* or in writing to the Council on Environmental Quality, *Attn:* Michael Weiss, 722 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Weiss, Deputy Associate Director for Ocean and Coastal Policy, at (202) 456–6224.

SUPPLEMENTARY INFORMATION: On June 12, 2009, President Obama issued a Memorandum to the Heads of Executive Departments and Agencies that established an Interagency Ocean Policy Task Force, led by the Chair of the Council on Environmental Quality. That Presidential memo charged the Task Force with, within 90 days, developing recommendations that include:

1. A national policy that ensures the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhances the sustainability of ocean and coastal economies, preserves our maritime heritage, provides for adaptive management to enhance our understanding of and capacity to respond to climate change, and is coordinated with our national security and foreign policy interests. The recommendation should prioritize upholding our stewardship responsibilities and ensuring accountability for all of our actions affecting ocean, coastal, and Great Lakes resources, and be consistent with international law, including customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea.

2. A United States framework for policy coordination of efforts to improve stewardship of the oceans, our coasts, and the Great Lakes. The Task Force should review the Federal Government's existing policy coordination framework to ensure integration and collaboration across jurisdictional lines in meeting the objectives of a national policy for the oceans, our coasts and the Great Lakes. This will include coordination with the work of the National Security Council and Homeland Security Council as they formulate and coordinate policy involving national and homeland security, including maritime security. The framework should also address specific recommendations to improve coordination and collaboration among Federal, State, tribal and local authorities, including regional governance structures.

3. An implementation strategy that identifies and prioritizes a set of objectives the United States should pursue to meet the objectives of a national policy for the oceans, our coasts, and the Great Lakes.

The Task Force was also charged with, within 180 days, developing a recommended framework for effective coastal and marine spatial planning.

On September 10, 2009, the Task Force submitted its interim report to the President addressing the first three tasks laid out in the President's Memorandum. To allow for additional public engagement and comment before the President makes any final decision on the interim report, the Task Force is issuing it for a 30-day public comment period. Though the main focus of the Task Force now turns to developing a recommended framework for effective coastal and marine spatial planning, due to the President by December 9, 2009, the Task Force anticipates that the Interim Report will be refined as the Task Force receives further thoughtful input from the public. With this continued public participation, the Task Force will be able to provide the President with the best possible final recommendation.

Public comments are requested on or before October 17, 2009.

September 17, 2009.

Nancy Sutley,

Chair, Council on Environmental Quality.

[FR Doc. E9–22868 Filed 9–22–09; 8:45 am]

BILLING CODE 3125–W9–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors.

ACTION: Meeting notice.

SUMMARY: Pursuant to 10 U.S.C. 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will meet in the Russell Senate Office Building, Room 236, Washington, DC, on 01 October 2009. The meeting session will begin at 8 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant to Secretary of the Air Force has determined that a portion of this meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that one portion of this meeting be closed to the public because it will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements must address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force Pentagon address detailed below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to allot a specific amount of time for the proposed subject, and invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations before the BoV. Any oral presentations before the BoV shall be in accordance with 41 CFR 102–3.140(d), section 10(a)(3) of the FACA, and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during open portions of this BoV meeting shall be made available upon request.

FOR FURTHER INFORMATION CONTACT: Mr. David Boyle, USAFA Programs Manager, Directorate of Force Development, Deputy Chief of Staff, Manpower and Personnel, AF/A1DOA, 2221 S. Clark St., Ste. 500, Arlington, VA 22202, (703) 604–8158.

SUPPLEMENTARY INFORMATION: Due to scheduling difficulties the U.S. Air Force Academy Board of Visitors was unable to finalize its agenda in time to publish notice of its meeting in the **Federal Register** for the 15-calendar days required by 41 CFR 102–3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E9–22886 Filed 9–22–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the Uranium Data Program Forms EIA–851A, ''Domestic Uranium Production Report—Annual,'' EIA–851Q, ''Domestic Uranium Production Report—Quarterly,'' and EIA–858, ''Uranium Marketing Annual Survey,'' to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.,* at 3507(h)(1)).

DATES: Comments must be filed by October 23, 2009. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Christine Kymn, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202–395–7285 or e-mail to *Christine_J._Kymn@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4638. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Grace Sutherland may be contacted by telephone at (202) 586–6264.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component; (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. EIA–851A, ''Domestic Uranium Production Report—Annual,'' EIA–851Q, ''Domestic Uranium Production Report—Quarterly,'' and EIA–858, ''Uranium Marketing Annual Survey.''
2. Energy Information Administration.
3. OMB Number: 1905–0160.
4. Revision and three year extension.
5. Mandatory.
6. EIA's Uranium Data Program collects basic data necessary to meet EIA's legislative mandates as well as the needs of EIA's public and private customers. Data collected include uranium exploration, reserves, production, processing, and marketing. The data are used for analyses and publications. Respondents include firms and individuals that comprise the U.S. uranium industry.
7. Business or other for-profit.
8. 1,531 hours annually.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act

of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, September 17, 2009.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E9–22941 Filed 9–22–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2055–066]

Idaho Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

September 16, 2009.

a. *Type of Application:* Change in Land Rights.

b. *Project Number:* 2055–066.

c. *Date Filed:* March 31, 2009.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* C.J. Strike Hydroelectric Project.

f. *Location:* The project is located on the Snake and Bruneau Rivers in Owyhee and Elmore Counties, Idaho, and occupies federal lands management by the U.S. Bureau of Land Management. The proposed action would occur in Elmore County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Nathan Gardiner, Idaho Power Company, P.O. Box 70, 1221 W. Idaho Street, Boise, ID 83702. Telephone: (208) 388–2975.

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov.*

j. *Deadline for filing comments and or motions:* October 16, 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:* Idaho Power Company (licensee) proposes to convey in fee approximately 47 acres of project lands along the Snake River to Mr. and Mrs. Tim Landis in exchange for approximately 46.6 acres of existing farming and grazing easements on nearby project lands currently owned by the licensee. The exchange would allow the licensee to manage the 46.6 acres of project lands unencumbered, which are located adjacent to the Snake River, and would provide for enhanced protection of cultural resources in the area.

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–2055) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email 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. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–2055–066).

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. E9–22858 Filed 9–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2016–207]

Tacoma Power; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 16, 2009.

a. *Type of Application:* Amendment Recreation Facilities Plan.

b. *Project Number:* 2016–207.

c. *Date Filed:* August 25, 2009.

d. *Applicant:* Tacoma Power.

e. *Name of Project:* Cowlitz River Hydroelectric Project.

f. *Location:* The project is located on the Cowlitz River in Lewis County, Washington, and occupies Federal lands administered by the U.S. Forest Service and Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Ms. Cindy Swanberg, Tacoma Power, 3628 South 35th Street, Tacoma, WA 98409; telephone: (253) 502–8362; e-mail: *cswanber@cityoftacoma.org.*

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov.*

j. *Deadline for filing comments and/or motions:* October 16, 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:* Tacoma Power proposes to amend the project's approved recreation plan by deleting a requirement to lengthen an existing boat dock at the Mossyrock Park Boat Launch. Instead the licensee proposes to build a new loading dock that is designed to be used during low reservoir levels at the Taidnapam North Boat launch, which was completed in 2008 pursuant to the approved recreation plan. The licensee states that the new configuration will better serve the boating public while eliminating the environmental and aesthetic impacts associated with extending the existing dock at Mossyrock Park. In developing the application, the licensee consulted with the U.S. Fish and Wildlife Service, U.S. Forest Service, Washington Department of Fish and Wildlife, Washington State Parks and Recreation Commission, Washington Recreation and Conservation Office, and Lewis County, Washington.

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-2016) 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. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–2016–207).

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. E9–22857 Filed 9–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13212–001; 13211–001]

Kenai Hydro, L.L.C.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

September 16, 2009.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project Nos.:* 13212–001 and 13211–001.

c. *Date Filed:* August 6, 2009.

d. *Submitted By:* Kenai Hydro, L.L.C.

e. *Name of Project:* Grant Lake/Falls Creek Hydroelectric Project.

f. *Location:* On Grant Lake, Grant Creek and Falls Creek on the Kenai Peninsula, near the community of Moose Pass, Alaska. Portions of the project would occupy Federal lands within the Chugach National Forest, administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 808(b)(1) and 18 CFR 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Steve Gilbert, Kenai Hydro, L.L.C., 6921 Howard Avenue, Anchorage, AK 99504; or e-mail at *SteveG@enxco.com.*

i. *FERC Contact:* Joseph Adamson at (202) 502–8085; or e-mail at *joseph.adamson@ferc.gov.*

j. On August 6, 2009, Kenai Hydro, L.L.C. filed its request to use the Traditional Licensing Process and provided public notice of its request. In a letter dated September 15, 2009, the Director, Division of Hydropower Licensing, approved Kenai Hydro, L.L.C.'s request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Alaska State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Kenai Hydro, L.L.C. as the Commission's non-Federal representative for carrying out informal

consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. Kenai Hydro, L.L.C. filed a Pre-Application Document (PAD, including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.5 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22856 Filed 9–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Draft Environmental Impact Statement for the Abengoa Biorefinery Project Near Hugoton, Stevens County, KS (DOE/EIS–0407D)

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice of Availability.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the *Draft Environmental Impact Statement for the Abengoa Biorefinery Project near Hugoton, Stevens County, KS* (DOE/EIS–0407D) (referred to as the ''Draft Abengoa Biorefinery EIS'' or ''Draft EIS''). This Draft EIS was prepared in accordance with the Council on Environmental Quality's National Environmental Policy Act (NEPA) Implementing Regulations (40 CFR parts 1500–1508) and DOE NEPA Implementing Regulations (10 CFR part 1021). The U.S. Department of Agriculture, Rural Development, (USDA–RD) is a cooperating agency in preparation of the Draft Abengoa Biorefinery EIS.

DOE's Proposed Action in the Draft Abengoa Biorefinery EIS is to provide federal funding to Abengoa Bioenergy Biomass of Kansas, LLC (ABBK) to support the final design, construction, and startup of a commercial-scale integrated biorefinery to be located near the city of Hugoton, Stevens County, Kansas (hereafter referred to as the Abengoa Biorefinery Project). The Abengoa Biorefinery Project would use lignocellulosic biomass as feedstock to produce ethanol and biopower (electricity) sufficient to meet the needs of the biorefinery and to sell to the regional power grid. In the Draft EIS, DOE also evaluates an Action Alternative, under which the biorefinery would not produce electricity for sale to the regional grid, and a No-Action Alternative, under which the biorefinery would not be constructed. The Draft Abengoa Biorefinery Project EIS evaluates the potential direct, indirect, and cumulative environmental impacts from the construction and operation of the Abengoa Biorefinery Project. DOE's preferred alternative is the Proposed Action.

DATES: The public is invited to comment on the Draft EIS, and all comments received no later than November 9, 2009 will be addressed in preparing the Final EIS. Comments received after the end of the public comment period will be considered to the extent practicable. A public hearing on the Draft EIS will be held at the Stevens County Courthouse, 200 East 6th St., Hugoton, Kansas 67951–2606, on October 21 2009, from 6 p.m. to 8 p.m. Written and oral comments will be accepted and given equal weight.

ADDRESSES: Copies of this Draft EIS are available for review at The Stevens County Library, 501 S. Monroe Street, Hugoton, KS 67951, 620–544–2301, and the U.S. Department of Energy, FOIA Reading Room, 1E–190, Forrestal Bldg., 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–3142. The Draft EIS is also available on the Golden Field Office On-line FOIA Public Reading Room: *http://www.eere.energy.gov/golden/Reading_Room.aspx,* at: *http://www.biorefineryprojecteis-abengoa.com* and at: *http://www.gc.energy.gov/NEPA.*

How to Comment on the Draft EIS: Oral and written comments on the Draft EIS will be accepted at the public hearing, or written comments may be mailed to Ms. Kristin Kerwin at the U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, Colorado 80401, or submitted via e-mail to: *kristin.kerwin@go.doe.gov.* Envelopes and the subject line of e-mails and faxes should be labeled ''Draft Abengoa Biorefinery EIS Comments.'' Comments or requests for information may also be submitted via the EIS Web site at *http://www.biorefineryprojecteis-abengoa.com.*

FOR FURTHER INFORMATION CONTACT: For information on the Draft Abengoa Biorefinery EIS, or information on how to comment, contact Ms. Kristin Kerwin by any of the means described above under **ADDRESSES**, or access the Abengoa Biorefinery Project EIS Web site at: *http://www.biorefineryprojecteis-abengoa.com.*

For further information on the DOE Office of Energy Efficiency and Renewable Energy Integrated Biorefinery Program, contact Mr. John Ferrell, Biomass Program Manager (Acting), U.S. Department of Energy, 1000 Independence Avenue, SW., EE–2E, 5H–021, Washington, DC 20585, *telephone:* 202–586–6745, *facsimile:* 202–586–1640, *e-mail: eere_biomass@ee.doe.gov.*

For further information on the U.S. Department of Agriculture Rural Business-Cooperative Service Biorefinery Assistance Program contact: Energy Branch, Attention: Biorefinery Assistance Program, 1400 Independence Avenue, SW., Mail Stop 3225, Washington, DC 20250–3225; *telephone:* 202–720–1400.

For general information regarding the DOE National Environmental Policy Act (NEPA) process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., GC–20, Washington, DC 20585; e-mail *AskNEPA@hq.doe.gov;* telephone 202–586–4600; or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: *Background:* In September 2007, pursuant to the Energy Policy Act of 2005 (EPAct 2005) Section 932, DOE granted an initial award of approximately $15 million to ABBK to advance the conceptual design, initiate the permitting process, and support an environmental review under NEPA for a proposed biomass-to-ethanol and energy facility that would be located adjacent to and west of the city of Hugoton, Stevens County, Kansas. DOE requires completion of the design, permitting, and environmental review obligations prior to deciding whether to co-fund the final design, construction and start-up phases of the project.

On August 25, 2008, DOE initiated the environmental review process by publishing a Notice of Intent in the **Federal Register** (''Notice of Intent to Prepare an Environmental Impact Statement and Notice of Wetlands Involvement for the Abengoa Biorefinery Project Near Hugoton, KS,'' 73 FR 50001). However, based on changes in the scope of the project proposed by ABBK and also ABBK's decision to solicit loan guarantees from DOE's Loan Guarantee Program pursuant to Title XVII of EPAct 2005 and from USDA–RD Biorefinery Assistance Program, DOE published an Amended Notice of Intent in the **Federal Register** on April 29, 2009 (''Amended Notice of Intent To Modify the Scope of the Environmental Impact Statement for the Abengoa Biorefinery Project Near Hugoton, KS'', 74 FR 19543). Public comments were accepted on the original scope of the EIS from August 25 through October 9, 2008, and then on the revised scope from April 29 through May 29, 2009. An initial public scoping meeting was held in Hugoton, KS on September 10, 2008, and an additional public scoping meeting was held on May 19, 2009 to address the revised scope. DOE received both oral and written scoping comments. DOE identified 16 scoping comments and grouped them into three categories reflecting the nature of the individual comments: (1) Support for the project, (2) requests for specific information or analyses and (3) statements of no negative environmental impacts. All requests for specific information are addressed in the Draft EIS.

Proposed Action: DOE's Proposed Action analyzed in the Draft EIS is to provide Federal funding to support the design, construction, and start up of the integrated biorefinery proposed by ABBK. DOE would negotiate an agreement with ABBK to provide approximately $85 million (2008 dollars) for the final design, construction and start up of the biorefinery. The estimated total project cost is approximately $300 million (2008 dollars). At this time, DOE is not considering issuing a loan guarantee for the proposed project. The Abengoa Biorefinery facility would use lignocellulosic biomass (biomass) as feedstock to produce biofuels. Biomass such as corn stover, wheat straw, milo stubble, switchgrass, and other available materials would be harvested as feedstock and fermented to produce ethanol. The biorefinery would also produce electricity.

Under the Proposed Action, the Abengoa Biorefinery would process approximately 2,300 dry metric tons per day of feedstock, which would be obtained from producers within 50 miles of the Abengoa Biorefinery Project site. The biorefinery would produce up to 18 million gallons of denatured ethanol per year using a one-step feedstock hydrolysis and fermentation process. The biorefinery also would produce 92 megawatts of electricity, and 117,000 dry short tons per year of lignin-rich stillage cake. Electricity would be produced via a high-pressure, steam-condensing turbine generator. Seventy megawatts of electricity would be sold commercially. The lignin-rich stillage cake could be sold to a lignin producer, processed and lignin-poor stillage cake would be returned to the biorefinery and burned in the solid fuel boiler.

Action Alternative: For the Action Alternative, DOE would provide Federal funding for an integrated biorefinery that would produce approximately 12 million gallons per year of denatured ethanol, 45,000 dry short tons per year of lignin-rich stillage cake, and 20 megawatts of electricity for use at the facility (none sold commercially).

Under the Action Alternative, the integrated biorefinery would use a two-stage process to pretreat, hydrolyze and ferment sugars for ethanol production, and would produce syngas using a gasification system. A syngas boiler as well as the biomass boilers would produce steam. Steam would be used for ethanol production processes and electricity production. The biomass boilers and the turbines would be used to generate electricity solely to operate the plant (no electricity would be sold commercially) and would be smaller than those for the Proposed Action.

No Action Alternative: Under the No Action Alternative, DOE would not provide Federal funding to ABBK to support the final design, construction, and start-up of the Abengoa Biorefinery Project. Under the No Action Alternative, the Draft EIS presumes that ABBK would not build a biorefinery. The Department recognizes, however, that ABBK could pursue alternative sources of capital for development of the biorefinery.

Preferred Alternative: The Proposed Action is DOE's Preferred Alternative.

Following the end of the public comment period, November 9, 2009, DOE will consider and respond to the comments received, and issue the Final Abengoa Biorefinery EIS. DOE will issue a Record of Decision no sooner than 30 days after the U.S. Environmental Protection Agency issues a Notice of Availability of the Final EIS in the **Federal Register**.

Issued in Golden, CO on September 15, 2009.

Steve Blazek,

NEPA Compliance Officer, Golden Field Office.

[FR Doc. E9–22920 Filed 9–22–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ08–5–003]

Bonneville Power Administration; Transmission Service Terms and Conditions; Notice of Filing

September 16, 2009.

Take notice that on September 14, 2009, Bonneville Power Administration (BPA), pursuant to 18 CFR 35.28(e) and 18 CFR 385.207, filed certain amendments to Attachment K to its Open Access Transmission Tariff in response to the Commission's July 16, 2009 Order, *United States Department of Energy—Bonneville Power Administration,* 128 FERC ¶ 61,065 (2009). BPA also request a declaratory order accepting their proposed Attachment K as revised, finding that it satisfies the Commission's standards for reciprocity.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the

Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 14, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22855 Filed 9–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–233; Docket No. EL00–98–218]

Notice of Filing

September 16, 2009.

In the matter of: San Diego Gas & Electric Company, Complainant v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and The California Power Exchange.

Take notice that on September 11, 2009, the California Power Exchange Corporation filed a refund report in compliance with the Commission's May 21, 2009 Order, *Order Approving Settlement,* 127 FERC 61,145.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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 October 2, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22853 Filed 9–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System Power Rates

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2009 Power Repayment Studies which show the need for an increase in annual revenues to meet cost recovery criteria. Such increased revenues are needed primarily to cover increased investments and replacements in hydroelectric generating facilities and increased operation and maintenance expenses. The Administrator has developed proposed Integrated System rates, which are supported by a rate design study, to recover the required revenues. The June 2009 Revised Study indicates that the proposed rates would increase annual system revenues approximately 10.8 percent from $160,255,300 to $177,586,158.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end November 23, 2009. Upon request, a combined Public Information and Comment Forum (Forum) will be held in Tulsa, Oklahoma at 9 a.m. on October 7, 2009.

ADDRESSES: The Forum will be held in Southwestern's offices, Room 1460, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. James K. McDonald, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6690, *jim.mcdonald@swpa.gov.*

SUPPLEMENTARY INFORMATION: Originally established by Secretarial Order No. 1865 dated August 31, 1943, Southwestern is an agency within the U.S. Department of Energy created by the Department of Energy Organization Act, Public Law 95–91 (1977). Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these States plus Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are those associated with Southwestern's transmission facilities, which consist of 1,380 miles of high-voltage transmission lines, 24 substations, and 46 microwave and VHF radio sites. Costs associated with the Sam Rayburn and Robert D. Willis Dams, two Corps of Engineers projects that are isolated hydraulically, electrically, and financially from the Integrated System are repaid under separate rate schedules and are not addressed in this notice.

Following Department of Energy guidelines, Southwestern, prepared a Current Power Repayment Study (''Study'') using existing system rates. (The guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2, entitled Power Marketing Administration Financial Reporting). The Study indicates that Southwestern's legal requirement to repay the investment in power generating and transmission facilities for power and energy marketed by Southwestern will not be met without an increase in revenues. The need for increased revenues is primarily due to increased investments and replacements in hydroelectric generating facilities for the U.S. Army's Corps of Engineers (Corps) and increased operations and maintenance costs for both Southwestern and the Corps. The Revised Power Repayment Study shows that additional annual revenues of $17,330,858 (a 10.8 percent increase) are needed to satisfy repayment criteria.

A Rate Design Study has also been completed which allocates the revenue requirement to the various system rate schedules for recovery, and provides for

transmission service rates in general conformance with F.E.R.C. Order Nos. 888 and 888 (A–C). The proposed new rates would increase estimated annual revenues from $160,255,300 to $177,586,158 and would satisfy the present financial criteria for repayment of the project and transmission system investments within the required number of years. As indicated in the Integrated System Rate Design Study, this revenue would be developed primarily through increases in the charges for power sales capacity and energy and transmission services, to include some of the ancillary services for deliveries of both Federal and non-Federal power and associated energy from the transmission system of Southwestern.

A second component of the Integrated System rates for power and energy, the Purchased Power Adder (PPA), produces revenues which are segregated to cover the cost of power purchased to meet contractual obligations. The PPA is established to reflect what is expected to be needed by Southwestern to meet purchased power needs on an average annual basis. Southwestern proposes that the PPA rate will remain the same. This rate reflects present market rates as applied to our projected power needs. Also, the Administrator's authority to adjust the PPA at his or her discretion with the Purchased Power Adder Adjustment (PPAA) will remain the same which limits the adjustments to two per year not to exceed ± 6.7 mills per kilowatthour per year. The Administrator will use this discretion to reduce the current PPAA (4.5 mills per kilowatthour) to zero effective January 1, 2010. The Administrator will also have (with this discretion) another opportunity to implement a change to the PPAA up to the limit of ± 6.7 mills per kilowatthour per year to ensure recovery of purchased power costs. (The Administrator's discretionary authority to adjust the PPA with the PPAA, no more than twice annually, not to exceed ± 6.7 mills per kilowatthour per year, was approved by the Federal Energy Regulatory Commission in the *United States Department of Energy—Southwestern Power Administration (Integrated System) 118 F.E.R.C. ¶ 62,162 (2007)).*

A new component for regulation service has been proposed to the existing rate schedules to include an adder for the requirement of supplying regulation service to those customers inside the Balancing Authority Area. This Regulation Purchased Adder is being proposed so that all users of regulation service within the Balancing Authority Area are appropriately assessed for their consumption of the service that is purchased to supplement the Federal resource used to support the Balancing Authority's requirement to regulate for loads. A copy of the proposed Regulation Purchased Adder language contained within the proposed Rate Schedules can be requested from Mr. James K. McDonald at the address listed above.

Below is a general comparison of the existing and proposed system rates:

	Existing rates	Proposed rates
Generation rates	**Rate Schedule P–06A (System Peaking)**	**Rate Schedule P–09 (System Peaking)**
Capacity:		
Grid or 138–161kV	$3.51/kW/Mo	$4.06/kW/Mo.
Required Ancillary Services (generation in control area).	$0.10/kW/Mo	$0.11/kW/Mo.
Regulation & Freq. Response (generation in control area).	$0.09/kW/Mo	$0.09/kW/Mo.
Regulation Purchased Adder (load within SWPA BA).		prorata share of total energy cost.
Reserve Ancillary Services (generation in control area).	$0.0184/kW/Mo	$0.0184/Kw/Mo.
Transformation Service 69 kV (applied to usage, not reservation.	$0.30/kW/Mo	$0.42/kW/Mo.
Energy:		
Peaking Energy	$0.0082/kW/Mo	$0.0086/kW/Mo.
Supplemental Peaking Energy	$0.0082/kW/Mo	$0.0086/kW/Mo.
Purchased Power Adder	$0.0067	$0.0067.
Administrator's Discretionary Adder Adjustment Limit.	±$0.0067 annually	±$0.0067 annually.
Transmission rates	**Rate Schedule NFTS–06A (Transmission)**	**Rate Schedule NFTS–09 (Transmission)**
Capacity (Firm Reservation with energy):		
Grid or 138–161 kV	$0.095/kW/Mo, $0.238/kW/Week, $0.432/kW/Day.	$1.18/kW/Mo, $0.295/kW/Week, $0.0536/kW/Day.
Required Ancillary Services (generation in control area).	$0.10/kW/Mo, or $0.025/kW/Week, or $0.0045/kW/Day.	$0.11/kW/Mo, or $0.028/kW/Week, or $0.005/kW/Day.
Reserve Ancillary Services (generation in control area).	$0.0184/kW/Mo, or $0.0046/kW/Week, or $0.00084/kW/Day.	$0.0184/kW/Mo, or $0.0046/kW/Week, or $0.00084/kW/Day.
Regulation & Freq Response (deliveries within control area).	$0.09/kW/Mo, or $0.023/kW/Week, or $0.0041/kW/Day.	$0.09/kW/Mo, or $0.023/kW/Week, or $0.0041/kW/Day.
Transformation Service 69 kV and below (applied on usage, not reservation) Weekly and daily rates not applied.	$0.03/kW/Mo	$0.42/kW/Mo.
Capacity (Non-firm with energy)	No capacity charge, 80% of firm monthly charge divided by 4 for weekly rate, divided by 22 for daily rate, and divided by 352 for hourly rate.	No capacity charge, 80% of firm monthly charge divided by 4 for weekly rate, divided by 22 for daily rate, and divided by 352 for hourly rate.
Network Service	$0.95/kW/Mo	$1.18/kW/Mo.

	Existing rates	Proposed rates
Required Ancillary Services	$0.10/kW/Mo	$0.11/kW/Mo.
Reserve Ancillary Services (generation in control area).	$0.00184/kW/Mo	$0.00184/kW/Mo.
Regulation & Freq Response (deliveries within control area).	$0.09/kW/Mo	$0.09/kW/Mo.
Excess energy rates	**Rate Schedule EE–06 (Excess Energy)**	**Rate Schedule EE–09 (Excess Energy)**
Energy	$0.0082/kWh	$0.0086/kW/h.

Opportunity is presented for Southwestern's customers and other interested parties to receive copies of the Integrated System Studies. If you desire a copy of the Integrated System Power Repayment Studies and Rate Design Study Data Package, submit your request to Mr. James K. McDonald, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, One West Third, Tulsa, OK 74103 or (918) 595–6690, *jim.mcdonald@swpa.gov.*

Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR 903). A Public Information and Comment Forum is tentatively scheduled for October 7, 2009, to explain to the public the proposed rates and supporting studies and to allow for comment. A chairman, who will be responsible for orderly procedure, will conduct the Forum if a Forum is requested. Questions concerning the rates, studies, and information presented at the Forum will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing, except that questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices.

Persons desiring to attend the Forum should indicate in writing (address cited above) by letter, e-mail or facsimile transmission (918–595–6656) by October 1, 2009, their intent to appear at such Forum. If no one so indicates his or her intent to attend, no such Forum will be held. Persons interested in speaking at the Forum should submit a request to Mr. James K. McDonald, Assistant Administrator, Southwestern, at least seven (7) calendar days prior to the Forum so that a list of forum participants can be developed. The chairman may allow others to speak if time permits.

A transcript of the Forum will be made. Copies of the transcript may be obtained, for a fee, from the transcribing service. Copies of all documents introduced will also be available from the transcribing service upon request for a fee. If you desire a copy of the transcript or any documents introduced, submit your request to Mr. James K. McDonald, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, One West Third, Tulsa, OK 74103 or (918) 595–6690, *jim.mcdonald@swpa.gov.*

A copy of all written comments or an electronic copy in MS Word on the proposed Integrated System Rates is due on or before November 23, 2009. Comments should be submitted to Mr. James K. McDonald, Assistant Administrator, Southwestern, at the above-mentioned address for Southwestern's offices.

Following review of the oral and written comments and the information gathered in the course of the proceeding, the Administrator will submit the finalized Integrated System Rate Proposal, Power Repayment Studies, and Rate Design Study in support of the proposed rates to the Deputy Secretary of Energy for confirmation and approval on an interim basis, and subsequently to the Federal Energy Regulatory Commission (Commission) for confirmation and approval on a final basis. (Procedures for the confirmation and approval of rates for the Federal Power Marketing Administrations are found at title 18, part 300, subpart L of the Code of Federal Regulations (18 CFR 300).) The Commission will allow the public an opportunity to provide written comments on the proposed rate increase before making a final decision.

Dated: September 17, 2009.

Michael Brairton,

Deputy Assistant Administrator.

[FR Doc. E9–22925 Filed 9–22–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–791–000]

MoGas Pipeline LLC; Notice of Informal Technical Conference

September 16, 2009.

Take notice that an informal technical conference will be convened in this proceeding commencing at 10 a.m. on Tuesday, September 22, 2009, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Lorna Hadlock. *Lorna.Hadlock@FERC.GOV,* (202) 502–8737.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22852 Filed 9–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974: Notice of New System of Records

September 16, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of new system of records.

SUMMARY: The Federal Energy Regulatory Commission (the Commission), under the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, is publishing a description of a new system of records.

ADDRESSES: Comments and requests for further information should be directed to the following address: Director, Division of Payroll, Application and Integration, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jennifer Nye, Director, Division of Payroll, Application and Integration, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, (202) 502–6679.

SUPPLEMENTARY INFORMATION:

I. Report on the New System

A. Background

The Privacy Act of 1974, 5 U.S.C. 552a, requires that each agency publish a notice of the existence and character of each new or altered ''system of records.'' 5 U.S.C. 552a(a)(5). This Notice identifies and describes the Commission's new system of records. A copy of this report has been distributed to the Speaker of the House of Representatives and the President of the Senate as the Act requires. The Commission has adopted a new system of records under the Privacy Act of 1974. This system does not duplicate any existing agency system. The notice includes for the system of records the name; location; categories of individuals on whom the records are maintained; categories of records in the system; authority for maintenance of the system; each routine use; the policies and practices governing storage, retrievability, access controls, retention and disposal; the title and business address of the agency official responsible for the system of records; procedures for notification, access and contesting the records of each system; and the sources for the records in the system. 5 U.S.C. 552(a)(4).

B. New System of Records

FERC–56 Management, Administrative, and Payroll System (MAPS) Financials System

FERC–56 SYSTEM NAME:

MAPS Financials

SECURITY CLASSIFCATION:

Unclassified.

SYSTEM LOCATION:

Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street, NE, Washington, DC 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3511.

PURPOSE(S):

For reimbursement by agency to employees' bank accounts for incurred allowable expenses while on official travel.

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

To facilitate the automatic payment to agency employees for allowable expenses previously incurred while on official travel.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Paper and computer.

RETRIEVABILITY:

By individual's name and social security number.

SAFEGUARDS:

Paper records are stored in a locked room with access limited to those employees whose official duties require access. Computer data is backed up, password protected and limited to employees with a requirement to access and maintain it.

RETENTION AND DISPOSAL:

Records are maintained for 6 years and 3 months after the period covered by the account, and then are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Payroll, Application and Integration, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6679.

NOTIFICATION PROCEDURE:

Requests from individuals to determine if a system of records contains information about them should be directed to the System Manager.

RECORD ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as notification procedure above.

RECORD SOURCE CATEGORIES:

Employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22854 Filed 9–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Washington-Action Agency Estuary Habitat Memorandum of Agreement Record of Decision

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

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD under the National Environmental Policy Act (NEPA) for the Estuary Habitat Memorandum of Agreement (MOA) with the State of Washington consistent with and tiered to the Fish and Wildlife Implementation Plan Environmental Impact Statement (DOE/EIS–0312, April 2003) and ROD (October 31, 2003). The NEPA ROD for the MOA is included as part of the Administrator's ROD for the MOA. BPA has decided to enter into a MOA with the State of Washington and two Federal agencies (the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation) to provide for a 9-year funding commitment for Columbia River Estuary habitat projects to help strengthen populations of steelhead and salmon listed under the Endangered Species Act. The Columbia River Estuary includes the mainstem Columbia River from the mouth of the River at its confluence with the Pacific Ocean, up to Bonneville Dam, including tidally-influenced tributaries below Bonneville Dam. The Columbia River

Estuary includes important habitat for all Columbia Basin salmon and steelhead species, as well as a wide variety of other fish and wildlife species. The MOA is consistent with and will work in concert with the 2008 Biological Opinion issued by the National Oceanic and Atmospheric Administration-Fisheries for the Federal Columbia River Power System for listed salmon and steelhead. The MOA also supports BPA's implementation of the Northwest Power and Conservation Council's Columbia Basin Fish and Wildlife Program.

ADDRESSES: Copies of the ROD may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD is also available on the BPA Web site, *http://www.bpa.gov/corporate/pubs/rods/2008/.*

FOR FURTHER INFORMATION CONTACT: Sandra Ackley, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *sjackley@bpa.gov*.

Issued in Portland, Oregon, on September 15, 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E9–22926 Filed 9–22–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Request for Information (RFI)—Photovoltaic (PV) Manufacturing Initiative

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for Information (RFI)—Photovoltaic (PV) Manufacturing Initiative.

SUMMARY: The Department of Energy (DOE) today gives notice of a Request for Information on the PV Manufacturing Initiative. The ''PV Manufacturing Initiative'' is intended to coordinate stakeholders and technology development efforts across the solar community to facilitate the development of a strong PV manufacturing industry in the United States. The primary goals of this initiative include supporting the creation of a robust United States-based PV manufacturing technology including infrastructure and supply chain base, developing a highly trained workforce with the critical skills required to meet the needs of a rapidly growing industry, and speeding the implementation of new cutting edge technologies.

There are three separate models currently under consideration: University-Led Consortia, Collaborative Industry-Led Consortia, and Manufacturing Development Facilities, which are described in full detail in the **SUPPLEMENTARY INFORMATION** section. This Request for Information (RFI) seeks comments on the general concept, potential benefits or obstacles, the overall merits of the idea, alternatives, and the relative priority of this activity. DOE will evaluate responses to this RFI to determine the best approach to move forward.

DATES: Responses to this RFI must be submitted by 11:59 PM Eastern Time on September 30, 2009.

ADDRESSES: All responses to this RFI must be delivered electronically in Microsoft Word (.doc or .docx) format as an attachment to an e-mail sent to the following e-mail address: *PVManufInit@go.doe.gov.* E-mails should have the subject line ''PV Manufacturing Initiative Response''.

FOR FURTHER INFORMATION CONTACT: Any questions about the content of this RFI must be sent to the following e-mail address: *PVManufInit@go.doe.gov.* E-mails should have the subject line ''Question''.

SUPPLEMENTARY INFORMATION:

Program Manager/Area

JoAnn Milliken, Acting Program Manager, Solar Energy Technologies Program, Office of Energy Efficiency and Renewable Energy.

Background and Rationale

The mission of the Department of Energy's (DOE) Solar Energy Technologies Program (SETP) is to accelerate the wide-spread adoption of solar electric technologies across the United States through a program of applied research and development, demonstration, and market transformation activities. This mission aims to diversify the Nation's electricity supply options, increase national security, and improve the environment. The SETP mission is consistent with the Energy Policy Act of 2005 and DOE's Strategic Plan.

During the past decade, worldwide demand for and production of PV energy systems has been growing at a compounded annual growth rate of more than 30%. This growth has taken place in response to government supported programs in Germany, Spain, and other countries outside the United States. This demand for PV products has the potential to also grow in the United States due to new and emerging Federal and State support programs and favorable solar conditions, as well as declining system costs. Currently, the United States, is not a major manufacturer of PV products and, therefore, not well-positioned to take advantage of this opportunity's potential to create a strong domestic industry.

The ''PV Manufacturing Initiative'' is intended to coordinate stakeholders and technology development efforts across the solar community to facilitate the development of a strong PV manufacturing industry in the United States. The primary goals of this initiative include supporting the creation of a robust United States-based PV manufacturing technology including infrastructure and supply chain base, developing a highly trained workforce with the critical skills required to meet the needs of a rapidly growing industry, and speeding the implementation of new cutting edge technologies.

Three separate models are currently under consideration: (1) University-led consortia guided by industry that would conduct industry-relevant manufacturing research projects; (2) collaborative industry-led consortia that will develop and implement manufacturing research projects with shared intellectual property (IP); and (3) manufacturing development efforts, possibly implemented through common facilities, for equipment and process development with individual companies maintaining exclusive ownership of IP.

Proposed Strategy

If a Funding Opportunity Announcement (FOA) is developed from this RFI, it will enable DOE to launch a major PV Manufacturing Initiative that will accelerate development and provide a strong base for a domestic United States PV industry. DOE anticipates that up to $30M may be available to fund the PV Manufacturing Initiative in the first year. Of that, DOE anticipates that approximately $5M may be devoted to a single or multiple awards for University-Led Consortia. The remaining $25M may be used to fund single or multiple awards for Collaborative Industry-led Consortia and/or Manufacturing Development Facilities.

All proposals to implement PV Manufacturing Initiative models would be evaluated according to a competitive award process. In all cases, successful proposals would be expected to maximize the number of alternative

funding sources, provide geographic diversity, incorporate a broad base of the PV industry, and have a detailed plan for the management of intellectual property, consortium membership (if a consortia is proposed), and other governance issues. All PV technologies (*i.e.,* wafer, thin film, and concentrator) and combinations of technologies may be considered. The Industry-led models (the Collaborative Industry-led Consortia and Manufacturing Development Facilities) are intended to allow the integration of universities and workforce development; likewise, the University-Led Consortia model should have strong ties to industry. All model approaches are also intended to allow for the technical participation of national laboratories, as defined in section 2 of the Energy Policy Act of 2005. Regarding financial participation, each model encourages inclusion of state economic development or other funding organizations.

Entities who apply for multiple awards should be able to demonstrate that they can complete all the work proposed.

Below are characteristics of the three models being considered to implement the goals of the PV Manufacturing Initiative.

University-Led Consortia

DOE would maintain a constant level of funding over the first 5 years for each University-Led Consortium, with the option to extend for 5 years either through an extension of the existing award, or as a subsequent competitive opportunity. Additional sources of funding would be expected by industry participants and universities. The consortia would select projects proposed by the universities in consultation with industry.

The specific problems to be addressed will be identified through rigorous planning and implementation of industry-relevant collaborative research plans. Based on the development opportunities identified, the consortia will fund development projects with the expectation of delivering new offerings to market within 2–5 years. Participation in standards or roadmap planning activities could be considered part of the scope of these consortia.

Successful consortia will provide interested graduate-level and post-doctoral students with opportunities for direct experience in research and development (R&D) projects and hands-on training in industrially viable manufacturing processes. The consortia would also address how its relationship with the PV industry is expected to produce graduates from the university that have a thorough understanding of PVs from materials to systems, excellent proficiency in device, module and system aspects of PVs, and the technical communication skills that are highly valued by the industry.

Collaborative Industry-Led Consortia

DOE support for each Collaborative Industry-Led Consortium would fund initial projects in combination with other funding sources, with the DOE share of support gradually decreasing over 5 years and industry and other parties assuming a greater share over the same time span. Additionally, it is expected that all industry participants would equitably share in the intellectual property developed through each consortium.

The specific problems to be addressed will be identified through rigorous planning and implementation of industry relevant collaborative research plans. Based on the development opportunities identified, the consortia will fund development projects with the expectation of delivering new offerings to market within 2–5 years. Because of the anticipated membership of diverse companies across the PV industry, it may be desirable for these consortia to serve as a major resource and leading contributors to industry-wide standards and roadmap development.

Manufacturing Development Facilities

DOE funding for Manufacturing Development Facilities would provide initial awards to set up the facilities, with additional funding for these facilities also expected to come through the organizing entity, user fees, equipment providers, as well as other participants. DOE funding would be gradually reduced over 1–3 years with other participants assuming a greater share. Manufacturing Development Facility awards could be executed with an organization with ties to the PV industry, industry-led consortium, or as an individual or non-related separate entity. Either new or retooled manufacturing development facilities could be established. These facilities will assist, potentially, a wide-range of PV companies in making the transition to commercial production. In contrast to the Collaborative Industry-Led Consortia, IP developed through these facilities will be owned by user companies.

Manufacturing Development Facilities could be implemented with some or all of the following characteristics: provide tools with common uses to innovate and test processing parameters; facilitate matchmaking between process innovators and the development facilities of equipment manufacturers; enable users to access process development and characterization capabilities to aid benchmarking and troubleshooting manufacturing processes; and give users access to technical expertise and manufacturing equipment to speed development of full commercial manufacturing capability.

Participation in standards or roadmap planning activities could be considered part of the scope of work for the Manufacturing Development Facility awardees.

Anticipated Award and Financial Information, if a Funding Opportunity Results From This RFI

Total Estimated Cost of the Project: $125,000,000–$200,000,000 (DOE and Cost share) depending on mix of models selected.

Total DOE Funding Anticipated: $100,000,000.

Initial Funding: $30,000,000.

Anticipated Level of Required Cost Share:

University Led Collaborative Consortia, 20%.

Collaborative Industry Led Consortia, 50%.

Manufacturing Development Facilities, 50%.

Fiscal Year of Initial Funding: FY10.

Estimated Project Period of Awards:

University-Led Consortia, 5 years.

Collaborative Industry-Led Consortia, 5 years.

Manufacturing Development Facilities, 1–3 years.

Qualifications or Restricted Eligibility:

The University-Led Consortia are restricted to domestic universities. Industry participants for the Collaborative Industry-Led Consortia must have United States-based PV research facilities and demonstrated intent for United States manufacturing within 3 years. All other participants must be United States-based organizations.

DOE Laboratory Involvement:

National laboratories may not apply as prime applicants, but may apply as team members.

Request for Information Guidelines

Respondents are asked to specifically comment on the questions below. Respondents are also encouraged to comment on the general concept, potential benefits or obstacles, the overall merits of this idea, alternatives, and the relative priority of this activity. DOE will evaluate responses to this RFI to determine the best approach to move forward.

Questions

(1) *Concept:*

• Please comment on the three models comprising the PV Manufacturing Initiative. How well is the problem framed, and are the models identified correct possible solutions? Will the models identified accomplish the goals of the Initiative? Are there other, more expedient approaches to achieving the goals? Should the models be modified? Do any of the models have higher priority? Are there other models that have not been discussed that should also be considered?

• What PV technologies would most likely succeed using these or other models?

• What are the most likely organizational barriers that may arise (*e.g.* IP sharing issues), and are there solutions DOE should consider?

(2) *Benefits:*

• What do you see as the greatest contributions the PV Manufacturing Initiative can make to establish a strong manufacturing base and supply chain for the United States PV industry?

(3) *Eligibility:*

• Do you agree with the eligibility criteria for the leads and participants for the University-Led Consortia? What about the Collaborative Industry-Led Consortia? Manufacturing Development Facilities?

• Should ''for profit'' consortia be considered or only non-profit entities?

• Should there be a minimum number of partners required by DOE for award or could a consortium be contained within one institution with far-reaching activity?

(4) *Funding:*

• Would it be better to fund more awards at lower levels or fewer awards at higher levels?

• Does the level of funding seem appropriate given the amount and type of work anticipated?

• Does the level of cost share seem appropriate?

DOE will not pay for information provided under this Request for Information (RFI), and there is no guarantee that a project will be supported as a result of this RFI. This RFI is not accepting applications for financial assistance or financial incentives.

A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed. DOE may also decide at a later date to issue Funding Opportunity Announcements (FOAs), based on consideration of the input received from this RFI or to not issue this opportunity at all.

Respondents are requested to provide the following information at the start of their response to this RFI:

• Company/institutional name,

• Company/institutional contact,

• Type of Business or Institution,

• Address, phone number, and e-mail address,

• Brief description of the operations and mission of business or institution (several sentences will suffice).

All responses to this RFI must be delivered electronically in Microsoft Word (.doc) format as an attachment to an e-mail sent to the following e-mail address: *PVManufInit@go.doe.gov.* E-mails should have the subject line ''PV Manufacturing Initiative Response''. Any questions about the content of this RFI must be sent to the following e-mail address: *PVManufInit@go.doe.gov.* E-mails should have the subject line ''Question''.

Responses to this RFI must be submitted by 11:59 p.m. Eastern Time on September 30, 2009. Responses should be limited to 5 pages. However, more than one response is allowed per respondent. Please identify your answers by responding to a specific question if possible.

We welcome other comments as well. Identifying the comment with the item to which it refers will facilitate aggregating all the responses. Any information obtained as a result of this RFI is intended to be used by the Government on a non-attribution basis for program planning and procurement strategy development. Information or data that is restricted in any way or limited for use by the Government is not solicited and will not be considered. Please do not respond with any information that you deem proprietary or confidential. Responses to this RFI are not confidential and may be published publically on a non-attribution basis. DOE has no obligation to respond to those who submit comments, and/or give any feedback on any decision made based on the comments received, as there is potential for a future Funding Opportunity relative to this subject.

DOE thanks you for your assistance and comments in helping accomplish its mission.

Issued in Golden, CO, on September 4, 2009.

Andrea K. Lucero,

Contracting Officer.

[FR Doc. E9–22930 Filed 9–22–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–463–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

September 16, 2009.

Take notice that on September 10, 2009, ANR Pipeline Company (ANR), 717 Texas Street, Houston, Texas 77002, filed in Docket No. CP09–463–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon by sale to ATP Oil & Gas Corporation (ATP), approximately 9.67 miles of 6-inch diameter pipeline, located in offshore Louisiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, ANR proposes to abandon by sale to ATP, the El 30–34 Facilities, which consist of approximately 9.67 miles of 6-inch diameter pipeline bearing Minerals Management Service Segment No. 8888, ANR Line No. 795, beginning at a point on ATP's Eugene Island Area Block 30 JA Platform and ending at the upstream side of a subsea 8-inch tap valve located on ANR's 20-inch pipeline in Eugene Island Area Block 34 designated as Line No. 733, in Federal Waters, offshore Louisiana. ANR also proposes to abandon its interest in any appurtenances and facilities related to Line No. 795, including, and without limitation, the pipeline riser, metering facilities including Meter No. 512202 (excluding any Electronic Gas Measurement Equipment (EGM)), and deck piping associated with the El 30–34 Facilities. ANR states that they will continue to operate the meter for ATP, and will continue to own, operate, and maintain ANR's existing side valve assembly on ANR's Line No. 733, EGM, and gas sampling equipment.

Any questions regarding the application should be directed to Rene Staeb, Manager, Project Determinations & Regulatory Administration, ANR Pipeline Company, 717 Texas Street, Houston, Texas 77002, or call at (832)

320–5215 or fax (832) 320–6215 or *Rene_Staeb@transcanada.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22859 Filed 9–22–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8792–4]

Access to Confidential Business Information by Syracuse Research Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized contractor, Syracuse Research Corporation (SRC) of Syracuse, NY, to access information which has been submitted to EPA under sections 4, 5, 6, 8, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data is expected to occur on or before September 30, 2009 September 30, 2009.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *scott.sherlock@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **''Federal Register''** listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under Contract Number (EP-W-09-027), contractor SRC of 301 Plainfield Road, Suite 350, Syracuse, NY, will assist the Office of Pollution Prevention and Toxics (OPPT) by providing expertise in the health and environmental sciences, including biotechnology and biostatistics; performing hazard and exposure assessments at the screening level; performing hazard assessments, risk assessments and characteristics of new and existing chemicals; performing expert analysis of science issues and questions; organizing review panels/standards; providing automatic data processing, information management support, and literature and translation support.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number (EP-W-09-027), SRC will require access to CBI submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA to perform successfully the duties specified under the contract. SRC personnel will be given access to information submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, and 21 of TSCA that EPA may provide SRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and SRC's Syracuse, NY and Arlington, VA sites in accordance with EPA's TSCA CBI Protection Manual.

Access to TSCA data, including CBI, will continue until September 30, 2014. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

SRC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential Business Information.

Dated: September 17, 2009.

Matthew G. Leopard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–22916 Filed 9–22–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0167; FRL–8435–8]

Bromine; Antimicrobial Registration Review Final Work Plan and Proposed Registration Review Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's final work plan and proposed registration review decision for the pesticide bromine and opens a public comment period on the proposed decision. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before November 23, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0167, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket identification (ID) number EPA–HQ–OPP–2009–0167. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: *For pesticide-specific information, contact*: K. Avivah Jakob, Chemical Review Manager, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1328; fax number: (703) 308–8090; e-mail address: *jakob.kathryn@epa.gov*.

For general information on the registration review program, contact: Lance Wormell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0523; fax number: (703) 308–8090; e-mail address: *wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the chemical review manager listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions

or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed registration review decision for the pesticide bromine (Bromine Case 4015), and opens a 60–day public comment period on the proposed decision. Bromine is a bromide releasing antimicrobial pesticide that is registered as a mildewstat, bactericide, fungistat and insecticide. Bromine is used to control bacteria and fungi on surfaces of agricultural, commercial, institutional, industrial, residential, and public access premises and equipment. It is also used to treat/disinfect potable water in non-residential settings, aboard ships and on oil and gas drilling/production platforms. In addition, bromine is characterized by low toxicity and is found in nature.

The registration review docket for a pesticide includes earlier documents related to the registration review of the case. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan, for public comment. Because no comments were received, and because the Agency required no further risk assessments to complete registration review of this case, the final work plan and proposed decision were combined into a single document.

The documents in the initial docket described the Agency's rationales for not conducting additional risk assessments for the registration review of bromine. This proposed registration review decision continues to be supported by those rationales included in documents in the initial docket. Following public comment, the Agency will issue a final registration review decision for products containing bromine.

The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006, and appears at 40 CFR part 155, subpart C. The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA, as amended by PRIA in 2007, requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60–day public comment period on all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for bromine. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a ''Response to Comments Memorandum'' in the docket. The final registration review decision will explain the effect that any comments had on the decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review*. Links to earlier documents related to the registration review of bromine are provided at: *http://www.epa.gov/oppsrrd1/registration_review/bromine/index.htm*

B. What is the Agency's Authority for Taking this Action?

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

List of Subjects

Environmental protection, Administrative practice and procedure, Antimicrobials, Bromine, Pesticides and pests.

Dated: September 11, 2009.

Joan Harrigan Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9–22621 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8958–9; Docket ID No. EPA–HQ–ORD–2007–0925]

Draft Integrated Science Assessment for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a document titled, ''Integrated Science Assessment for Carbon Monoxide—Second External Review Draft'' (EPA/600/R–09/019B). This draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development as part of the review of the national ambient air quality standards (NAAQS) for carbon monoxide.

EPA is releasing this draft document to seek review by the Clean Air Scientific Advisory Committee (CASAC) and the public. The draft document does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. EPA will consider any timely public comments submitted in response to this notice when revising the document.

DATES: Comments must be received on or before November 13, 2009.

ADDRESSES: The ''Integrated Science Assessment for Carbon Monoxide—Second External Review Draft'' will be available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of CD–ROM or paper copies will be available. Contact Ms. Debbie Wales by phone (919–541–4731), fax (919–541–5078), or e-mail (*wales.deborah@epa.gov*) to request either of these, and please provide your name, your mailing address, and the document title, ''Integrated Science Assessment for Carbon Monoxide—

Second External Review Draft'' (EPA/600/R–09/019B) to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Thomas C. Long, NCEA; *telephone:* 919–541–1880; *facsimile:* 919–541–2985; or *e-mail: long.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the EPA Administrator to identify certain pollutants that ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air * * *.'' Under section 109 of the Act, EPA is to establish national ambient air quality standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Carbon monoxide (CO) is one of six ''criteria'' pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA and supplementary annexes, in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of EPA's air quality criteria.

On September 13, 2007 (72 FR 52369), EPA formally initiated its current review of the air quality criteria for CO, requesting the submission of recent scientific information on specified topics. A workshop was held on January 28–29, 2008 (73 FR 2490) to discuss policy-relevant science to inform EPA's planning for the CO NAAQS review. Following the workshop, a draft of EPA's ''Plan for Review of the National Ambient Air Quality Standards for Carbon Monoxide'' (EPA–452/D–08–001) was made available in March 2008 for public comment and was discussed by the CASAC via a publicly accessible teleconference consultation on April 8, 2008 (73 FR 12998). EPA finalized the plan and made it available in August 2008 (EPA/452/R–08/005; *http://www.epa.gov/ttn/naaqs/standards/co/s_co_cr_pd.html*). In November 2008, EPA held an authors' teleconference to discuss, with invited scientific experts, preliminary draft materials prepared during the ongoing development of the CO ISA and its supplementary annexes.

The First External Review Draft ISA for CO (EPA/600/R–09/019; *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=203935*) was released on March 12, 2009 (74 FR 10734). This document was reviewed by the CASAC review panel and discussed at a public meeting held May 12–13, 2009 (74 FR 15265). The CASAC held a follow-up public teleconference on June 17, 2009 (74 FR 25530) to review and approve the CASAC CO Review Panel's draft letter providing comments to EPA on the First External Review Draft ISA for CO. Following the teleconference, CASAC sent a final letter report to EPA on June 24, 2009 (*http://yosemite.epa.gov/sab/sabproduct.nsf/4620a620d0120f93852572410080d786/6E648129288BF930852575DF0070A528/$File/EPA-CASAC-09-011-unsigned.pdf*).

After the end of the comment period on the Second External Review Draft ISA for CO, the CASAC review panel will review the draft at a public meeting. Timely public comments received will be provided to the CASAC review panel. A future **Federal Register** notice will inform the public of the exact date and time of that meeting.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0925, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov*
- *Fax:* 202–566–1753
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0925. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: 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. Publicly available docket materials are generally available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center; however, certain materials, such as copyrighted material, are publicly available only in hard copy.

Dated: September 10, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–22953 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8957–5; Docket ID No. EPA–HQ–ORD–2009–0229]

Draft Toxicological Review of Ethyl Tertiary Butyl Ether: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of listening session.

SUMMARY: EPA is announcing a listening session to be held on October 7, 2009, during the public comment period for the external review draft document entitled, ''Toxicological Review of Ethyl Tertiary Butyl Ether: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–08/019A). This listening session is a step in EPA's revised IRIS process, announced on May 21, 2009, to develop human health assessments for inclusion in the IRIS database. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties during the public comment period and before the external peer review meeting. EPA welcomes the scientific and technical comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment in response to the independent external peer review and public comments. All presentations will become part of the official public record.

The EPA's draft assessment and peer review charge are available via the Internet on the National Center for Environmental Assessment's (NCEA) home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.*

DATES: The listening session on the draft IRIS health assessment for Ethyl Tertiary Butyl Ether will be held on October 7, 2009, beginning at 9 a.m. and ending at 4 p.m., Eastern Daylight Time. If you want to make a presentation at the listening session, you should register by September 30, 2009, indicate that you wish to make oral comments at the session, and indicate the length of your presentation. When you register, please indicate if you will need audio-visual aid (*e.g.,* lap top and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by September 30, 2009, the listening session will be cancelled and EPA will notify those registered of the cancellation.

The public comment period for review of this draft assessment was announced previously in the **Federal Register** (FR) (74 FR 42069) on August 20, 2009. As stated in that FR notice, the public comment period began on August 20, 2009, and ends October 19, 2009. Any technical comments submitted during the public comment period should be in writing and must be received by EPA by October 19, 2009, according to the procedures outlined below. Only those public comments submitted using the procedures identified in the August 20, 2009 FR notice by the October 19, 2009 deadline will be provided to the independent peer-review panel prior to the peer-review meeting. The date and logistics for the peer-review meeting will be announced later in a separate FR notice.

Listening session participants who want EPA to share their comments with the external peer reviewers should also submit written comments during the public comment period using the detailed and established procedures included in the aforementioned FR notice (August 20, 2009). Comments submitted to the docket prior to the end of the public comment period will be submitted to the external peer reviewers and considered by EPA in the disposition of public comments. All comments must be submitted to the docket, but comments received after the public comment period closes will not be submitted to the external peer reviewers.

ADDRESSES: The listening session on the draft Ethyl Tertiary Butyl Ether assessment will be held at the EPA offices at Two Potomac Yard (North Building), 7th Floor, Room 7100, 2733 South Crystal Drive, Arlington, Virginia 22202. To attend the listening session, register by September 30, 2009, via e-mail at *Meetings@erg.com* (subject line: Ethyl Tertiary Butyl Ether listening session), by phone: 781–674–7374, or by faxing a registration request to 781–674–2906 (please reference the ''Ethyl Tertiary Butyl Ether Listening Session'' and include your name, title, affiliation, full address and contact information). Please note that to gain entrance to this EPA building to attend the meeting, attendees must have photo identification with them and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, attendees should give the name Christine Ross and the telephone number, 703–347–8592, to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188 and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 a.m., and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the ''Ethyl Tertiary Butyl Ether Listening Session'' and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross at 703–347–8592 or *ross.christine@epa.gov.* To request accommodation of a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: For information on the public listening sessions, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8592; facsimile: 703–347–8689; or e-mail: *ross.christine@epa.gov.* If you have questions about the draft

Ethyl Tertiary Butyl Ether assessment, contact Andrew Hotchkiss, IRIS Staff, National Center for Environmental Assessment, U.S. EPA, 109 T.W. Alexander Drive, B243–01, Durham, NC 27711; *telephone:* 919–541–4164; *facsimile:* 919–541–0245; or *e-mail: hotchkiss.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

This listening session is a step in EPA's revised process, announced on May 21, 2009, for development of human health assessments for inclusion on IRIS. The updated process is posted on the IRIS home page at *http://www.epa.gov/iris.*

Dated: September 10, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–22923 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8954–9; Docket ID No. EPA–HQ–ORD–2009–0245]

Draft Toxicological Review of Hydrogen Cyanide and Cyanide Salts: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and listening session.

SUMMARY: EPA is announcing a public comment period and a public listening session for the external review draft document titled, ''Toxicological Review of Hydrogen Cyanide and Cyanide Salts: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–08/016). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within the EPA's Office of Research and Development (ORD). The public comment period and the external peer-review workshop, which will be scheduled at a later date and announced in the **Federal Register**, are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward the public comments that are submitted in accordance with this notice to the external peer-review panel prior to the meeting for their consideration. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

EPA is also announcing a listening session to be held on October 27, 2009, during the public comment period for this draft document. This listening session is a step in EPA's revised IRIS process, announced on May 21, 2009, to develop human health assessments for inclusion in the IRIS database. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties during the public comment period and before the external peer review meeting. EPA welcomes the scientific and technical comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment in response to the independent external peer review and the public comments. All presentations will become part of the official public record.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: The public comment period begins September 23, 2009, and ends November 23, 2009. Technical comments should be in writing and must be received by EPA by November 23, 2009.

The listening session on the draft IRIS health assessment for Hydrogen Cyanide and Cyanide Salts will be held on October 27, 2009, beginning at 9 a.m. and ending at 4 p.m., Eastern Daylight Time. If you want to make a presentation at the listening session, you should register by October 20, 2009, indicate that you wish to make oral comments at the session, and indicate the length of your presentation. When you register, please indicate if you will need audio-visual aid (*e.g.,* lap top and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by October 20, 2009, the listening session will be cancelled and EPA will notify those registered of the cancellation.

Listening session participants who want EPA to share their comments with the external peer reviewers should also submit written comments during the public comment period using the detailed and established procedures described in the **SUPPLEMENTARY INFORMATION** section of this notice. Comments submitted to the docket prior to the end of the public comment period will be submitted to the external peer reviewers and considered by EPA in the disposition of public comments. All comments must be submitted to the docket, but comments received after the public comment period closes will not be submitted to the external peer reviewers.

ADDRESSES: The draft ''Toxicological Review of Hydrogen Cyanide and Cyanide Salts: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

The listening session on the draft Hydrogen Cyanide and Cyanide Salts assessment will be held at the EPA

offices at Two Potomac Yard (North Building), 7th Floor, Room 7100, 2733 South Crystal Drive, Arlington, Virginia, 22202. To attend the listening session, register by October 20, 2009, via e-mail at *saundkat@versar.com* (subject line: Hydrogen Cyanide and Cyanide Salts listening session), by phone: 703–750–3000 extension 545, or by faxing a registration request 703–642–6954 (please reference the ''Hydrogen Cyanide and Cyanide Salts Listening Session'' and include your name, title, affiliation, full address and contact information). Please note that to gain entrance to this EPA building to attend the meeting, attendees must have photo identification with them and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, attendees should give the name Christine Ross and the telephone number, 703–347–8592, to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188 and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 a.m., and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the ''Hydrogen Cyanide and Cyanide Salts Listening Session'' and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross at 703–347–8592 or *ross.christine@epa.gov.* To request accommodation of a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For information on the public listening sessions, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8592; facsimile: 703–347–8689; or e-mail: *ross.christine@epa.gov.*

If you have questions about the document, contact Kathleen Newhouse, National Center for Environmental Assessment (NCEA),1200 Pennsylvania Ave 8601P, Washington DC, 20460; telephone: 703–347–8641; facsimile: 703–347–8689; or e-mail: *newhouse.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How to Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0245 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's 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. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0245. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the

http://www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: August 21, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–22912 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2009–0297; FRL–8961–8]

RIN 2040–AF08

Drinking Water: Perchlorate Supplemental Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period.

SUMMARY: In an August 19, 2009, **Federal Register** notice, EPA announced that it was seeking comments on additional approaches to analyzing data related to the Agency's preliminary regulatory determination for perchlorate. The additional comments are sought in an effort to ensure consideration of all the potential options for evaluating whether there is a meaningful opportunity for human health risk reduction of perchlorate through a national primary drinking water rule. In response to requests from several stakeholders, this action reopens the public comment period for an additional 15 days.

DATES: EPA must receive your comments on or before October 8, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0297, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2009–0297. 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 FURTHER INFORMATION CONTACT: Eric Burneson, Office of Ground Water and Drinking Water, Standards and Risk Management Division, at (202) 564–5250 or e-mail *burneson.eric@epa.gov.* For general information contact the EPA Safe Drinking Water Hotline at (800) 426–4791 or *e-mail: hotline-sdwa@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The statutory and regulatory background is described in detail in the October 10, 2008, **Federal Register** notice of a preliminary regulatory determination for perchlorate (73 FR 60262) and summarized in the August 19, 2009, **Federal Register** notice of supplemental request for comments (74 FR 41883). Briefly, the Safe Drinking Water Act (SDWA) section 1412, as amended in 1996, requires EPA to make a determination whether to regulate at least 5 contaminants from its contaminant candidate list (CCL) every 5 years. To regulate a contaminant in drinking water, EPA must determine that it meets three criteria: (1) The contaminant may have an adverse effect on human health, (2) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern, and (3) regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems.

On October 10, 2008, EPA published a preliminary regulatory determination for perchlorate, requesting public comment on its determination that perchlorate did not meet the second and third criteria for regulation. On November 12, 2008, EPA published a **Federal Register** Notice (73 FR 66895) reopening the comment period for the preliminary regulatory determination for an additional 15 days. The Agency received 32,795 comment letters on the preliminary regulatory determination for perchlorate. These comments and other supporting materials for the October 10, 2008, notice are available electronically at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OW–2008–0692).

On August 19, 2009, EPA published a **Federal Register** notice of supplemental request for comment on a broader range of alternatives for interpreting the available data on: the level of health concern, the frequency of occurrence of perchlorate in drinking water, and the opportunity for health risk reduction through a national primary drinking water standard. These alternative interpretations may impact the Agency's final regulatory determination for perchlorate. The supporting materials for the August 19, 2009, supplemental notice are available electronically at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OW–2009–0297).

Next Steps

Several stakeholders have requested an extension to the September 18, 2009, comment deadline specified in the August 19, 2009, supplemental notice in order to evaluate EPA's alternative analyses and prepare comments. This action reopens the comment period for an additional 15 days.

The Agency will consider the information and comments submitted in response to the August 19, 2009, supplemental notice until October 8, 2009. EPA will also consider the comments received on the previous

Federal Register Notices pertaining to the perchlorate regulatory determination and all peer review comments before issuing a final regulatory determination for perchlorate. EPA intends to issue a regulatory determination as expeditiously as possible following consideration of the comments and information received by the Agency.

Dated: September 17, 2009.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Water.

[FR Doc. E9–22927 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0218; FRL–8421–5]

Estimating the Drinking Water Component of a Dietary Exposure Assessment; Science Policy, Notice of Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA hereby withdraws the pesticide science policy document entitled ''Estimating the Drinking Water Component of a Dietary Exposure Assessment,'' that was issued in November 1999. This science policy was developed during the implementation of the new safety standard in section 408 of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. EPA's assessment of exposure to residues in drinking water no longer involves performing screening level assessments as described in this policy paper. Instead, the Agency now routinely develops estimates of exposure to pesticides in drinking after using the more advanced methods that EPA has described in other science policy papers.

FOR FURTHER INFORMATION CONTACT: Elizabeth Behl, Environmental Fate and Effects Division, Office of Pesticide Programs (7507P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–6128; fax number: 703–305–6309; e-mail address: *behl.betsy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action, however, may be of interest to persons who produce or formulate pesticides or who register pesticide products. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0218. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

The Food Quality Protection Act of 1996 (FQPA) significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened health protections for infants and children from pesticide risks.

During 1998 and 1999, EPA and the United States Department of Agriculture (USDA) established a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the Tolerance Reassessment Advisory Committee (TRAC), to address FFDCA issues and implementation. TRAC was comprised of more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met from May 27, 1998, through April 29, 1999.

In order to continue the constructive discussions about FFDCA, EPA and USDA established, under the auspices of NACEPT, the Committee to Advise on Reassessment and Transition (CARAT). The CARAT provided a forum for a broad spectrum of stakeholders to consult with and advise the Agency and the Secretary of Agriculture on pest and pesticide management transition issues related to the tolerance reassessment process. The CARAT was intended to further the valuable work initiated by earlier advisory committees toward the use of sound science and greater transparency in regulatory decision-making, increase stakeholder participation, and advise on reasonable transition strategies that reduce risks without jeopardizing American agriculture and farm communities.

As a result of the 1998 and 1999 TRAC process, EPA decided that the implementation process and related policies would benefit from providing notice and comment on major science policy issues. The TRAC identified nine science policy areas it believed were key to implementation of tolerance reassessment. EPA agreed to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In a notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA described its intended approach. Since then, EPA has issued a series of draft and revised documents concerning the nine science policy issues. Publication of this notice is intended to update the public on the status of the science paper ''Estimating the Drinking Water Component of a Dietary Exposure Assessment.''

III. Summary: Why this Policy is No Longer Needed

As a result of the new procedures for estimating concentrations of pesticide residues in drinking water, this notice announces the withdrawal of ''Estimating the Drinking Water Component of a Dietary Exposure Assessment,'' *http://www.epa.gov/fedrgstr/EPA-PEST/1999/November/Day-10/6044.pdf*.

In assessing the risks of pesticide exposure, scientists frequently use mathematical models to predict pesticide concentrations in food, water, residential, and occupational environments. This notice pertains to how the Agency determines pesticide risk from drinking water. (For more information on the models the Agency uses to estimate concentrations of pesticides in drinking water see *http://www.epa.gov/oppefed1/models/water/models4.htm*). The current approach provides a more realistic estimate of exposure through drinking water since actual drinking water consumption data and reported body weight from the Combined Survey of Food Intake by Individuals (CSFII) are used, rather than the standard assumptions used in the approach discussed in ''Estimating the Drinking Water Component of a Dietary Exposure Assessment.''

This action is also responsive to the recommendations made by EPA's Office of Inspector General during its review of EPA's implementation of FQPA. In its report ''Opportunities to Improve Data Quality and Children's Health through the FQPA'' issued January 10, 2006, *http://www.epa.gov/oig/reports/2006/20060110–2006–P–00009.pdf*, the Office of Inspector General recommended that EPA update the status of its Science Policy issue papers. This **Federal Register** notice updates the public on the status of one of the Science Policy papers which has been superseded by other guidance.

List of Subjects

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

Dated: September 16, 2009.

Stephen A. Owens,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E9–22809 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1145; FRL–8959–6]

Final Risk and Exposure Assessment Report for Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final report.

SUMMARY: On or about September 15, 2009, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available a final report, *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: Final Report.* The purpose of this document is to convey the approach taken to assess environmental exposures to ambient oxides of nitrogen and sulfur and to characterize associated public welfare risks, as well as to present the results of those assessments.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Rea, Office of Air Quality Planning and Standards (Mail code C539–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *e-mail: rea.anne@epa.gov; telephone:* 919–541–0053; *fax:* 919–541–0840.

General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2007–1145. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes National Ambient Air Quality Standards (NAAQS) for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

The EPA is currently conducting a joint review of the existing secondary (welfare-based) NAAQS for oxides of nitrogen (NO_X) and oxides of sulfur (SO_X). Because NO_X, SO_X, and their associated transformation products are linked from an atmospheric chemistry perspective as well as from an environmental effects perspective, and because of the National Research Council's (NRC's) 2004 recommendations to consider multiple pollutants in forming the scientific basis for the NAAQS, EPA has decided to jointly assess the science, risks, and policies relevant to protecting the public welfare associated with oxides of nitrogen and oxides of sulfur. This is the first time since NAAQS were established in 1971 that a joint review of these two pollutants has been conducted. Since both the Clean Air Scientific Advisory Committee (CASAC) and EPA have recognized these interactions historically, and the science related to these interactions has continued to evolve and grow to the present day, there is a strong basis for considering them together.

As part of its review of the secondary NAAQS for NO_X and SO_X, EPA is preparing an assessment of exposures and characterization of risks for adverse ecological effects associated with atmospheric NO_X and SO_X deposition. A draft plan describing the proposed approaches to assessing ecological exposures and effects is described in the draft document, *Draft Scope and Methods Plan for Risk/Exposure Assessment: Secondary NAAQS Review for Oxides of Nitrogen and Oxides of Sulfur.* This document was released for public review and comment in March 2008 and was the subject of a consultation with the CASAC on April 2 and 3, 2008. Comments received from that consultation were considered in developing the document titled, *Risk and Exposure Assessment to Support the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First Draft,* which was released for public review and comment in August 2008. This document was the subject of a CASAC review on October 1–2, 2008. Comments received from that review were considered in developing the document titled, *Risk and Exposure Assessment to Support the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: Second Draft,* which was released for public review and comment in June 2009 and was the subject of a CASAC review on July 22–23, 2009. In preparing the final risk and exposure assessment report, EPA considered comments received from CASAC and the public at and subsequent to that meeting.

The *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: Final Report* being released at this time conveys the approach taken to assess ecological effects due to the deposition of ambient NO_X and SO_X,

and presents the results of these analyses. This document will be available online at: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_rea.html.*

Dated: September 14, 2009.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E9–22951 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8949–6]

Availability of FY 08 Grantee Performance Evaluation Reports for the Eight States of EPA Region 4 and 16 Local Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; Clean Air Act Section 105 grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.115) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of eight state air pollution control programs (Alabama Department of Environmental Management; Florida Department of Environmental Protection; Georgia Department of Natural Resources; Commonwealth of Kentucky Department for Environmental Protection; Mississippi Department of Environmental Quality; North Carolina Department of Environment and Natural Resources; South Carolina Department of Health and Environmental Control; and Tennessee Department of Environment and Conservation) and 16 local programs (City of Huntsville Division of Natural Resources, AL; Jefferson County Department of Health, AL; Broward County Environmental Protection Department, FL; City of Jacksonville Environmental Quality Division, FL; Hillsborough County Environmental Protection Commission, FL; Miami-Dade County Air Quality Management Division, FL; Palm Beach County Health Department, FL; Pinellas County Department of Environmental Management, FL; Louisville/Jefferson County Metro Government, KY; Forsyth County Environmental Affairs Department, NC; Mecklenburg County Land Use and Environmental Services Agency, NC; Western North Carolina Regional Air Quality Agency, NC; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; Memphis-Shelby County Health Department, TN; Knox County Department of Air Quality Management, TN; and Metropolitan Government of Nashville and Davidson County Public Health Department, TN). The 24 evaluations were conducted to assess the agencies' Fiscal Year 2008 performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW., Atlanta, Georgia 30303, in the Air, Pesticides and Toxics Management Division. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marie Persinger (404) 562–9048 for information concerning the state and local agencies of Alabama, Kentucky and state agency of Mississippi; Miya Smith (404) 562–9091 for the state and local agencies of Florida; Mary Echols (404) 562–9053 for the state agency of Georgia; Seema Rao (404) 562–8429 for the state and local agencies of North Carolina; and Marilyn Sabadaszka (404) 562–9001 for the state agency of South Carolina and for the state and local agencies of Tennessee. They may be contacted at the above Region 4 address.

Dated: August 5, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–22906 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OAR–2008–0235; FRL–8960–4]

Notice of Issuance of Part 71 Federal Operating Permit to Veolia Environmental Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that, on September 12, 2008, pursuant to Title V of the Clean Air Act (CAA), EPA issued a Title V Permit to Operate (Title V permit) to Veolia Environmental Services (Veolia). This permit authorizes Veolia to operate its facility in Sauget, Illinois. Veolia's Sauget facility is a treatment, storage and disposal facility, which accepts offsite waste for further disposal through incineration. Containers and bulk shipments of hazardous and solid wastes are received, analyzed and transferred to temporary storage facilities, processed and incinerated in one of three combustion units.

DATES: During the public comment period, which ended July 18, 2008, EPA received comments on the draft Title V permit. EPA responded to the comments and issued the final permit on September 12, 2008. No one appealed the permit to the Environmental Appeals Board (EAB). Therefore, in accordance with 40 CFR 71.11 the permit became effective 30 days after permit issuance, October 12, 2008.

ADDRESSES: The final signed permit is available for public inspection online at *http://www.regulations.gov,* docket ID EPA–R05–OAR–2008–0235, or during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, EPA, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604, (312) 353–4761, or *damico.genevieve@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Is the Background Information?
B. What Is the Purpose of This Notice?

A. What Is the Background Information?

Veolia (formerly Onyx Environmental Services) submitted to Illinois Environmental Protection Agency (IEPA) on September 7, 1995, an application for a Title V permit for its facility in Sauget, Illinois. IEPA issued a draft Title V permit on June 6, 2003, and the public comment period for the permit ended September 12, 2003. During the public comment period, IEPA received comments on the draft permit. IEPA revised the permit and submitted the proposed permit to EPA on November 6, 2003. EPA did not object to the proposed permit within its 45-day review period, which ended December 21, 2003.

On February 18, 2004, EPA received a petition from the Sierra Club and American Bottom Conservancy requesting that EPA object to issuance of the Veolia Title V permit, pursuant to Section 505(b)(2) of the CAA and 40 CFR 70.8(d). On February 1, 2005, EPA issued an order granting the petition in

part and denying it in part. Pursuant to 40 CFR 70.8(c), this action started a 90-day period during which IEPA was required to issue a revised Title V permit that addressed the issues raised in the February 1, 2005 order. IEPA did not issue the permit within the 90-day window. The Sierra Club and the American Bottom Conservancy sued EPA, alleging that EPA had a duty to issue the permit following the State of Illinois' failure to timely issue the revised permit.

On September 29, 2006, EPA announced its intent to issue or deny a Federal Title V permit. Veolia submitted a Part 71 permit application to EPA on May 2, 2007. EPA deemed the application administratively complete on June 13, 2007. EPA issued a draft permit for public comment on June 5, 2008, and held a public hearing on July 8, 2008. We received both oral and written comment on the draft permit. We issued a final permit on September 12, 2008, after considering all the comments we received.

On September 12, 2008, EPA notified by letter all parties that participated in the public comment process of the issuance of the final permit. The letter also explained the commenters' right to petition the EAB to review any condition of the permit decision pursuant to 40 CFR 71.11(l)(1).

B. What Is the Purpose of This Notice?

EPA is notifying the public of the issuance of the Title V permit to Veolia on September 12, 2008. Pursuant to 40 CFR 71.11(l)(4), because no one appealed the permit to the EAB following EPA's September 12, 2008, letter notification of the final permit, no one may seek judicial review of this final Agency action. The permit became effective on October 12, 2008.

Dated: September 11, 2009.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E9–22907 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0215; FRL–8792–9]

Exposure Modeling Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the location and time for the Exposure Modeling Public Meeting (EMPM) and sets forth the tentative agenda topics.

DATES: The meeting will be held on September 29, 2009, from 9 a.m. to 4 p.m. To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**.

ADDRESSES: The meeting will be held at EPA's Office of Pesticide Programs (OPP), One Potomac Yard (South Bldg.), 1st Floor South Conference Room, 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Tiffany Mason, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8648; fax number: (703) 305–6309; e-mail address: *mason.tiffany@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 required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2009–0215. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. Background

On a triannual interval, an Exposure Modeling Public Meeting will be held for presentation and discussion of current issues in modeling pesticide fate, transport, and exposure in support of risk assessment in a regulatory context. Meeting dates and abstract requests are announced through the "empmlist" forum on the LYRIS list server at *https://lists.epa.gov/read/all_forums*.

III. Topics for the Meeting

This meeting is open to the pubic. Tentative topics include Pesticide Usage Data: Availability, utility, and impact on model predictions. However, a variety of topics will be encompassed by the presentations.

List of Subjects

Environmental protection, Modeling, Monitoring, Pesticides, Pest.

Dated: September 17, 2009.

Arthur-Jean Williams,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. E9–22914 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0008; FRL–8436-2]

SFIREG Environmental Quality Issues Working Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG), Environmental Quality Issues (EQI) Working Committee will hold a 2–day meeting, beginning on October 19, 2009 and ending October 20, 2009. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, October 19, 2009 from 8:30 a.m. to 5 p.m. and 8:30 a.m to 12 noon on Tuesday October 20, 2009

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The open meeting will be held at EPA. One Potomac Yard (South

Bldg.) 2777 Crystal Dr., Arlington VA. 1st Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5561 fax number: (703) 308–1850; e-mail address: *kendall.ron@epa.gov*. or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford DE 19963; telephone number (302) 422-8152; fax (302) 422-2435; e-mail address: *grierstaytonaapco-sfireg@comcast.net*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to: Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2008–0143. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

Topics may include but are not limited to:

1. Update on the EPA's NPDES general permit for pesticides.
2. Report on USGS study on Pesticide Occurrence in the Lakes of the Ridge Citrus Region of Central Florida.
3. Office of Water-Update on Harmonization of Risk Assessment-Scoping Paper.
4. Office of Water-Update on atrazine water quality criteria and May SAP.
5. Update on Revision to Advisory Statements-Outcome of full SFIREG Meeting.
6. Fumigant label comments and label development.
7. OECA update.
8. Update on Office of Water's CCL3 and UCMR programs.
9. POINTS database summary and updates.
10. Briefing from the Federal-State Toxicology and Risk Analysis Committee(FSTRAC)- Discussion on SFIREG and FSTRAC working together.
11. NAWQA Cycle 3 update.
12. Spot on pet products. EPA's evaluation of these products and incident Data.

III. How Can I Request to Participate in this Meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

List of Subjects

Environmental protection,

Dated: September 15, 2009.

William R. Diamond,

Director, Field and External Affairs Division, Office of Pesticide Programs

[FR Doc. E9–22620 Filed 9–22–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0362; FRL–8433–7]

2-(Hydroxymethyl)-2 nitro-1,3-propanediol (Tris Nitro); 10,10′-Oxybisphenoxarsine (OBPA); Peroxy Compounds Registration Review; Antimicrobial Pesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before December 22, 2009.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

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

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

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and

included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact*: The Chemical Review Manager identified in the table in Unit III.A.for the pesticide of interest.

For general information contact: Lance Wormell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0523; fax number: (703) 308–8090; e-mail address: *wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
2-(Hydroxymethyl)-2 nitro-1,3-propanediol (Tris Nitro), Case 3149	EPA–HQ–OPP–2009–0639	K. Avivah Jakob, (703) 305–1328, *jakob.kathryn@epa.gov*
10,10′-Oxybisphenoxarsine (OBPA), Case 0044	EPA–HQ–OPP–2009–0618	Lance Wormell, (703) 603–0523, *wormell.lance@epa.gov*
Peroxy Compounds, Case 4072	EPA–HQ–OPP–2009–0546	Eliza Blair, (703) 308–7279, *blair.eliza@epa.gov*

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

• An overview of the registration review case status.

• A list of current product registrations and registrants.

• **Federal Register** notices regarding any pending registration actions.

• **Federal Register** notices regarding current or pending tolerances.

• Risk assessments.

• Bibliographies concerning current registrations.

• Summaries of incident data.

• Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm*. Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

• To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

• The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

• As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials, 2-(Hydroxymethyl)-2 nitro-1,3-propanediol (Tris Nitro); 10,10′-Oxybisphenoxarsine (OBPA); Peroxy Compounds

Dated: August 18, 2009,

Joan Harrigan-Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9–22624 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0589; FRL–8438–3]

Aldicarb, Aliphatic Solvents, et al; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of products containing the pesticides: Aldicarb, Aliphatic Solvents, Carbaryl, Copper Salts, Copper Sulfate, Cypermethrin, Naphthalene Acetic Acid, Piperonyl Butoxide, Resmethrin, 2,4-DB, and 2,4-DP, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an August 12, 2009, **Federal Register** Notice of Receipt of Requests from the registrants to voluntarily cancel their Aldicarb, Aliphatic Solvents, Carbaryl, Copper Salts, Copper Sulfate, Cypermethrin, Naphthalene Acetic Acid, Piperonyl Butoxide, Resmethrin, 2,4-DB, and 2,4-DP product registrations. These are not the last Aldicarb, Aliphatic Solvents, Carbaryl, Copper Salts, Copper Sulfate, Cypermethrin, Naphthalene Acetic Acid, Piperonyl Butoxide, Resmethrin, 2,4-DB, and 2,4-DP products registered for use in the United States. In the August 12, 2009 Notice, EPA indicated that it would issue an order implementing the cancellations unless the Agency received substantive comments within the 30 day comment

period that would merit its further review of these requests, or unless the registrants withdrew their requests within this period. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the Aldicarb, Aliphatic Solvents, Carbaryl, Copper Salts, Copper Sulfate, Cypermethrin, Naphthalene Acetic Acid, Piperonyl Butoxide, Resmethrin, 2,4-DB, and 2,4-DP products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective September 23, 2009.

FOR FURTHER INFORMATION CONTACT: Barbara Briscoe, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8177; fax number: (703) 308–8090; e-mail address: *briscoe.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0589. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by registrants, of products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1.

TABLE 1.—ALDICARB, ALIPHATIC SOLVENTS, ET AL; PRODUCT CANCELLATIONS

Registration No.	Product Name
228–195	Riverdale DP-4 Amine
352–694	Tenn-Cop 5E
478–76	Real Kill Flying Insect Killer
478–77	Real Kill Indoor/Outdoor Plus
478–86	Real Kill Liquid House and Garden Bug Killer for House Plants
478–122	Real Kill Automatic Indoor Plus
769–628	SMCP Vapona Insecticide 50% Concentrate Solution
769–646	X-Cel Oil plus Malathion
769–728	Seven Brand Carbaryl Insecticide 5% Turf Insecticide Granules
769–843	Pratt's Summer Spray Oil
769–848	Pratt's 6N Superior Oil
769–886	Agrisect Superior Oil
769–928	Warner Enterprises Indoor Insect Fogger
5481–428	NAA 800
5481–432	Technical 1-Naphthalene Acetic Acid Sodium Salt
8660–83	White Fly Spray

TABLE 1.—ALDICARB, ALIPHATIC SOLVENTS, ET AL; PRODUCT CANCELLATIONS—Continued

Registration No.	Product Name
8660–138	Flea and Tick Pet Spray
8845–33	Vertagreen Professional Use with Dacthal
8845–64	Vertagreen Weed & Feed
8845–65	Vertagreen Copper Sulfate Crystals
8845–74	Pro – Tek with Balan
9688–21	Chemsico Insecticide for Flying Insects
9688–48	Chemsico Wasp and Hornet Killer II
9688–49	Chemsico Wasp and Hornet Killer III
9688–102	Chemsico Home Insect Control Spray A
9688–223	Chemsico Insecticide FR
10807–208	Misty Root Killer
46515–45	Wasp & Hornet Killer 4
71368–32	Nufarm 2,4 DB Weed Killer
71368–33	Nufarm Buticide 200 Weed Killer
73049–317	Cyperkil EC
73049–318	Cyperkil WSB
75402–2	HILO Premises Spray
75402–3	Aloe Care Flea & Tick Shampoo
AL820033	Temik Brand 15G Aldicarb Pesticide-Use on Pecans
AL870008	Temik 15 G Aldicarb Pesticide-Use On Pecans Growing Under Drip Irrigation
AZ820015	Temik Brand 15G Aldicarb Pesticide-Pecans
GA090004	Temik Brand 15G Aldicarb Pesticide

TABLE 1.—ALDICARB, ALIPHATIC SOLVENTS, ET AL; PRODUCT CANCELLATIONS—Continued

Registration No.	Product Name
GA820013	Temik Brand 15G Aldicarb Pesticide-Use on Pecans
GA870003	Temik Brand 15G Aldicarb Pesticide-Use on Pecans Growing Under Drip Irrigation
MS830009	Temik Brand 15G Aldicarb Pesticide-Use on Pecans
NC780021	Temik Brand 15G Aldicarb Pesticide-Use on Flue-Cured Tobacco
NC820008	Temik Brand 15G Aldicarb Pesticide-Use on Flue-Cured Tobacco
NM820016	Temik Brand 15G Aldicarb Pesticide-Use on Pecans
SC830009	Temik Brand 15G Aldicarb Pesticide-Use on Pecans
SC090003	Temik Brand 15G Aldicarb Pesticide
TX790010	Temik Brand 15G Aldicarb Pesticide
VA820013	Temik Brand 15G Aldicarb Pesticide-Use on Flue-Cured Tobacco

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company No.	Company Name and Address
228	Nufarm Americas, Inc. 150 Harvester Dr., Suite 200 Burr Ridge, IL 60527
352	Dupont Crop Protection 1007 Market Street Wilmington, DE 19898
478	Realex, Div. of United Industries, Corp. PO Box 142642 St. Louis, MO 63114

TABLE 2.—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company No.	Company Name and Address
769	Value Gardens Supply, LLC D/B/A Value Garden Supply PO Box 585 St Joseph, MO 64502
5481	Amvac Chemical Corp. D/B/A Amvac 4695 MacArthur Court, Suite 1250 Newport Beach, CA 92660
8660	United Industries Corp. D/B/A Sylorr Plant Corp. PO Box 142642 St. Louis, MO 63114
8845	Spectrum Group Div. of United Industries Corp. PO Box 142642 St. Louis, MO 63114
9688	Chemsico Div. of United Industries Corp. PO Box 142642 St. Louis, MO 63114
10807	Amrep, Inc. 990 Industrial Park Drive Marietta, GA 30062
46515	Celex, Div. of United Industries Corp. PO Box 142642 St. Louis, MO 63114
71368	Nufarm, Inc. 150 Harvester Drive, Suite 200 Burr Ridge, IL 60527
73049	Valent Biosciences Corp. 870 Technology Way, Suite 100 Libertyville, IL 60068
75402	Boss Pet Products, Inc. 1645 Rockside Road, Suite 200 Maple Heights, OH 44137
AL820033	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
AL870008	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
AZ820015	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709

TABLE 2.—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company No.	Company Name and Address
GA090004	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
GA820013	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
GA870003	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
MS830009	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
NC780021	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
NC820008	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
NM820016	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
SC830009	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
SC090003	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
TX90010	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
VA820013	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the August 12, 2009, **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of Aldicarb, Aliphatic Solvents, Carbaryl, Copper Salts, Copper Sulfate, Cypermethrin, Naphthalene Acetic Acid, Piperonyl

Butoxide, Resmethrin, 2,4-DB, and 2,4-DP.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of Aldicarb, Aliphatic Solvents, Carbaryl, Copper Salts, Copper Sulfate, Cypermethrin, Naphthalene Acetic Acid, Piperonyl Butoxide, Resmethrin, 2,4-DB, and 2,4-DP registrations identified inTable 1. Accordingly, the Agency orders that the product registrations identified in Table 1 are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Table 1 in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions.

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks until all stocks are exhausted, unless other factors (such as hazard) necessitate modified terms. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in.

Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, pesticides, and pests.

Dated: September 14, 2009.

Richards P. Keigwin, Jr

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. E9–22626 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0503; FRL–8437–1]

Disulfoton and Methamidophos; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of pesticide products containing disulfoton or methamidophos, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a July 22, 2009 Federal Register Notice of Receipt Requests (FRL–8427–2) from the disulfoton and methamidophos registrants to voluntarily cancel their product registrations. These are the last disulfoton and methamidophos products registered for use in the United States. In the July 22, 2009 Notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests within this period. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this Notice a cancellation order granting the requested cancellations. Any distribution, sale or use of disulfoton and methamidophos products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stock provisions.

DATES: This order is effective on September 23, 2009.

FOR FURTHER INFORMATION CONTACT:

Chemical Review Manager	Pesticide	Office location for Mail and Special Courier	Telephone Number	e-mail address
Joy Schnackenbeck	Methamidophos	Pesticide Re-evaluation Division, (7508P) Environmental Protection Agency 1200 Pennsylvania Ave., NW. Washington, DC 20460–0001	(703) 308–8072	schnackenbeck.joy@epa.gov

Chemical Review Manager	Pesticide	Office location for Mail and Special Courier	Telephone Number	e-mail address
Eric Miederhoff	Disulfoton	Pesticide Re-evaluation Division Office of Pesticide Programs Environmental Protection Agency 1200 Pennsylvania Ave., NW. Washington, DC 20460–0001	(703) 347–8028	*miederhoff.eric@epa.gov*

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION, CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for these actions under docket identification (ID) number EPA–HQ–OPP–2009–0503. Additional information regarding these pesticide active ingredients is available in: Docket ID number EPA–HQ–OPP–2009–0054 for disulfoton and docket ID number EPA–HQ–OPP–2009–0842 for methamidophos. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces the cancellations, as requested by registrants, of all disulfoton and methamidophos products registered under sections 3 and 24(c) of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this Unit.

TABLE 1.—DISULFOTON AND METHAMIDOPHOS PRODUCTS SUBJECT TO THIS CANCELLATION ORDER

Registration Number	Product Name	Active Ingredient
264–723	Di-Syston 15% Granular	Disulfoton
264–725	Disulfoton Technical	Disulfoton
264–729	Monitor 4	Methamidophos
264–734	Disulfoton 8 Emulsifiable Systemic Insecticide	Disulfoton
264–741	Monitor Technical	Methamidophos
264–744	Monitor 60% Concentrate	Methamidophos
264–1020	Monitor 4 Spray	Methamidophos
264–1021	Valent Monitor Technical	Methamidophos
432–1286	Systemic 2 in 1 Rose Care 10–10–10 Rose Food with Insecticide	Disulfoton
5481–8989	Terraclor Super-X Soil Fungicide With Di-Syston	Disulfoton
72155–49	Flower Rose and Shrub Care	Disulfoton
AR970004	Monitor 4	Methamidophos
CA050010	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
CA780163	Monitor 4	Methamidophos
CA810044	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton

TABLE 1.—DISULFOTON AND METHAMIDOPHOS PRODUCTS SUBJECT TO THIS CANCELLATION ORDER—Continued

Registration Number	Product Name	Active Ingredient
CA840192	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
CA980013	Monitor 4	Methamidophos
DE910002	Monitor 4	Methamidophos
FL800046	Monitor 4	Methamidophos
FL900003	Monitor 4	Methamidophos
GA900001	Monitor 4	Methamidophos
IN790001	Monitor 4	Methamidophos
LA040011	Monitor 4 Liquid Insecticide	Methamidophos
MD910009	Monitor 4	Methamidophos
MI060002	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
NC860005	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
NC880001	Di- Syston 15% Granular	Disulfoton
NC890007	Monitor 4	Methamidophos
NC920011	Di- Syston 15% Granular	Disulfoton
NJ960010	Monitor 4	Methamidophos
OH790008	Monitor 4	Methamidophos
OR040030	Di- Syston 8 Emulsifiable Systemic Disulfoton Insecticide	Disulfoton
OR050024	Di- Syston Disulfoton 8 Emulsifiable Systemic Insecticide	Disulfoton
SC780007	Monitor 4 Liquid Insecticide	Methamidophos
TN060002	Monitor 4 Liquid Insecticide	Methamidophos
TX860007	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
TX910016	Monitor 4	Methamidophos
VA910005	Monitor 4	Methamidophos
WA040015	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton
WA040028	Di-Syston 15% Granular	Disulfoton
WA920026	Di- Syston 8 Emulsifiable Systemic Insecticide	Disulfoton

Table 2 of this unit includes the names and addresses of record, in sequence by EPA company number, for all registrants of the products in Table 1.

TABLE 2.—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company Number	Company Name and Address
264	Bayer CropScience 2 T.W. Alexander Drive Research Triangle Park, North Carolina 27709
432	Bayer Environmental Science 2 T.W. Alexander Drive PO Box 12014 Research Triangle Park, North Carolina 27709
5481	Amvac Corporation 4695 Macarthur Court, Suite 1250 Newport Beach, California 92660–1706
72155	Bayer Advanced 2 T.W. Alexander Drive PO Box 12014 Research Triangle Park, North Carolina 27709

III. Summary of Public Comments Received and Agency Response to Comments

The Agency did not receive any comments on the Notice, published on July 22, 2009, that announced receipt of the requests for voluntary cancellation and opened a 30–day public comment period that ended on August 21, 2009.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the disulfoton and methamidophos product registrations identified in Table 1 of Unit II are to be canceled on their designated effective dates. For disulfoton FIFRA Section 3 products, the cancellations for EPA Reg. Nos. 264–723, 264–734, 5481–8989, and 432–1286 are effective December 31, 2009. Cancellations for EPA Reg. Nos. 264–725 and 72155–49 are effective December 31, 2010. For all methamidophos products, cancellations are effective December 31, 2009. For both disulfoton and methamidophos, the effective cancellation dates for all FIFRA 24(c) Special Local Need registrations is December 31, 2009.

Any distribution, sale or use of existing stock of the products identified in Table I of Unit II in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stock provisions. Bayer (Bayer CropScience, Bayer Environmental Science, and Bayer Advanced) may sell and distribute existing stocks of EPA Reg. Nos. 264–725, 264–729, 264–734, 264–741, 264–744, 264–1020, 264–1021, and 432–1286 until December 31, 2010. Bayer may sell and distribute existing stocks of EPA Reg. Nos. 264–723 and 72155–49 until June 30, 2011. Amvac Chemical Corp. may sell and distribute existing stocks of EPA Reg. No. 5481–8989 until December 31, 2010. For both methamidophos and disulfoton, Bayer and Amvac may sell and distribute existing stocks of State-registered products until December 31, 2010. For all affected methamidophos and disulfoton products, persons other than Bayer and AMVAC may sell and distribute existing stocks until exhausted. Use of the products canceled by this Notice may continue until existing stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products. The foregoing applies to all products in Table 1, both State-registered and federally-registered products.

List of Subject

Environmental protection, Pesticides and pests.

Dated: September 16, 2009.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. E9–22921 Filed 9–22–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8960–7]

Proposed Administrative Agreement and Order on Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act for Certain Remedial Activities at the South Minneapolis Residential Soil Contamination Site

AGENCY: U.S. Environmental Protection Agency (''EPA'').

ACTION: Notice; Request for public comment on proposed CERCLA administrative agreement and order on consent with Open Arms of Minnesota for the South Minneapolis Residential Soil Contamination Superfund Site.

SUMMARY: Notification is hereby given of a proposed administrative agreement concerning certain remedial activities at the South Minneapolis Residential Soil Contamination hazardous waste site in Minneapolis, Minnesota (the ''Site''). EPA proposes to enter into this agreement under the authority of sections 122, 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (''CERCLA''), with the approval and participation of the U.S. Department of Justice. The proposed agreement has been executed by Open Arms of Minnesota (the ''Settling Party'').

Under the proposed agreement, the Settling Party, which represents that it is a Bona Fide Prospective Purchaser under CERCLA, would perform the remedial actions required under EPA's September 5, 2008 Record of Decision for the Settling Party's properties at 2514 and 2518 Bloomington Avenue South, Minneapolis, Minnesota. The Settling Party would also pay EPA's costs of overseeing these actions.

For thirty days following the date of publication of this notice, EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before October 23, 2009.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of South Minneapolis Residential Soil Contamination Site, Minneapolis, Minnesota, U.S. EPA Docket No. V–W–09C–935.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–0562, *Krueger.Thomas@epa.gov.*

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Dated: September 4, 2009.

Doug S. Ballotti,

Acting Director, Superfund Division, Region 5.

[FR Doc. E9–22937 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0986; FRL–8437–8]

Notice of Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of an initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before October 23, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0986 and the pesticide petition number (PP) 6H5743, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0986 and the pesticide petition number (PP) 6H5743. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–0029; e-mail address: *rodia.carmen@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. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the

disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have a typical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

PP 6H5743. EPA–HQ–OPP–2006–0986. EPA has received a pesticide petition *PP 6H5743*, from Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048–6316, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of allethrin in or on food items as a result of applications in food handling establishments at 1.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408 (d)(2) of FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition. Analytical methods for determining residues of allethrin in a variety of food commodities have been developed and submitted to the Agency. These methods use gas chromatography (GC) with quantitation by an electron capture detector (ECD) for determination of total allethrin residues. These methods have been validated and are appropriate for the determination of allethrin residues in a variety of food commodities after application in food handling establishments.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 15, 2009.

Rachel C. Holloman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–22939 Filed 9?–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0538; FRL–8434–7]

Notice of Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of an initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before October 23, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0538 and the pesticide petition number (PP), by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0538 and the pesticide petition number (PP). EPA's policy is that all comments

received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

Anna Gross, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5614; e-mail address: *gross.anna@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. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of

regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

PP 9E7552. Interregional Research Project Number 4 (IR-4), Rutgers University, 500 College Rd. East, Suite 201W, Princeton, NJ 08540, on behalf of OmniLytics, 5450 W. Wiley Post Way, Salt Lake City, UT 84116, proposes to establish an exemption from the requirement of a tolerance for residues of the microbial pesticide, Bacteriophage of *Clavibacter michiganensis* subsp. *michiganensis*, in or on tomato. The petitioner believes no analytical method is needed because there is a long history of mammalian consumption of phages in food without causing any known deleterious human health effects or any evidence of toxicity. Phage-infected plants are part of the human diet and there have been no findings which indicate that phages are able to replicate in mammals or other verebrates, thereby eliminating the possibility of human infection.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 9, 2009.

Keith Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–22807 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0625; FRL–8437–9]

Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is making available for comment a registration application submitted by Scimetrics Ltd. Corp. requesting the addition of the black-tailed prairie dog and their host fleas for the chemical combination of the anticoagulant rodenticide, diphacinone and the insecticide, imidacloprid. Diphacinone and imidacloprid are chemicals currently registered with the Agency. In consideration of recent public interest in pesticide products intended to control the black-tailed prairie dog, EPA is providing public notice of its receipt of this application and an opportunity for the public to comment on the application.

DATES: Comments must be received on or before October 23, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0625, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0625. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Dan Peacock, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5407; e-mail address: *peacock.dan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to various environmental groups, farmers, ranchers, state regulatory partners, other interested federal agencies, members of the public interested in the sale, distribution, or use of pesticides, and other pesticide registrants and pesticide users. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is

claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is making available for comment a registration application for a product containing the chemical combination of the anticoagulant rodenticide, diphacinone and the insecticide, imidacloprid, to control black-tailed prairie dogs and their host fleas. EPA is providing this comment opportunity because it believes that pesticide products intended to control black-tailed prairie dogs have been the subject of particular public interest in recent years. Diphacinone is currently registered for use against rodents, including Norway rats, roof rats, house mice, ground squirrels, and voles. Imidacloprid is currently registered as an insecticide to control host fleas on the California ground squirrel. EPA will evaluate all comments received during the public comment period. The application would, if accepted by EPA, allow the use of diphacinone and imidacloprid for the control of the black-tailed prairie dogs and their host fleas.

A copy of the application (with information claimed by the applicant as CBI redacted) is available for public review in the docket established for this new use application as described under **ADDRESSES**.

Following the review of the application, and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the registration application, and if issued, the conditions under which it is to be granted.

List of Subjects

Environmental protection, Receipt of application.

Dated: September 14, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–22810 Filed 9–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0632; FRL–8434–6]

Registration Review; Pesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration review cases. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration review. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or November 23, 2009.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A., for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available

on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact*: The Chemical Review Manager identified in the table in Unit III.A., for the pesticide of interest.

For general information contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Fluazinam (7013)	EPA–HQ–OPP–2009–0039	Molly Clayton, (703) 603–0522, *clayton.molly@epa.gov*
Flumiclorac-pentyl (7232)	EPA–HQ–OPP–2009–0084	Monica Wait, (703) 347–8019, *wait.monica@epa.gov*
Fluridone (7200)	EPA–HQ–OPP–2009–0160	Joy Schnackenbeck, (703) 308–8072, *schnackenbeck.joy@epa.gov*
Flurprimidol (7000)	EPA–HQ–OPP–2009–0630	Kelly Ballard, (703) 305–8126, *ballard.kelly@epa.gov*
Hexaflumuron (7413)	EPA–HQ–OPP–2009–0568	Rusty Wasem, (703) 305–6979, *wasem.russell@epa.gov*
Maleic Hydrazide (0381)	EPA–HQ–OPP–2009–0387	James Parker, (703) 306–0469, *parker.james@epa.gov*
Piperalin (3114)	EPA–HQ–OPP–2009–0483	Jose Gayoso, (703) 347–8652, *gayoso.jose@epa.gov*
Pronamide (0082)	EPA–HQ–OPP–2009–0326	Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov*
Sulfentrazone (7231)	EPA–HQ–OPP–2009–0624	Jacqueline Guerry, (215) 814–2184, *guerry.jaqueline@epa.gov*
Tebuthiuron (0054)	EPA–HQ–OPP–2009–0327	Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov*

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters

must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

• As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 14, 2009.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. E9–22622 Filed 9–22–09; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 09–2029]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') debars Andre J. Hornsby from the schools and libraries universal service support mechanism (or ''E–Rate Program'') for a period of three years based on his conviction of wire fraud, witness and evidence tampering, and obstruction of justice in connection with his participation in the program. The Bureau takes this action to protect the E–Rate Program from waste, fraud and abuse.

DATES: Debarment commences on the date Andre J. Hornsby receives the debarment letter or September 23, 2009, whichever date comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Michele Berlove, Acting Assistant Division Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *michele.berlove@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau debarred Andre J. Hornsby from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.8 and 47 CFR 0.111. Attached is the debarment letter, DA 09–2029, which was mailed to Andre J. Hornsby and released on September 11, 2009. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission.

September 11, 2009
DA 09–2029

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Andre J. Hornsby, Inmate No. 39456–037, FTC Oklahoma, Federal Transfer Center, Oklahoma City, Oklahoma 73189.

Re: Notice of Debarment File No. EB–09–IH–0408

Dear Mr. Hornsby: Pursuant to section 54.8 of the rules of the Federal Communications Commission (the ''Commission''), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or ''E–Rate program'') for a period of three years.[1]

On July 14, 2009, the Enforcement Bureau (the ''Bureau'') sent you a Notice of Suspension and Initiation of Debarment Proceedings (the ''Notice of Suspension'').[2] That Notice of Suspension was published in the Federal Register on July 22, 2009.[3] The Notice of Suspension suspended you from participating in activities associated with or relating to the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.[4]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the Federal Register.[5] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, the United States District Court for the District of Maryland sentenced you to six years in prison following your conviction for federal crimes, including honest services wire fraud, witness and evidence tampering, and obstruction of justice, in connection with your activities related to the E–Rate program for Prince George's County Public School System (''PGCPS'').[6] While employed as Chief Executive Officer, Secretary and Treasurer for the Board of Education for Prince George's County, you devised and participated in schemes to defraud PGCPS for your personal financial gain by steering contracts, making materially false representations, destroying records, and otherwise hiding your associations to conceal your role in the fraudulent conduct.[7] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.8(c) of the Commission's rules.[8] For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, i.e., the earlier date of your receipt of this Notice of Debarment or its publication date in the Federal Register.[9] Debarment excludes you, for the debarment period, from activities associated with or related to the schools and libraries support mechanism, including the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[10]

Sincerely,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Michael R. Pauzé, Assistant United States Attorney, Department of Justice (via e-mail) Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

[1] 47 C.F.R. § 54.8(g) (2008). See also 47 C.F.R. § 0.111(a)(14).

[2] Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Andre J. Hornsby, Notice of Suspension and Initiation of Debarment Proceedings, 24 FCC Rcd 9093 (Inv. & Hearings Div., Enf. Bur. 2009) (Attachment 1)(''Notice of Suspension'').

[3] 74 Fed. Reg. 36223 (July 22, 2009).

[4] See Notice of Suspension, 24 FCC Rcd at 9094–96.

[5] See 47 C.F.R. § 54.8 (e)(3),(4). That date occurred no later than Aug. 21, 2009. See supra note 3.

[6] See Notice of Suspension, 24 FCC Rcd at 9094–95. See also United States v. Andre Jose Hornsby, Criminal Docket No. 8:06CR00376–PJM–1, Judgment (D. Md. filed and entered Dec. 5, 2008).

[7] See Notice of Suspension, 24 FCC Rcd at 9094–95. See also United States v. Andre Jose Hornsby, Criminal Docket No. 8:06CR00376–PJM–1, Superseding Indictment (D. Md filed and entered Apr. 23, 2008).

[8] 47 C.F.R. § 54.8(c). See also § 54.8(a)(4),(b)–(e).

[9] See 47 C.F.R. § 54.8(e)(5),(g). See also Notice of Suspension, 24 FCC Rcd at 9096.

[10] See 47 C.F.R. § 54.8(a)(1),(a)(5),(d),(g); Notice of Suspension, 24 FCC Rcd at 9096.

Attachment 1

July 14, 2009
DA 09–1528

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED AND E–MAIL (robertbonsib@marcusbonsib.com) AND FACSIMILE (301) 441–3003

Andre J. Hornsby, c/o Robert C. Bonsib, Marcus and Bonsib, 6411 Ivy Lane, Suite 116, Greenbelt, MD 20770.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–09–IH–0408

Dear Mr. Hornsby: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction of federal crimes, including honest services wire fraud, witness and evidence tampering, and obstruction of justice, in connection with your participation in the schools and libraries universal service support mechanism (''E–Rate program'').[11] Consequently, pursuant to 47 C.F.R. § 54.8, this letter constitutes official notice of your suspension from the E–Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[12]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[13] On November 25, 2008, the United States District Court for the District of Maryland sentenced you to six years in prison, to be followed by three years of supervised release, following your conviction on federal crimes, including honest services wire fraud, witness and evidence tampering, and obstruction of justice, in connection with your activities related to the E–Rate program.[14] In addition, you were ordered to pay a $20,000 fine and $70,000 in restitution to the Prince George's County Public School System (''PGCPS'').[15]

You were employed as Chief Executive Officer, Secretary and Treasurer for the Board of Education for Prince Georges County (''Board'').[16] As Chief Executive Officer of the Board, you were responsible for overall administration of PGCPS from June 2003 until June 2005.[17] Beginning in November 2003, you devised schemes to defraud PGCPS for your personal financial gain.[18] You directed PGCPS employees to seek proposals from outside E–Rate consulting companies for assistance with PGCPS' E–Rate applications.[19] Despite late filings and other disqualifications, you ultimately steered the bidding process and directed contracts be awarded for E–Rate consulting services to Erate Managers, LLC (''Erate Managers''), a non-existent company purportedly operated by an individual who had worked for you in other school districts (''Former Employee'').[20] You, in turn, were to receive more than $100,000 from the Former Employee for your role in securing the E–Rate consulting contracts with PGCPS, and accepted $1,000 in cash as a down payment.[21] Further, you made materially false representations, destroyed records and otherwise hid your associations with the Former Employee to conceal your role in the fraudulent conduct at issue.[22]

Pursuant to section 54.8 of the Commission's rules, your conviction on criminal offenses arising out of consulting activities associated with or related to the schools and libraries support mechanism requires the Bureau to suspend you from continuing to participate in any activities associated with or related to the schools and libraries support mechanism.[23] Activities arising out of or related to the schools and libraries support mechanism include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[24]

Your suspension becomes immediately effective upon the earlier of your receipt of this letter or publication of notice in the Federal Register, pending the Bureau's final debarment determination.[25] In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation.[26] Your request must be received within 30 days after you receive this letter or after notice is published in the Federal Register, whichever comes first.[27] Such requests, however, will not ordinarily be granted.[28] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[29] The Bureau will decide any request for the reversal or modification of suspension within 90 days of its receipt of such request.[30]

II. Initiation of Debarment Proceedings

Your conviction for criminal conduct in connection with the E–Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for suspension and debarment defined in section 54.8(c) of the Commission's rules.[31] Therefore, pursuant to section 54.8 of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.[32]

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[11] *See* 18 U.S.C. §§ 1343, 1346 (honest services wire fraud), 1512(b) (attempted evidence tampering), and 1503 (obstruction of Justice). Any further reference in this letter to ''your conviction'' refers to your six count conviction. *United States* v. *Andre Jose Hornsby*, Criminal Docket No. 8:06CR00376–PJM–1, Judgment (D. Md. filed and entered Dec. 5, 2008) (''*Hornsby Judgment*''). *See also United States* v. *Andre Jose Hornsby*, Criminal Docket No. 8:06CR00376–PJM–1, Superseding Indictment (D. Md filed and entered Apr. 23, 2008) (''*Hornsby Indictment*'').

[12] 47 C.F.R. § 54.8 (2008). *See also* 47 C.F.R. § 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order*'') (adopting section 54.521 of the Commission's rules to suspend and debar parties from the E–Rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[13] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 C.F.R. § 54.8(a)(6).

[14] *Hornsby Judgment* at 1–5. *See also Hornsby Indictment* at 1–21, 24–27, 29–30. (Discussion of your convictions in this notice is limited to those activities related to the E–Rate program).

[15] *Hornsby Judgment* at 6–7. PGCPS was one of the 20 largest school districts in the nation in 2004, with a budget of more than $1 billion. *See* Department of Justice Press Release (Nov. 25, 2008), *available at* http://baltimore.fbi.gov/dojpressrel/pressrel08/ba112508.htm (*DOJ November 2008 Press Release*).

[16] *Hornsby Indictment* at 2. *See also DOJ November 2008 Press Release* at 1. The Board was responsible for oversight of PGCPS. *See* Hornsby Indictment at 1. Responsibility for the overall administration of PGCPS was entrusted to the Chief Executive Officer, who reported to the Board. *See Hornsby Indictment* at 2.

[17] *Hornsby Indictment* at 2.

[18] *Id.* at 14–19. *See also DOJ November 2008 Press Release* at 1.

[19] *Hornsby Indictment* at 6, 15.

[20] *Id.* at 4–8. You directed PGCPS personnel not to award contracts to the company with the highest overall score, and stalled the bidding process past the deadline in favor of waiting for a proposal from Erate Managers. *Hornsby Indictment* at 6–7. *See also DOJ November 2008 Press Release* at 1–2.

[21] *Hornsby Indictment* at 8, 14–15. *See also DOJ November 2008 Press Release* at 1–2.

[22] *Hornsby Indictment* at 14–18, 24–27, 29–30. *See also DOJ November 2008 Press Release* at 3.

[23] 47 C.F.R. § 54.8(b)–(e); *see also* § 54.8(a)(4).

[24] 47 C.F.R. § 54.8(a)(1); *see also* § 54.8(a)(3).

[25] 47 C.F.R. § 54.8(a)(7), (e)(1); *see also Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69.

[26] 47 C.F.R. § 54.8(e)(4).

[27] *Id.*

[28] *Id.*

[29] 47 C.F.R. § 54.8(f); *see also Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

[30] 47 C.F.R. § 54.8(e)(5), (f); *see also Second Report and Order*, 18 Fcc Rcd at 9226, ¶ 70.

[31] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 C.F.R. § 54.8(c). You were convicted for obstruction of justice, attempted evidence tampering for falsification or destruction of records, and wire fraud. *See supra note* 4.

[32] *See* 47 C.F.R. § 54.8(b), (c).

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the Federal Register.[33] Absent extraordinary circumstances, the Bureau will debar you.[34] The Bureau will decide any request for reversal or limitation of debarment within 90 days of receipt of such request.[35] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the Federal Register.[36]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[37] The Bureau may, if necessary to protect the public interest, extend the debarment period.[38]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, to the attention of Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4–C330, Washington, DC 20554, with a copy to Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via email to Rebekah.Bina@fcc.gov and to Michele.Berlove@fcc.gov.

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at Rebekah.Bina@fcc.gov. If Ms. Bina is unavailable, you may contact Ms. Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1477 and by e-mail at Michele.Berlove@fcc.gov.

Sincerely yours,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division Enforcement Bureau.

cc: Michael R. Pauzé, Assistant United States Attorney, Department of Justice (via e-mail) Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

[FR Doc. E9–22962 Filed 9–22–09; 8:45 am]

BILLING CODE 6712–01–P

[33] 47 C.F.R. § 54.8(e)(3), (5); *see also Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

[34] 47 C.F.R. § 54.8(e)(5); *see also Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

[35] 47 C.F.R. § 54.8(e)(5), (f); *see also Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

[36] 47 C.F.R. § 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment, upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 C.F.R. § 54.8(f).

[37] 47 C.F.R. § 54.8(a)(1), (d), (g); *see also Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67.

[38] 47 C.F.R. § 54.8(g).

FEDERAL COMMUNICATIONS COMMISSION

[DA 09–2030]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') debars Mr. Steven Newton from the schools and libraries universal service support mechanism (or ''E–Rate Program'') for a period of three years based on his conviction of wire fraud, aiding and abetting, and collusion in connection with his participation in the program. The Bureau takes this action to protect the E–Rate Program from waste, fraud and abuse.

DATES: Debarment commences on the date Mr. Steven Newton receives the debarment letter or September 23, 2009, whichever date comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Michele Berlove, Acting Assistant Division Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *michele.berlove@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau debarred Mr. Steven Newton from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.8 and 47 CFR 0.111. Attached is the debarment letter, DA 09–2030, which was mailed to Mr. Steven Newton and released on September 11, 2009. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

September 11, 2009
DA 09–2030

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Steven Newton, 35402 Paseo Viento, Capastrano Beach, California 92624–1837.

Re: Notice of Debarment, File No. EB–08–IH–1928

Dear Mr. Newton: Pursuant to section 54.8 of the rules of the Federal Communications Commission (the ''Commission''), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or ''E–Rate program'') for a period of three years.[1]

On July 14, 2009, the Enforcement Bureau (the ''Bureau'') sent you a Notice of Suspension and Initiation of Debarment Proceedings (the ''Notice of Suspension'').[2] That Notice of Suspension was published in the Federal Register on July 22, 2009.[3] The Notice of Suspension suspended you from participating in activities associated with or relating to the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.[4]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in

[1] 47 C.F.R. 54.8(g) (2008). *See also* 47 C.F.R. § 0.111(a)(14).

[2] Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Steven Newton, Notice of Suspension and Initiation of Debarment Proceedings, 24 FCC Rcd 9098 (Inv. & Hearings Div., Enf. Bur. 2009) (Attachment 1)(''Notice of Suspension'').

[3] 74 Fed. Reg. 36221 (July 22, 2009).

[4] *See* Notice of Suspension, 24 FCC Rcd at 9099–101.

the Federal Register.[5] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pleaded guilty and were sentenced to six months in prison following your conviction for federal crimes in connection with your participation in two schemes to defraud the E–Rate program.[6] As former President at Premio Computers, Inc., and principal manager of SEMA4, Inc. and Digital Connect Communications, Inc. you participated in schemes to defraud the E–Rate program for your personal financial gain by controlling the bidding, application, and implementation and invoicing process, and by submitting materially false information to USAC regarding the cost and eligibility of equipment.[7] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.8(c) of the Commission's rules.[8] For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, *i.e.*, the earlier date of your receipt of this Notice of Debarment or its publication date in the Federal Register.[9] Debarment excludes you, for the debarment period, from activities associated with or related to the schools and libraries support mechanism, including the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[10]

Sincerely,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Michael Wood, Antitrust Division, United States Department of Justice (via e-mail)
Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

Attachment 1

July 14, 2009
DA 09–1529

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND FACSIMILE (415–522–1506) AND EMAIL (gsl@defendergroup.com)

Mr. Steven Newton, c/o Law Office of Garrick S. Lew, Attn: Garrick Sherman Lew, 600 Townsend Street, Suite 329E, San Francisco, California 94102.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–08–IH–1928

Dear Mr. Newton: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction of Wire Fraud, Aiding and Abetting, and Collusion, in violation of 18 U.S.C. §§ 2 and 1343, and 15 U.S.C. § 1, in connection with your participation in the schools and libraries universal service support mechanism (''E–Rate program'').[11] Consequently, pursuant to 47 C.F.R. § 54.8, this letter constitutes official notice of your suspension from the E–Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[12]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[13] You pleaded guilty and were sentenced to six months in prison in connection with your participation in two schemes to defraud the E–Rate program.[14] Specifically, you admitted that as former Vice President at Premio Computers, Inc.[15] and principal manager of SEMA4, Inc.[16] and Digital Connect Communications, Inc.[17] you participated in schemes to defraud the E–Rate program of money and property through materially false and fraudulent pretenses for your own enrichment.[18] You did this, with the help of other co-conspirators or defendants, by controlling the bidding, application, and implementation and invoicing process of the E–Rate program.[19] You submitted materially false information to USAC regarding the cost and eligibility of equipment services and intentionally misrepresented the school district's ability and willingness to pay their portion of the E–Rate projects.[20]

Pursuant to section 54.8 of the Commission's rules, your conviction on criminal offenses arising out of activities associated with or related to the schools and libraries support mechanism requires the Bureau to suspend you from continuing to participate in any activities associated with or related to the schools and libraries support mechanism.[21] Activities arising out of or related to the schools and libraries support mechanism include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[22]

Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the Federal Register,

[5] *See* 47 C.F.R. § 54.8 (e)(3),(4). That date occurred no later than Aug. 21, 2009. *See supra* note 3.

[6] *See* Notice of Suspension, 24 FCC Rcd at 9099. *See also United States v. Steven Newton,* Criminal Docket No. 3:05–CR–00208–CRB–10, *Plea Agreement* (N.D. Cal. filed and entered Apr. 20, 2007); *United States v. Steven Newton,* Criminal Docket No. 3:05–CR–00208–CRB–10, Judgment (N.D. Cal. filed and entered Mar. 31, 2009).

[7] *See* Notice of Suspension, 24 FCC Rcd at 9099. *See also United States v. Video Network Communications, Inc. et al.,* Criminal Docket No. 3:05–CR–00208–CRB, Superseding Indictment (N.D. Cal. filed Dec. 8, 2005 and entered Dec. 12, 2005), http://www.usdoj.gov/atr/cases/f213600/213626.htm (accessed May 1, 2008).

[8] 47 C.F.R. § 54.8(c). *See also* § 54.8(a)(4),(b)–(e).

[9] *See* 47 C.F.R. § 54.8(e)(5),(g). *See also* Notice of Suspension, 24 FCC Rcd at 9101.

[10] *See* 47 C.F.R. § 54.8(a)(1),(a)(5),(d),(g); Notice of Suspension, 24 FCC Rcd at 9101.

[11] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent two count conviction on wire fraud, collusion, and aiding and abetting. *See United States v. Steven Newton,* Criminal Docket No. 3:05–CR–00208–CRB–10, *Plea Agreement* (N.D. Cal. filed and entered Apr. 20, 2007) (''*Newton Plea*''). *See also United States v. Steven Newton,* Criminal Docket No. 3:05–CR–00208–CRB–10, Judgment (N.D. Cal. filed and entered Mar. 31, 2009) (Convicted on Counts 11 and 22)(''*Newton Judgment*''). *See also generally United States v. Video Network Communications, Inc. et al.,* Criminal Docket No. 3:05–CR–00208–CRB, Superseding Indictment (N.D. Cal. filed Dec. 8, 2005 and entered Dec. 12, 2005), http://www.usdoj.gov/atr/cases/f213600/213626.htm (accessed May 1, 2008) (''*VNCI Superseding Indictment*'').

[12] 47 C.F.R. § 54.8 (2008). *See also* 47 C.F.R. § 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order*'') (adopting section 54.521 of the Commission's rules to suspend and debar parties from the E–Rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.,* Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[13] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 66; *Program Management Order,* 22 FCC Rcd at 16387, ¶ 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 C.F.R. § 54.8(a)(6).

[14] *Newton Judgment* at 1–2. *See also VNCI Superseding Indictment* at ¶¶ 4–6, 8–11, 15, 19, 22–24, 72–78, 133–137, 145–151.

[15] Premio Computers, Inc. manufactures computers, software and peripheral equipment, and sells them to wholesale, commercial, and government entities. *See In the Matter of Premio, Inc.,* Notice of Debarment, 22 FCC Rcd 1019, 1021 (Jan. 22, 2007). Premio Computers, Inc. was debarred from the E–Rate program for its involvement in E–Rate related fraud. *See generally id.*

[16] SEMA4 is a California company that provided equipment and services for a project funded by the E–Rate program. *See VNCI Superseding Indictment* at ¶¶ 74–75. The charges against SEMA4 were dismissed. *See United States v. SEMA4, Inc.,* Criminal Docket No. 3:05–CR–00208–CRB–3 (N.D. Cal. terminated June 12, 2007).

[17] Digital Connect Communications, Inc. was a California company that provided telecommunication and Internet access equipment and services to schools participating in the E–Rate program. *See VNCI Superseding Indictment* at ¶¶ 134–135. The charges against this company were dismissed. *See United States v. Digital Connect Communications, Inc.,* Criminal Docket No. 3:05–CR–00208–CRB–4 (N.D. Cal. terminated June 12, 2007).

[18] *See VNCI Superseding Indictment* at ¶¶ 4–6, 8–11, 15–16, 19, 22–24, 72–78, 133–137, 145–151.

[19] *Id.*

[20] These misrepresentations included inflating the costs of eligible telecommunications equipment and services in applications to cover the cost of ineligible equipment and services. *See VNCI Superseding Indictment* at ¶¶ 8–11, 22–24, 78, 145–151.

[21] 47 C.F.R. § 54.8(b)–(e); *see also* § 54.8(a)(4).

[22] 47 C.F.R. § 54.8(a)(1); *see also* § 54.8(a)(3).

pending the Bureau's final debarment determination.[23] In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation.[24] Your request must be received within 30 days after you receive this letter or after notice is published in the Federal Register, whichever comes first.[25] Such requests, however, will not ordinarily be granted.[26] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[27] The Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[28]

II. Initiation of Debarment Proceedings

Your guilty plea and conviction of criminal conduct in connection with the E–Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for suspension and debarment defined in section 54.8(c) of the Commission's rules.[29] Therefore, pursuant to section 54.8 of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.[30]

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the Federal Register.[31] Absent extraordinary circumstances, the Bureau will debar you.[32] The Bureau will decide any request for reversal or limitation of debarment within 90 days of receipt of such request.[33] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the Federal Register.[34]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[35] The Bureau may, if necessary to protect the public interest, extend the debarment period.[36]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, to the attention of Rebekah L. Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah L. Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C327, Washington, DC, 20554, with a copy to Michele Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC, 20554. You shall also transmit a copy of the response via e-mail to *Rebekah.Bina@fcc.gov* and to *Michele.Berlove@fcc.gov.*

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Michele Levy Berlove, Acting Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1477 and by e-mail at *Michele.Berlove@fcc.gov.*

Sincerely yours,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

[FR Doc. E9–22963 Filed 9–22–09; 8:45 am]

BILLING CODE 6712–01–P

[23] 47 C.F.R. § 54.8(a)(7), (e)(1); *see also Second Report and Order,* 18 FCC Rcd at 9226, ¶ 69.

[24] 47 C.F.R. § 54.8(e)(4).

[25] Id.

[26] *Id.*

[27] 47 C.F.R. § 54.8(f); *see also Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70.

[28] 47 C.F.R. § 54.8(e)(5), (f); *see also Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70;

[29] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 C.F.R. § 54.8(c). You were convicted on various fraud charges. *See supra* note 4.

[30] *See* 47 C.F.R. § 54.8(b), (c).

[31] 47 C.F.R. § 54.8(e)(3), (5); *see also Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70.

[32] 47 C.F.R. § 54.8(e)(5); *see also Second Report and Order,* 18 FCC Rcd at 9227, ¶ 74.

[33] 47 C.F.R. § 54.8(e)(5), (f); *see also Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70.

[34] 47 C.F.R. § 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 C.F.R. 54.8(f).

[35] 47 C.F.R. § 54.8(a)(1), (d), (g); *see also Second Report and Order,* 18 FCC Rcd at 9225, ¶ 67.

[36] 47 C.F.R. § 54.8(g).

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010071–036.

Title: Cruise Lines International Association Agreement.

Parties: AMA Waterways; American Cruise Lines, Inc.; Azamara Cruises; Carnival Cruise Lines; Celebrity Cruises, Inc.; Costa Cruise Lines; Crystal Cruises; Cunard Line; Disney Cruise Line; Holland America Line; Hurtigruten, Inc.; Majestic America Line; MSC Cruises; NCL Corporation; Oceania Cruises; Orient Lines; Princess Cruises; Regent Seven Seas Cruises; Royal Caribbean International; Seabourn Cruise Line; SeaDream Yacht Club; Silversea Cruises, Ltd.; Uniworld River Cruises, Inc.; and Windstar Cruises.

Filing Party: Terry Dale, President; Cruise Lines International Association, Inc.; 910 SE 17th Street, Suite 400; Fort Lauderdale, FL 33316.

Synopsis: The amendment would add Avalon Waterways and Paul Gauguin Cruises and delete Majestic America Line and Orient Lines as parties to the agreement.

Agreement No.: 012081.

Title: MSC/CMA CGM Cross Slot Charter Agreement.

Parties: CMA CGM. S.A. and MSC Mediterranean Shipping Company S.A.

Filing Party: Draughn B. Arbona, Esq.; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502–1868.

Synopsis: The agreement would authorize the parties to exchange slots in the trade between California ports and ports in China.

By Order of the Federal Maritime Commission.

Dated: September 18, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–22986 Filed 9–22–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 015131N.
Name: Formosa International Freight Forwarder, Inc.
Address: 20 West Lincoln Ave., Ste. 302, Valley Stream, NY 11580.
Date Revoked: August 31, 2009.
Reason: Failed to maintain a valid bond.

License Number: 021493NF.
Name: Global Express Consolidators, Inc.
Address: 2775 W. Okeechobee Rd., #146, Hialeah, FL 33010.
Date Revoked: September 4, 2009.
Reason: Failed to maintain valid bonds.

License Number: 019460NF.
Name: USCA Forwarding-Seabell Express Inc.
Address: 50 Harrison Street, Ste. 305, Hoboken, NJ 07030.
Date Revoked: August 27, 2009.
Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. E9–22984 Filed 9–22–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Tri-State Runner, 520A Palisades Ave., Teaneck, NJ 07666, Vinton South, Sole Proprietor.

Ocean Cargo Express Lines, LLC, 5572 Export Blvd., Garden City, GA 31408, *Officers:* Suzanne M. Loe, Manager, (Qualifying Individual) Willem A. Vermaas, Member.

Delvi, Inc., 7010 N.W. 50 Street, Miami, FL 33166, *Officers:* Jose A. Riba, Secretary (Qualifying Individual), Jose A. Riba, Sr., President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

KCTC International (America), Inc., dba World Bridge Line, 16012 S. Western Ave., Ste. 302, Gardena, CA 90247, *Officer:* Byung H. Chung, President (Qualifying Individual).

G.P. Logistics, Inc., 9910 NW 21st Street, Miami, FL 33172, *Officer:* Byron E. Keeler, President (Qualifying Individual).

Express USA Inc., 200 Middlesex Essex Tpk, Ste. 100, Iselin, NJ 08830, *Officer:* Christian Nadal, Secretary (Qualifying Individual).

AME Logistics LLC, 156–15 146 Ave., Ste. 128, Jamaica, NY 11434, *Officers:* Peter Lee, President (Qualifying Individual), James Lo, Partner.

AFC Worldwide Express, Inc. dba R+L Global Logistics, 975 Cobb Place Blvd., Ste. 101, Kennesaw, GA 30144, *Officers:* Anthony J. Scaturro, President (Qualifying Individual), Glenn S. Henderson, CEO.

Metro Freight Services Inc. dba Maritime, Express Lines (M.E.L.), 1225 W. St. George Ave., Linden, NJ 07036, *Officer:* Georges T. Samaha, President (Qualifying Individual).

Elzado Enterprises Incorporated, 14940 Grant Lane, Leisure City, FL 33033, *Officer:* Trudy Westcarr, CFO (Qualifying Individual).

Poseidon Logistics, Inc., 801 S. Garfield Ave., Ste. 200, Alhambra, CA 91801, *Officer:* An (Anna) Tong Li, Secretary (Qualifying Individual).

SIRVA Move Management, Inc., 5001 U.S. Highway 30 West, Fort Wayne, IN 46818, *Officer:* Donald J. Krengiel, Asst. Secretary (Qualifying Individual).

Joker Logistics USA, Inc., 11301 Metro Airport Center Dr., Ste. 170, Romulus, MI 48174, *Officer:* Michael Unsworth, V.P. of Customs (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Global Transit Group LLC, 2266 Bath Ave., Brooklyn, NY 11214, *Officer:* Rostislav Kamenetskiy, Manager (Qualifying Individual).

Dated: September 18, 2009.

Karen V. Gregory,
Secretary.

[FR Doc. E9–22985 Filed 9–22–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

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

FOR FURTHER INFORMATION CONTACT: Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sections 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Richard A. Lidinsky, Jr.,
Chairman.

The Members of the Performance Review Board Are:

1. Joseph E. Brennan, Commissioner.
2. Rebecca F. Dye, Commissioner.
3. Clay G. Guthridge, Administrative Law Judge.
4. Florence A. Carr, Director, Bureau of Trade Analysis.
5. Karen V. Gregory, Secretary.
6. Vern W. Hill, Director, Bureau of Enforcement.
7. Peter J. King, General Counsel.
8. Sandra L. Kusumoto, Director, Bureau of Certification and Licensing.
9. Austin L. Schmitt, Director of Operations.

[FR Doc. E9–22983 Filed 9–22–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Comment Request for Review of ACF Disaster Case Management Implementation Guide; Office of Human Services Emergency Preparedness and Response

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Administration for Children and Families (ACF), Office of Human Services Emergency Preparedness and Response (OHSEPR) intends to submit to notice in the **Federal Register** for comments on the ACF Disaster Case Management Implementation Guide, dated December 10, 2008.

Disaster case management is the process of organizing and providing a timely, coordinated approach to assess disaster-related needs as well as existing healthcare, mental health and human services needs that may adversely impact an individual's recovery if not addressed. Disaster case management facilitates the delivery of appropriate resources and services, works with a client to implement a recovery plan and advocates for the client's needs to assist him/her in returning to a pre-disaster status while respecting human dignity. If necessary, disaster case management helps transition the client with pre-existing needs to existing case management providers after disaster-related needs are addressed. This is facilitated through the provision of a single point of contact for disaster assistance applicants who need a wide variety of services that may be provided by many different organizations.

The purpose of disaster case management is to rapidly return individuals and families who have survived a disaster to a state of self-sufficiency. This is accomplished by ensuring that each individual has access to a case manager who will capture information about the individual's situation and then serve as his/her advocate and help him/her organize and access disaster-related resources, human services, healthcare and mental healthcare that will help him/her achieve pre-disaster levels of functioning and equilibrium. The service is particularly critical in situations where large-scale mortality, injuries, or personal property damage have occurred. Disaster case management is based on the principles of self-determination, self-sufficiency, federalism, flexibility and speed, and support to States.

Comments are particularly invited on: the program guidelines of the ACF Disaster Case Management Pilot Program; and recommendations on program improvements based on valid evidence and methodology.

For a copy of the ACF Disaster Case Management Implementation guide, please contact Kaee Ross at 202–401–9331, or visit *http://www.acf.hhs.gov/ohsepr/dcm/dcm.guide.html.*

DATES: Comments must be received on or before October 8, 2009.

ADDRESSES: Send or deliver comments to—CAPT Roberta P. Lavin, Director, Office of Human Services Emergency Preparedness and Response, Administration for Children and Families, 370 L'Enfant Promenade, SW., 6th Floor West, Washington, DC 20447 or via email to *Roberta.Lavin@acf.hhs.gov.*

ADDITIONAL INFORMATION: Contacts: CAPT Roberta P. Lavin, Director, Office of Human Services Emergency Preparedness and Response (OHSEPR), at *roberta.lavin@acf.hhs.gov* or 202–401–9306; Sylvia R. Menifee, Deputy Director (Operations), OHSEPR, at *sylvia.menifee@acf.hhs.gov* or 202–401–1448; Kaee Ross, Project Officer, OHSEPR, at *kaee.ross@acf.hhs.gov* or 202–401–9331.

SUPPLEMENTARY INFORMATION: The Administration for Children and Families (ACF), within the Department of Health and Human Services (HHS) is responsible for Federal programs that promote the economic and social well-being of families, children, individuals, and communities. ACF programs aim to achieve the following:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities that have a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, American Indian tribes, Native communities, States, and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned, reformed, and integrated to improve needed access; and
- A strong commitment to working with people with developmental disabilities, refugees, and migrants to address their needs, strengths, and abilities.

Dated: September 16, 2009.

David A. Hansell,

Acting Assistant Secretary for Children and Families.

[FR Doc. E9–22946 Filed 9–22–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Cross-Site Evaluation of Children's Bureau Child Welfare Implementation Centers and National Resource Centers.

OMB No.: New Collection.

Description: The Cross-Site Evaluation of the Child Welfare Implementation Centers (IC) and National Resource Centers (NRC) is sponsored by the Children's Bureau, Administration for Children and Families of the U.S. Department of Health and Human Services and involves the conduct of a five-year, cross-site evaluation that examines the effectiveness of the ICs' and NRCs' activities and service provision and the relation of their training and technical assistance activities to organizational and systems change in State and Tribal child welfare systems. Additionally, the evaluation will examine the degree to which networking, collaboration, information sharing, adherence to common principles, and common messaging occurs across all members of the Children's Bureau Training and Technical Assistance (T/TA) Network, which is designed to improve child welfare systems and to support States and Tribes in achieving sustainable, systemic change that results in greater safety, permanency, and well-being for children, youth, and families. The Children's Bureau desires to assess the quality and effectiveness of the technical assistance it supports, and several of these programs and projects are required to be evaluated, including those funded under Section 105 of The Child Abuse Prevention and Treatment Act, as amended [42 U.S.C. 5106] and Parts B and E of Title IV of the Social Security Act. Beginning in fiscal year (FY) 2010, the T/TA Network will comprise a group of 30 T/TA providers

funded entirely or partially by the Children's Bureau through grants, contracts, and interagency agreements.

The cross-site evaluation uses a mixed-method, longitudinal approach to examine the ICs (funded in FY 2009) and a new cohort of NRCs (funded in FY 2010). Proposed data collection methods are a longitudinal telephone survey of State child welfare directors (or their designees) and Tribal Child Welfare/Social Service Directors (or their designees), a web-based survey of State and Tribal T/TA recipients, and aggregation of outputs from a web-based technical assistance tracking system (OneNet)that will be used by the five ICs and 11 NRCs. A web-based survey will be also administered to members of the T/TA Network. Data collected through these instruments will be used by the Children's Bureau to evaluate the effectiveness of technical assistance delivered to State, local, Tribal, and other publicly administered or publicly supported child welfare agencies and family and juvenile courts and the overall functioning of the T/TA Network.

Respondents: Respondents to two of the survey instruments will be State and Tribal governments. Respondents to the third survey instrument will be private institutions, including universities, not-for-profit organizations, and private companies. Private institutions, including universities and not-for-profit organizations will be respondents to the forms in the OneNet tracking system.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Agency Results Survey	74	1	1	74
Training and Technical Assistance (T/TA) Activity Survey	600	1	0.25	150
Web-Based Network Survey	30	1	0.25	7.50
OneNet Form: Implementation Project (IP) Description	5	5.40	0.50	13.50
OneNet Form: IP Technical Assistance (TA) Activity	5	280.80	0.33	463.32
OneNet Form: Implementation Center (IC) General TA Event	5	4	0.33	6.60
OneNet Form: IP Monthly Report	5	62.40	0.17	53.04
OneNet Form: National Resource Centers (NRC) TA Intake Form	11	45	0.13	64.35
OneNet Form: NRC TA Work Plan	11	45	0.20	99
OneNet Form: NRC TA Close-Out	11	45	0.08	39.60
OneNet Form: NRC TA Activity	11	528	0.20	1,161.60
OneNet Form: NRC General TA Event	11	36	0.25	99

Estimated Total Annual Burden Hours: 2,231.51.

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: September 18, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–22897 Filed 9–22–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Plasmid System for Monitoring Double-Stranded DNA Breaks in the Live Cell

Description of Technology: This technology is useful for studying the role of chromosomal breaks in cancer and for drug and assay development related to treating cancer. The technology is a two-plasmid system for inducing and monitoring individual double-stranded DNA breaks in the nuclei of live cells. The first plasmid, lac-I-SceI-tet, which is stably transfected into cells, has a rare 18 base pair restriction endonuclease site called ISceI. This site is flanked by an array of 256 copies of the lac-repressor binding site and 96 copies of the tetracycline response element. Plasmids expressing tet and lac repressor proteins labeled in a complementary fashion can be cotransfected to visualize these arrays of repressor binding sites. The second

plasmid, RFP-I-SceI-GR, is a chimera between the ISceI endonuclease and the ligand binding domain of the glucocorticoid receptor (GR) in frame with red fluorescent protein (RFP). This GR chimera will translocate from the cytoplasm to the nucleus upon addition of triamcinolone acetonide, leading to rapid induction of a double-stranded break between the lac and tet arrays.

Applications:

• Tool for drug studies relating to DNA stability and repair.

• Tool to probe the role of nuclear and DNA binding proteins in stability and repair.

Inventors: Thomas A. Misteli and Evi Soutoglou (NCI).

Related Publication: E Soutoglou, JF Dorn, K Sengupta, M Jasin, A Nussenzweig, T Ried, G Danuser, T Misteli. Positional stability of single double-strand breaks in mammalian cells. Nat Cell Biol. 2007 Jun;9(6):675–682.

Patent Status: HHS Reference No. E–264–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: This technology is available as a research tool under a Biological Materials License.

Licensing Contact: Steve Standley, PhD; 301–435–4074; *sstand@od.nih.gov.*

Mouse Embryonic Stem Cell-Based Functional Assay To Evaluate Mutations in BRCA2

Description of Technology: Mutations in breast cancer susceptibility genes BRCA1 and BRCA2 have up to an 80 percent life time risk in developing breast cancer. There are no ''mutation hot spots'' and to date, more than 1,500 different mutations have been identified in BRCA2. The absence of tumor cell lines expressing various mutant BRCA2 alleles has hindered evaluations to determine the functional differences between different mutations.

A simple, versatile and reliable mouse embryonic stem cell and bacterial artificial chromosome based assay to generate cell lines expressing mutant human BRCA2 has been developed and it has been used to classify 17 sequence variants. Available for licensing are wild-type and eleven mutant BRCA2 cell lines developed from this assay that have either truncations or point mutations. These cell lines may be used to evaluate the effect of DNA damaging agents, genotoxins and chemotherapeutic efficacy.

Applications:

• Research tool to generate and study BRCA2 mutations.

• Method to screen for chemotherapeutics.

• Method to evaluate DNA damaging agents.

Advantages: Ready to use portfolio of BRCA2 mutant cell lines to study BRCA2 mutant functional analysis.

Market: An estimated 194,280 new cases of breast cancer will be diagnosed and may cause 40,610 deaths in the U.S. in 2009.

Inventors: Shyam K. Sharan and Sergey Kuznetsov (NCI).

Publication: SG Kuznetsov et al. Mouse embryonic stem cell-based functional assay to evaluate mutations in BRCA2. Nat Med. 2008 Aug;14(8):875–881.

Patent Status: HHS Reference No. E–261–2007/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The Mouse Cancer Genetics Program, Center for Cancer Research, National Cancer Institute, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize mouse embryonic stem cell lines suitable for functional analysis of BRCA2 variants. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Establishment of Two Cell Lines That Stably Express Luciferase for In Vivo Tracking

Description of Technology: Available for licensing are two renal carcinoma cell lines, 786-O(luc) and 786-O/VHL/(luc) which both stably express luciferase. 786-O(luc) lacks von Hippel-Landau (VHL) protein expression and it has constitutively high expression of hypoxia-inducible transcription factor-2alpha (HIF-2alpha). The second stably expresses VHL, a tumor suppressor, and has minimal HIF-2alpha expression. These cell lines can be tracked in vivo and can be used to study VHL-dependent and HIF-2alpha dependent events such as tumorigenesis. VHL mutations lead to the clinical manifestations of von Hippel-Lindau disease, a rare autosomal dominant syndrome characterized by abnormal growth of blood vessels in multiple organs, including the brain and kidneys.

Applications: Model to study VHL pathology.

Advantages: Cell lines that stably express luciferase for in vivo tracking.

Benefits: Easy, ready to use positive and negative VHL and HIF-2alpha cells that stably express luciferase for in vivo tests.

Market:

• Incidence of VHL syndrome is 1 in 38,951.

• HCC is the third leading cause of cancer death worldwide.

• HCC is the fifth most common cancer in the world.

• Post-operative five-year survival rate of HCC patients is 30–40 percent.

Inventors: Leonard M. Neckers and W. Marston Linehan (NCI).

Patent Status: HHS Reference No. E–005–2007/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Urologic Oncology Branch, is seeking statements of capability or interest from parties interested in collaborative research to develop further uses for these two cell lines that stably express luciferase for in vivo tracking. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: September 17, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–22974 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the

Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Osmogels: A New Method for Stabilizing Weak Molecular Complex Interactions

Description of Invention: This invention describes a new method for stabilizing molecular complexes in polyacrylamide gels for analysis by the electrophoretic mobility shift assay. By adding specific osmolytes directly to the gel, investigators have found that weakly interacting molecular complexes can be sufficiently stabilized to allow quantitative analysis of the binding. Experiments with nonspecific labile complexes of two restriction endonucleases, EcoRI and BamHI, show that one of these added solutes is particularly effective at inhibiting complex dissociation, does not interfere with normal gel polymerization, and does not significantly slow normal gel migration. The results also demonstrate that sharp bands can be obtained for non-specific complexes of both enzymes on gels prepared with this solute while only smeared and distorted bands are observed on regular gels prepared without the solute. This method can be used for protein-protein, DNA-protein, and RNA-protein complexes, and can also be extended to include other techniques for separating complexes from free components using gel chromatography and capillary electrophoresis.

The potential market for gels that allow researchers to detect and quantify weak molecular complex interactions is significant; ranging from molecular biologists searching for novel regulatory DNA-binding proteins and convenient ways to detect protein-protein, or protein-DNA/RNA complexes to crystallographers needing reliable techniques to search for optimal conditions of complex formation. This technology has the potential to significantly impact biomedical research and development across many fields.

Application: Detection of weak molecular complex interactions for research and commercial use.

Development Status: Late stage.

Inventors: Nina Y. Sidorova and Donald C. Rau (NICHD).

Publications:

1. NY Sidorova, S Muradymov, DC Rau. Trapping DNA-protein binding reactions with neutral osmolytes for the analysis by gel mobility shift and self-cleavage assays. Nucleic Acids Res. 2005 Sep 9;33(16):5145–5155.

2. NY Sidorova and DC Rau. Differences between EcoRI nonspecific and ''star'' sequence complexes revealed by osmotic stress. Biophys J. 2004 Oct;87(4):2564–2576.

Patent Status: U.S. Patent Application No. 12/485,481 filed 16 Jun 2009 (HHS Reference No. E–214–2009/0–US–01); No foreign patent rights available.

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey A. James, Ph.D.; 301–435–5474; *jeffreyja@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Child Health and Human Development, Program in Physical Biology, Laboratory of Physical and Structural Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize osmogels for analysis of weak complexes by the electrophoretic mobility shift assay with potential extension of the technique to other separation methods. Please contact Joseph Conrad III, Ph.D. at 301–435–3107 or *jmconrad@mail.nih.gov* for more information.

RNA Nanoparticles and Methods of Use

Description of Invention: The invention hereby offered for licensing is in the field of nanoparticles and their usefulness in a variety of medical applications. More specifically the invention describes the design and synthesis of various RNA nanoparticles. These polyvalent nanoparticles comprise RNA motifs as building blocks that give the particles their unique characteristics. Moreover, the motifs can be pre-defined and chosen to give the particles desired characteristics (e.g. size and shape) tailored for a variety of applications. The polyvalent particles can utilize multiple unique positions to carry functional groups for cell recognition (e.g. cancer cells), therapy and detection. For therapeutic or detection applications the particles typically encompass at least two functional groups, a therapeutic or imaging agent and a targeting agent that will direct the particles to the targeted tissue.

RNA nanoparticles have the potential to serve as excellent drug or imaging delivery systems due to their designability and versatility. Furthermore, the RNA nanoparticles of the invention are also capable of self-assembly and potentially form nanotubes of various shapes which offer potentially broad uses in medical implants, gene therapy, nanocircuits, scaffolds and medical testing.

Applications: The technology can be primarily used for therapeutic and diagnostic applications.

Advantages: RNA nanoparticles potentially offer advantages compared to other conventional nanoparticles:

- They are compatible with biological systems and thus may be readily used for in vivo applications such as therapeutic and diagnostic.
- They are small and have a potential to move efficiently through biological barriers to a target tissue.
- They have multiple binding sites and thus can readily be conjugated with several functional groups (e.g. therapeutic molecule and targeting molecule).
- They are versatile and can be designed in different shapes and sizes for different applications.

Development Status: Early stage.

Market:

- According to U.S. National Science Foundation estimates, by 2015 the annual global market for nano-related goods and services will top $1 trillion, thus making it one of the fastest-growing industries in history. Assuming that these figures prove to be accurate, nanotechnology will emerge as a larger economic force than the combined telecommunications and information technology industries at the beginning of the technology boom of the late 1990s.
- The interest in nanoparticles as carriers of biological materials for medical applications has been growing exponentially in recent years and the commercial potential in the medical field is vast.
- According to market research reports the global medical market for nanotechnology applications is expected to increase from about $1.7 billion in 2007 to an estimated $3.8 billion by 2013, a compound annual growth rate (CAGR) of 14.9%.
- Nanoparticles have the largest share of the market, worth $1.6 billion in 2007. This segment is expected to be worth $3.4 billion in 2013, a CAGR of 13.4%.
- Other nanostructured materials represent the second largest segment, generating $36.5 million in 2007 and an $304.7 million in 2013, for a CAGR of 46.5%.
- Some therapeutics and imaging medical products based on nanoparticles have recently received FDA approval and are ready for commercialization. For example, the Rexin G, a targeted Delivery System (TRS) for treatment of solid tumors is already used commercially in the

Philippine and is currently being commercialized in the US by Epeius Biotechnologies.

Inventor: Bruce A. Shapiro (NCI).

Publications:

1. E Bindewald, C Grunewald, B Boyle, M O'Connor, BA Shapiro. Computational strategies for the automated design of RNA nanoscale structures from building blocks using NanoTiler. J Mol Graph Model. 2008 Oct;27(3):299–308.
2. B Shapiro, E Bindewald, W Kasprzak, Y Yingling. (E Gazit, F Nussinov, eds.) Protocols for the In silico Design of RNA Nanostructures. In: Nanostructure Design Methods and Protocols. Totowa, NJ: Humana Press; 2008. p. 93–115.
3. HM Martinez, JV Maizel Jr, BA Shapiro. RNA2D3D: a program for generating, viewing, and comparing 3-dimensional models of RNA. J Biomol Struct Dyn. 2008 Jun;25(6):669–683.
4. I Severcan, C Geary, L Jaeger, E Bindewald, W Kasprzak, B Shapiro. (G Alterovitz, M Ramoni, R Benson, eds.) Computational and Experimental RNA Nanoparticle Design. In: Automation in Genomics and Proteomics: An Engineering Case-Based Approach. Hoboken: Wiley Publishing; 2009.
5. E Bindewald, R Hayes, YG Yingling, W Kasprzak, BA Shapiro. RNAJunction: a database of RNA junctions and kissing loops for three-dimensional structural analysis and nanodesign. Nucleic Acids Res. 2008 Jan;36:D392–397.
6. YG Yingling and BA Shapiro. Computational design of an RNA hexagonal nanoring and an RNA nanotube. Nano Lett. 2007 Aug;7(8):2328–2334.
7. BA Shapiro and YG Yingling. PCT Application No. PCT/US2007/13027 filed 31 May 2007, which published as WO 2008/039254 on 03 Apr 2008, and U.S. Patent Application No. 12/227,955 filed 02 Dec 2008; both entitled ''RNA Hexagonal Ring and RNA Nanotube.''

Patent Status: U.S. Provisional Application No. 61,187,495 filed 16 Jun 2009 (HHS Reference No. E–059–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, Ph.D., MBA; 301–435–4616; UR7a@nih.gov; John Stansberry, Ph.D.; 301–435–5236; js852e@nih.gov

Collaborative Research Opportunity: The National Cancer Institute's Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize RNA nanostructures. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Bactericidal Peptides From Avian Leukocyte Ribonuclease A–2

Description of Invention: These bactericidal polypeptides offer a novel alternative to conventional antibiotics that are used to treat and prevent bacterial infections. As infection-causing bacteria continue to develop antibiotic resistance to first line antibiotics there will always be a need for new antibiotic alternatives. Additionally, a greater understanding of the specific cytoxic activity of RNase A ribonucleases, their functional domains, and their roles in promoting anti-pathogen host defense may provide insight into new therapeutic agents.

This invention includes a novel RNase A ribonuclease from chicken leukocytes and polypeptides that have bactericidal activities against both gram positive and gram negative bacteria, including such pathogens as *Escherichia coli, Salmonella spp.,* and *Staphylococcus.*

Applications:

- Polypeptides exhibiting bactericidal, bacteriostatic, and ribonuclease activity.
- Pharmaceutical compositions comprising the bactericidal polypeptides.
- Methods for treating bacterial infections.

Development Status: Early stage.

Market: With the increase in antibiotic and antibacterial drug resistance, the market for alternatives is growing.

Inventors: Helene F. Rosenberg et al. (NIAID).

Related Publication: T Nitto, KD Dyer, M Czapiga, HF Rosenberg. Evolution and function of leukocyte RNase A ribonucleases of the avian species, *Gallus gallus.* J Biol Chem. 2006 Sep 1;281(35):25622–25634.

Patent Status: U.S. Patent Application No. 12/438,700 filed 24 Feb 2009, claiming priority to 24 Aug 2006 (HHS Reference No. E–281–2006/0–US–03)

Licensing Status: Available for licensing.

Licensing Contact: RC Tang JD LLM; 301–435–5031; tangrc@mail.nih.gov.

Collaborative Research Opportunity: The NIAID Laboratory of Allergic Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact William Ronnenberg, NIAID Office of Technology Development, at 301–451–3522 or *wronnenberg@niaid.nih.gov* for more information.

Dated: September 17, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–22975 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0440]

Availability of Grant Funds for the Support of Cooperative Agreement Award to Georgetown University Entitled: Genome Wide Methylation Arrays for Detecting Markers of Increased Susceptibility to Mammary Cancer Caused by In-Utero Exposures to Endocrine Disruptors (U01)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), and Office of New Animal Drugs (ONADE) is announcing the availability of grant funds for the support of a sole source, cooperative agreement award to Georgetown University, Lombardi Cancer Research Center and Department of Oncology entitled: ''Genome Wide Methylation Arrays for Detection Markers of Increased Susceptibility to Mammary Cancer Caused by In-Utero Exposures to Endocrine Disruptors (U01).'' The main purpose of this study is to help gain an understanding of the extent to which exposures to endocrine disruptors early in life increase later susceptibility to developing breast cancer by inducing heritable epigenetic changes in transcription factors, which are linked to increased breast cancer risk. The study is subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331, *et seq.*) regulations issued under it and applicable Department of Health and Human Services statutes and regulations.

DATES: Important dates are as follows:

1. The application due date is 30 days from the publication in the **Federal Register**.
2. The anticipated start date is September 2009.

FOR FURTHER INFORMATION CONTACT:

Peer Review/Administrative Contact: Michelle Fuller, Center for

Veterinary Medicine (HFV–10), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9736, FAX: 240–276–9744, e-mail:*michelle.fuller@fda.hhs.gov*.

Scientific Contact: M. Cecilia Aguila, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl. (rm. E478), Rockville, MD 20855, 240–276–8125, FAX: 240–276–8116, e-mail: *Cecilia.aguila@fda.hhs.gov*.

For more information on this funding opportunity announcement (FOA), and to obtain detailed requirements, please refer to the full FOA located at *http://www.fda.gov/cvm*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Request for Application: RFA FD09–020
Catalog of Federal Domestic Assistance Number: 93.103

A. Background

More than 80,000 chemicals are registered for use in commerce in the United States and an estimated 2,000 new chemicals are introduced annually. These chemicals are used or present as contaminants in everyday items such as: Foods, personal care products, prescription drugs, household cleaners, and lawn care products (National Toxicology Program, 2002). Scientists are continually learning more about how these compounds interact with the body and the long-term impact of these interactions on our health. For example, many synthetic chemicals have been identified as known or suspected EDCs (endocrine disruptors), including DES (diethylstilbesterol), BPA (bisphenol A), and GEN (genistein). The long-term impact of these chemicals on human health is still largely unknown, particularly when the exposure levels are relatively low and do not cause any apparent toxic effects. EDCs may have estrogenic, antiestrogenic, androgenic, and/or anti-androgenic actions and /or they may disrupt adrenal and/or thyroid functions, too.

The endocrine system participates in many important functions of an organism, such as sexual differentiation before birth, sexual maturation during puberty, reproduction in adulthood, growth, metabolism, digestion, cardiovascular and immune functions, and excretion. Hormones are implicated in the etiology of certain cancers of hormone-dependent tissues, such as those of the breast, uterus, and prostate gland. Environmentally released man-made chemicals are suspected of being responsible for numerous adverse effects on the endocrine function in wildlife species as well as in humans.

EDCs may be harmful to human health following fetal exposure. This likely relates to epigenetic changes in gene methylation patterns occurring during gametogenesis and embryonic development. During these periods, most of our genes are demethylated, followed by remethylation; the timing and pattern of remethylation depends on the tissue lineage, intrauterine environment, and maternal nutrition and other exposures. Several genes have been identified whose expression is epigenetically altered in adult tissues in animals that have been exposed in utero to environmental contaminants with endocrine disrupting activity. Therefore, we hypothesize that in utero EDC exposures increase hypomethylation of genes, including those that regulate mammary stem cell behavior.

It is increasingly evident that many diseases, including breast cancer, may originate during fetal life. Experimental findings and limited human data show that maternal exposures during pregnancy to synthetic estrogens such as DES or endocrine disruptors present in food may precipitate mammary gland development and increase breast cancer risk. To date, traditional toxicity tests such as the 2-year rodent bioassay have been the bases for most regulatory decisions regarding the carcinogenic potential of chemicals in the food. The agency recommends an in utero exposure in these bioassays for direct food and color additives. Therefore, only a limited number of chemicals have been studied by this approach. Additionally, these in vivo toxicology studies are not routinely used to predict the effects of in utero exposures on later susceptibility to various diseases.

B. Research Objectives

The main purpose of the this study is to help gain an understanding of the extent to which exposures to endocrine disruptors early in life increase later susceptibility to developing breast cancer by inducing heritable epigenetic changes in transcription factors, which are linked to increased breast cancer risk. This will be accomplished, first, by exposing pregnant rodents to estrogen and estrogen-like endocrine disruptors at doses previously found to increase mammary cancer among offspring. Focus will be on the resulting hypomethylated genes that express high levels of transcription factors, which regulate proliferation, apoptosis, and differentiation of mammary epithelial cells. Second, humans will be exposed to maternal diet containing plant-derived compounds with hormonal activity during pregnancy to determine if the diet induces epigenetic changes among daughters in the same transcription factors identified in rodents. Third, the study will utilize genetically modified animal models to determine if the epigenetic changes identified in global methylation arrays are causally linked to an increased susceptibility to developing mammary cancer in vivo.

The data from this study will be used to develop the Prenatal Endocrine Disruption and Mammary Tumor Susceptibility assay (PEDMATS), which will provide a novel approach for predicting the safety of chemicals with endocrine activity. Consequently, the agency will benefit from the proposed study, which combines mechanism-focused toxicology studies and modern molecular biology tools, and addresses the question of the cellular target of breast cancer initiation; i.e., mammary stem and progenitor cells. PEDMATS would help the agency to predict the potential breast cancer risk for chemicals that have been identified as having, or that may have, endocrine activity, and for which there are no valid rodent carcinogenicity bioassays. Another valuable feature of this approach is the potential that the PEDMATS studies can be integrated into the current reproductive and developmental toxicity assessment battery used to evaluate the safety of new drugs.

C. Eligibility Information

Georgetown University is uniquely qualified to conduct this research. It has the expertise to study genetic markers in breast cancer in animal models and humans. Importantly, Georgetown University has expertise and proven ability in identifying genes affected in breast cancer. The data analysis is a critical component of the hybridization array experiments and poses a number of challenges due to the large amount of data generated even in a single experiment. Sophisticated, statistically principled data mining tools should be used. These state-of-the-art clustering pattern analyses use standard Finite Normal Mixture models and probabilistic component subspaces, multimodal clusters being automatically identified using Akaide information criterion and minimal information analysis. Georgetown University, Lombardi Cancer Center recently developed a simple approach for the exploration of limited gene expression data sets. To reduce dimensionality, a simple univariate statistical analysis (t-test) to compare gene expression data is

used. The reduced dimensional data set is visualized in three dimensions using these novel algorithms. These visualized algorithms derive the first three principal components from Fisher's matrix and project the multidimensional data into three dimensional gene expression data space. Exploration of the reduced dimensional data set allows for the identification of discriminant genes that are either assembled into a predictive neural network, and/ or selected for functional studies. These approaches have proved useful in recent studies conducted by Dr. Hilakivi-Clarke (Georgetown University, Lombardi Cancer Center) in identifying genes affected by timing of dietary exposures on breast cancer risk and are the preferred approaches for this study.

Georgetown University, Lombardi Cancer Research Center Animal Core Facility has an AAALAC (Association for Assessment and Accreditation of Laboratory Animal Care) accredited animal facility where the animals can be housed. Georgetown can provide the software, hardware, and sophisticated, statistically principled data mining tools. In addition, Georgetown University is already collaborating in an on-going women study in Finland measuring hormone and adipokine levels from blood samples.

This is a sole source award to Lombardi Comprehensive Cancer Center and Department of Oncology, Georgetown University, Washington, DC.

II. Award Information/Funds Available

Awards are made under the authorization of section 301 of the Public Health Service Act (PHS Act) (42 U.S.C. 241), as amended, and under Federal regulations at 42 CFR part 52 and 45 CFR parts 74 and 92.

A. Award Amount

The total amount CVM expects to award is $100,400 in the first year and $104,400 in the second year for a total award of $204,800; total award amount includes direct and indirect costs.

B. Length of Support

The project period will be from September 2009 to August 31, 2011. The first budget period will be from September 2009 to August 31, 2010.

The second year award will depend on the availability of funds and recipient approved performance.

III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *http://www.fda.gpo/cvm*. Persons interested in applying for a grant may obtain application forms and instructions at *http://grants.nih.gov/grants/forms.htm*. For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With Central Contractor Registration (CCR)
- Step 3: Register With Electronic Research Administration (eRA) Commons

Steps 1 (DUNS Number) and 2 (CCR), in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp*. Step 3 (eRA Commons), in detail, can be found at *https://commons.era.nih.gov/commons/registration/registration Instructions.jsp*.

After you have followed these steps, submit paper applications to the Grants Management Contact at the following address:

Gladys M. Bohler, Division of Acquisition Support and Grants (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2105, Rockville, MD 20857, 301–827–7168, FAX: 301–827–7101, e-mail: *gladys.bohler@fda.hhs.gov*.

Dated: September 17, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–22848 Filed 9–22–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of R34 Clinical Trial Pilot Applications PAR–08–195 and R01 PA–07–070 Applications.

Date: October 30, 2009.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Wagenaar Miller, PhD, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 6701 Democracy, Rm 666, Bethesda, MD 20892, 301–594–0652, *rwagenaa@mail.nih.gov*.

Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22969 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee.

Date: October 6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Michelle M. Timmerman, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616. 301–451–4573. *timmermanm@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22970 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ITVA CONFLICTS.

Date: October 6, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *bollerf@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy

[FR Doc. E9–22973 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of DE–PAR–09–182 R03 Applications.

Date: October 27, 2009.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Marilyn Moore-Hoon, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22971 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; R13 Conference Grant Meeting.

Date: November 17, 2009.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, 223, Bethesda, MD 20892.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institutes of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov*.

Dated: September 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22976 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; CDRC Member Conflicts.

Date: October 27, 2009.

Time: 11:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22978 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Pathogenesis of Age-Dependent CNS Degeneration.

Date: October 7, 2009.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *PARSADANIANA@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Mitochondrial Function in Longevity I.

Date: November 10, 2009.

Time: 11:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; MDS 1 Review.

Date: November 20, 2009.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Genetics of Osteoporosis.

Date: November 24, 2009.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22980 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Task Force on Community Preventive Services

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting:

Name: Task Force on Community Preventive Services Meeting.

Times and Dates: 8 a.m.–5:30 p.m. EST, October 14, 2009. 8 a.m.–1 p.m. EST, October 15, 2009.

Place: Centers for Disease Control and Prevention, 2500 Century Parkway, Room 1200/1201, Atlanta, Georgia 30345.

Status: Open to the public, limited only by space available.

Purpose: The mission of the Task Force is to develop and publish the *Guide to Community Preventive Services (Community Guide),* which is based on the best available scientific evidence and current expertise regarding essential public health and what works in the delivery of those services.

Topics:

—Interventions to increase screening for breast, cervical and colorectal cancer and of interventions to increase vaccination rates: Updates of reviews.

—Assessing effectiveness of interventions to increase physical activity.

—Assessing the scope of reviews of interventions to reduce inequalities in health outcomes.

Agenda items are subject to change as priorities dictate.

Contact person for additional information: Freda Parker, Community Guide Branch, Coordinating Center for Health Information and Service, National Center for Health Marking, Division of Health Communication and Marketing, 1600 Clifton Road, M/S E–69, Atlanta, GA 30333, *phone:* 404.498.1119.

Dated: September 17, 2009.

Tanja Popovic,

Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–22885 Filed 9–22–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National

Center for Complementary and Alternative Medicine.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Center for Complementary & Alternative Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Center for Complementary and Alternative Medicine.

Date: October 16, 2009.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, 50 South Drive, Room 1328/1334, Bethesda, MD 20892.

Contact Person: Robert B. Nussenblatt, MD, Acting Scientific And Clinical Director, Division of Intramural Research, NCCAM National Institutes of Health, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: September 11, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22739 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–1 Subcommittee.

Date: October 5–6, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22979 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; The NIDDK–KUH Fellowship Review Committee.

Date: October 16, 2009.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Pulse Wave Velocity in CKD Ancillary Studies.

Date: October 23, 2009.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Inflammation and Obesity.

Date: November 2, 2009.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Inflammatory Bowel Disease.

Date: November 20, 2009.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22977 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Council of Public Representatives (COPR, http://copr.nih.gov/) and the Office of Communications and Public Liaison (OCPL), Office of the Director, NIH (http://www.nih.gov/icd/od/ocpl/index.html); Request for Information (RFI) on Consumer Health Information Interests and Behaviors for Seeking and Using Health Information

ACTION: Request for Information (RFI) on Consumer Health Information Interests and Behaviors for Seeking and Using Health Information.

DATES: *Response Date:* December 30, 2009.

Introduction: Request for Information

January 21, 2009, President Obama issued a directive to all Federal agencies calling for greater transparency, public participation, and collaboration.

In response to this Directive, and in keeping with the work that has already been done by the National Institutes of Health (NIH) to encourage public input and provide science-based health resources and science information to the public, NIH posts this Request for Information (RFI) to offer a new public input opportunity. The RFI will provide insight and better understanding of the health information needs and information-seeking behaviors of NIH health consumer audiences. Information gathered will assist the agency in developing and disseminating health, medical, and scientific information to a broader variety of audiences. The agency anticipates using new outreach strategies and tools, from community-level outlets to Internet-based social media. Members of the public as well as organizations are invited and encouraged to participate in this public input opportunity.

The RFI is a collaborative effort between the NIH Office of Communications and Public Liaison (OCPL) and the NIH Director's Council of Public Representatives (COPR). COPR is a Federal Advisory Committee covered by the Federal Advisory Committee Act (5 U.S.C. Appendix 2). The COPR is composed of up to 21 members of the public who provide the public's perspective into the NIH research priority-setting process as well as the Agency's public health education and public engagement efforts.

NIH is part of the U.S. Department of Health and Human Services and is the primary Federal agency for conducting and supporting biomedical and behavioral research. NIH is the steward of medical and behavioral research for the Nation. Composed of 27 Institutes and Centers, the NIH provides leadership and financial support to researchers in more than 3,000 institutions in all 50 States, the territories and in more than 90 countries around the world. Its mission is science in pursuit of fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to extend healthy life and reduce the burdens of illness and disability.

NIH also has a responsibility to communicate science-based, trustworthy public health and science information to a wide range of audiences, including the public at large, patients, family members, health care providers, scientists, public health workers, nonprofit health organizations, and professional societies. These audiences have differing needs for the information available from the NIH. Building on its previous experience and record of success, NIH recognizes the need to communicate cutting-edge research advances to ensure continued improved health for all Americans in a changing media and information environment. For background information on the RFI, please visit this Web site *http://nihhealthinfoRFI.nih.gov.*

Information Requested

The Request for Information (RFI) serves as a vehicle to obtain public comments on how NIH can best address communication challenges and requirements for the 21st century in the face of increased demands and shrinking resources.

The purpose of the RFI is to obtain information aimed at helping the NIH strengthen short- and long-term communications strategies while identifying cost-effective, meritorious, innovative, and legally sanctioned methods and outlets for disseminating health information to the public. Specifically, the RFI seeks information on the following:

- The current state and range of health information-seeking behaviors and trends;
- The range of health information of interest to the public;
- How the public accesses and uses health information; and
- The barriers that might impede NIH's ability to communicate with health consumers.

Submitting Responses

Responses will be accepted through December 30, 2009. Please limit responses to the maximum number of words indicated for each response.

Responses may be submitted on the Web, by e-mail or by postal mail. See below for instructions.

1. Visit the Consumer Health Information Request for Information Web Site at *http://nihhealthinfoRFI.nih.gov* to submit responses on the Web or to download the response sheet to submit by e-mail or mail.
2. Complete the RFI questions attached in typed or written format. Responders should complete either the Requested Response for Health Consumers or the Requested Response for Organizations and Health Care Providers.
3. E-mail typed responses to this address *HealthInfoRFI@mail.nih.gov.*
4. Mail typed or handwritten responses to Kelli Carrington or Marin Allen, Ph.D., Office of Communications and Public Liaison, National Institutes of Health, 1 Center Drive, Room 344, Bethesda, MD 20892–0188.

Privacy Act Notification Statement

Collection of this information is authorized under 5 U.S.C. 301; 44 U.S.C. 3101. The primary use of this information is to obtain information from the public aimed at helping the National Institutes of Health strengthen short- and long-term communications strategies while identifying cost-effective, meritorious, innovative, and legally sanctioned methods and outlets for disseminating health information to the public. Upon completion of the Request for Information activities, the NIH Director's Council of Public

Representatives (COPR) will produce a final report with recommendations to the NIH Director, which will be available to the public and posted at this Web site *http://copr.nih.gov/reports.asp.* Submission of this information is voluntary, however, in order for us to consider your comments, you should complete all fields.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

Acknowledgement of receipt of written responses will not be made. Responses submitted electronically will receive notice of submission directly following data entry.

The RFI is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of the Government. By providing comments you are consenting to their consideration and use by the NIH.

The Government does not intend to award a grant or contract on the basis of the responses to this RFI nor pay for the preparation of any information submitted or for the Government's use of such information.

No basis for claims against the Government shall arise as a result of a response to this Request for Information or the Government's use of such information as either part of our evaluation process or in developing specifications for any subsequent announcement.

Inquiries

For questions about the RFI, please use the following contact information: Kelli Carrington or Dr. Marin Allen (*HealthInfoRFI@mail.nih.gov*) Office of Communications and Public Liaison, National Institutes of Health, 1 Center Drive, Room 344, Bethesda, MD 20892–0188, phone (301) 496–5787.

For questions about personal medical or health issues, please send a separate e-mail to *NIHinfo@od.nih.gov* or call 301–496–4000. Medical and health questions included in the RFI response can not receive a response due to Federal Privacy Act compliance.

We are grateful for your time and effort on behalf of improving our delivery of health and science information.

Requested Response for Health Consumers (19 Questions)

Demographic Information

1. Describe the city and State you represent.

2. Indicate what kind of community you live in (for example, rural, urban, or suburban).

3. Indicate your gender.

4. Describe your racial/ethnic background (for example American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White, and Other; ethnicity: Hispanic or Latino, not Hispanic or Latino).

5. Indicate your highest level of education (for example, less than high school, high school graduate or GED, some college or associate's degree, or bachelor's, master's or post-graduate degree such as PhD, MD, JD).

6. Indicate which age range you seek health information for the most (for example 18–29, 30–39, 40–49, 50–59, 60–69, 70 or older).

7. Indicate your income range (for example: $0–4,999, $5,000–9,999, $10,000–14,999, $15,000–19,999, $20,000–29,999, $30,000–39,999, $40,000–49,999, $50,000–69,999, $70,000–89,999, $90,000–$119,999, $120,000 and over).

8. Indicate your primary role (for example health consumer, parent, family caregiver, student, teacher, member nonprofit health-related organization, *etc.*). [Please use 10 words or less.]

Health Information

NIH produces a large amount of health materials and resources on a wide variety of health topics for audiences that include patients, family members and caregivers, medical, health and policy professionals, legislatures, and media professionals. Your responses to the questions below will help NIH better understand what new topics health consumers seek and better tailor the information we disseminate.

1. Please describe the health topic(s) that are currently important to you, your family members and/or friends (for example information on diseases, prevention, diagnosis, treatment, and health for women, men, teens, children, *etc.*). [Please use 50 words or less.]

2. List the language(s) that you would request health information for yourself, your family members and/or friends. [Please use 20 words or less.]

Health Information Sources

NIH disseminates research advances to improve health and quality of life for all. Your responses to the questions below will help fulfill our mission to serve as a primary source of health information for consumers we may not be reaching and using sources ranging from community locations, to national organizations to new Internet sources such as online forums, blogs, podcasts, social network sites, wikis and other social media.

1. Describe how you found the most recent health information you were looking for (for example what you were looking for, what steps did you take to find the information, what information did you find most useful, and what sources were most helpful and least helpful). [Please use 200 words or less.]

2. Describe how you *would* find health information for a friend or family member who was recently diagnosed with a health problem (for example cancer, heart disease, HIV/AIDS, arthritis, Alzheimer's, glaucoma). Identify what you would be looking for, what steps would you take to find the information, what information would you find most useful, and what sources would you think would be most helpful and least helpful). [Please use 200 words or less.]

3. Describe the best places you go to *in your community* for health information for you, your family, friends and neighbors (for example local organizations, community newspapers, clinics, community or health care centers, grocery stores, pharmacies, other retail outlets, places of worship, barber shops, beauty salons, *etc.*). [Please use 200 words or less.]

4. List the *types of Internet resources* you use to get health information and which are the most helpful (for example, online forums, blogs, podcasts, social network sites, wikis). Indicate why you use these sites (for example to get information, to participate in discussion, to pose questions, to post comments, *etc.*) [Please use 200 words or less.]

5. List ideas you have for NIH to distribute health information to specific audiences in your community and indicate which audiences and what language(s). [Please use 200 words or less.]

NIH Awareness and Role in Health Communications

NIH has a responsibility to communicate science-based, trustworthy public health and science information to a wide range of audiences, including the public at large, patients, family members, health care providers, scientists, public health workers, nonprofit health organizations, and professional societies. Your responses to the following questions will help us understand how familiar health consumers are with the agency's efforts to provide health information.

1. Describe how important the source or place where you get health

information is to you (for example, very important, important, not important). [Please use 20 words or less.]

2. Describe how you decide whether the health information you receive is trustworthy or believable. [Please use 100 words or less.]

3. Indicate whether you have ever requested health information from the NIH and describe your experience, including the type(s) of information you requested and how you received it (for example Web site, clearinghouse, health fair). Also describe how frequently you request information from NIH and when was the most recent time (for example 6 months, 12 months, 2 years. [Please use 100 words or less.]

Open Response on Health Information

1. Describe any additional information you would like NIH to know about health information and/or health information resources. [Please use 300 words or less.]

Requested Responses for Organizations and Health Care Providers (10 Questions)

General Information

1. Describe your organization's reach (for example, local, regional, national). [Please use 100 words or less.]

2. Indicate your primary role (for example leader of nonprofit health-related organization, clinician, physician, nurse, clinic or hospital staff, other allied health professional, professional caregiver, *etc.*). [Please use 10 words or less.]

3. Describe the services your organization or practice provides to its members/patients, including how you communicate with them. [Please use 200 words or less.]

4. Indicate the languages your members/patients seek health information. [Please use 20 words or less.]

Health Information

NIH produces a large number of health, medical, and science education materials and resources on a wide variety of health topics for audiences that include patients, family members and caregivers, medical, health and policy professionals, legislatures, and media professionals. Your response to the question below will help NIH better understand what new topics health consumers seek and better tailor the information we disseminate.

1. Please describe the health topics that are currently important to your members/patients (for example information on diseases, prevention, diagnosis, treatment, and health for women, men, teens, children, *etc.*) Identify what language(s) the topics are requested. [Please use 100 words or less.]

Health Information Sources

NIH disseminates research advances to improve health and quality of life for all. Your responses to the questions below will help fulfill our mission to serve as a primary source of health information for consumers we may not be reaching and using sources ranging from community locations, to national organizations to new Internet sources such as online forums, blogs, podcasts, social network sites, wikis and other social media.

1. Indicate how you think NIH should use the new Internet sources to send health information to your members/patients and describe the cases when NIH should use these sources (for example, online forums, blogs, podcasts, social network sites, wikis). [Please use 200 words or less.]

2. List ideas you have for NIH to distribute health information to specific audiences and indicate which audiences and how to reach them (for example local, regional, or national channels, print, online, in-person events). [Please use 200 words or less.]

NIH Awareness and Role in Health Communications

NIH has a responsibility to communicate science-based, trustworthy public health and science information to a wide range of audiences, including the public at large, patients, family members, health care providers, scientists, public health workers, nonprofit health organizations, and professional societies. Your responses to the following questions will help us assess how familiar our audiences are with the agency's efforts to provide health information.

1. Please describe your organization's or practice's understanding of the NIH's role in (a) disseminating health information and (b) meeting the health information needs of the public. [Please use 200 words or less.]

2. Please describe how NIH can better communicate results of Federally-funded biomedical and behavioral research initiatives for maximum impact on the nation's health, both within your organization or practice and directly to the wider public. [Please use 200 words or less.]

Open Response on Health Information

1. Describe any additional information you would like NIH to know about health information and/or health information resources. [Please use 300 words or less.]

Contact Person: Kelli L. Carrington, MA, Executive Secretary/Public Liaison Officer, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892. 301–594–4575. *carringk@mail.nih.gov.*

Dated: September 17, 2009.

Kelli L. Carrington,

Executive Secretary/Public Liaison Officer, Office of Communications and Public Liaison.

[FR Doc. E9–22972 Filed 9–22–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–0874]

National Offshore Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet, in Ocean Springs MS, to discuss various issues relating to offshore safety and security. The meeting will be open to the public.

DATES: NOSAC will meet on Thursday, November 5, 2009, from 9 a.m. to 3:30 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 22, 2009. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before October 22, 2009.

ADDRESSES: NOSAC will meet in the ''Banquet Hall'' room of the Gulf Hills Hotel and Conference Center, 13701 Paso Road, Ocean Springs, Mississippi. Send written material and requests to make oral presentations to Commander P.W. Clark, Designated Federal Officer (DFO), Commandant (CG–5222), U.S. Coast Guard, 2100 Second Street, SW., STOP 7126, Washington, DC 20593–7126. This notice is available on our online docket, USCG–2009–0874, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Commander P.W. Clark, Designated Federal Officer of NOSAC, or Mr. Jim Magill, Assistant Designated Federal Officer, telephone 202–372–1414, fax 202–372–1926.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal

Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Meeting

The agenda for the November 5, 2009, committee meeting includes the following:

(1) A discussion on issues concerning emerging International Maritime Organization (IMO) standards and activities and how they might impact OCS companies/operations;

(2) An update on the project to revise 46 CFR, Subchapter V, Subpart B—Commercial Diving Operations;

(3) An update on the Coast Guard's policy with respect to MARPOL Annex II Implementation and IMO Resolution A.673 for Offshore Supply Vessels (OSVs);

(4) An update on the Sub-Committee reviewing activities involving the employment of Foreign Workers on the OCS;

(5) An update from the Sub-Committee researching the Evacuation of Injured Workers from remote Drilling and Production Facilities;

(6) An update on the proposed regulations governing the Advanced Notice of Arrival (NOA) for units arriving on the U.S. Outer Continental Shelf (OCS);

(7) An update on the USCG's request for NOSAC to provide information and industry information on current costs and operations on OCS activities;

(8) The status of and development of policies and guidance surrounding the increased activities associated with the development of Offshore Renewable Energy Installations on the OCS, and;

(9) A discussion of safe lifting operations occurring on the OCS.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the DFO no later than October 22, 2009. Written material for distribution at the meeting should reach the Coast Guard no later than October 22, 2009. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the DFO no later than October 22, 2009.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the DFO as soon as possible.

Dated: September 16, 2009.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. E9–22982 Filed 9–22–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–71]

Healthy Home and Lead Hazard Control Grant Programs Data Collection-Progress Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This data collection is designed to provide HUD timely information on progress of all OHHLHC grant programs, including Healthy Homes Demonstration Program, Healthy Homes Technical Studies Program, Lead Based Paint Hazard Control Program, Lead Hazard Reduction Demonstration Program, Lead Outreach Program, Lead Technical Studies Program Operation Lead Elimination Action Program, Green Healthy Housing Technical Studies Program, and Lead Hazard Control Capacity Building Program grant activities. HUD will provide Congress with status reports as required by statue.

DATES: *Comments Due Date:* October 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2539–0008) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Healthy Home and Lead Hazard Control Grant Programs Data Collection-Progress Reporting.

OMB Approval Number: 2539–0008.

Form Numbers: HUD–96006.

Description of the Need for the Information and its Proposed Use: This data collection is designed to provide HUD timely information on progress of all OHHLHC grant programs, including Healthy Homes Demonstration Program, Healthy Homes Technical Studies Program, Lead Based Paint Hazard Control Program, Lead Hazard Reduction Demonstration Program, Lead Outreach Program, Lead Technical Studies Program Operation Lead Elimination Action Program, Green Healthy Housing Technical Studies Program, and Lead Hazard Control Capacity Building Program grant activities. HUD will provide Congress with status reports as required by statue.

Frequency of Submission: Quarterly.

Reporting burden:

Number of respondents: 300

Annual responses: 4

Hours per response: 9

Burden hours: 10,800

Total Estimated Burden Hours: 10,800.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 17, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–22964 Filed 9–22–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5288–N–10]

Notice of Proposed Information Collection for Public Comment; Recovery Act—Native American Housing Block Grant (NAHBG)

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Lillian L. Deitzer, Department Reports Management Officer, ODAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000; *telephone:* 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; *telephone:* 202–708–0713, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Proposed Information Collection for Public Comment; Recovery Act—Native American Housing Block Grant (NAHBG).

OMB Control Number: 2577–0262.

Description of Information Collection: The NAHBG Recovery Act competitive funding program was adapted from the Indian Community Development Block Grant (ICDBG) program; an existing competitive grant program administered by the Department of Housing and Urban Development (HUD), Public and Indian Housing (PIH), Office of Native American Programs (ONAP) for eligible Indian tribes. Tribes or their tribally designated housing entities (TDHE) were required to submit application information to provide a description of how a tribe or TDHE would use Recovery Act funds to provide affordable housing and meet the intent of the Recovery Act. HUD, PIH, ONAP, was directed by the Recovery Act to provide $242,250,000 for competitive grants to eligible entities that receive NAHASDA funds. All awards have been made under this program. The collection of reporting information is now essential for HUD to monitor grants and ensure that grantees are making proper use of federal funding. The NAHBG program requires quarterly financial reporting and annual performance reporting.

Agency form number, if applicable: SF–272 (to be replaced by the SF–425 as of October 1, 2009). HUD–52735–AS, Annual Performance Report.

Members of affected public: State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated total number of burden hours needed to prepare the information collection is 17,340. The number of respondents is 102; the frequency of response for each form varies from quarterly and annually.

Status of the proposed information collection: Revision of a Currently Approved Collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 17, 2009.

Bessy Kong,

Deputy Assistant Secretary, Policy, Program and Legislative Initiatives.

[FR Doc. E9–22965 Filed 9–22–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5288–N–09]

Notice of Proposed Information Collection for Public Comment; Recovery Act Application for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG)

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Lillian L. Deitzer, Department Reports Management Officer, ODAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000; *telephone:* 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; *telephone:* 202–708–0713, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of

information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Recovery Act Reporting for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG).

OMB Control Number: 2577–0263.

Description of Information Collection: The ICDBG Recovery Act Grant Program for Indian tribes and Alaska Native villages is a one-time grant program available in fiscal year 2009 in addition to the regular ICDBG funding competition. This program required eligible applicants to submit information to enable HUD to select the best projects for funding during the one-time competition. The collection of this information is essential for HUD to monitor grants and ensure that grantees are making proper use of federal funding. ICDBG funds are used for the development of viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4. The Recovery Act requires that, in selecting ICDBG projects to be funded, priority shall be given to projects that can award contracts based on bids within 120 days from the date the funds are made available to the recipients. The ICDBG program regulations require that quarterly and annual reports be submitted. In addition, the Recovery Act requires the collection of additional information for reporting purposes. The ICDBG program regulations can be found in 24 CFR Part 1003.

Agency form number, if applicable: SF–269 (to be replaced by SF–425 effective 10/1/2009)

Members of affected public: State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated total number of burden hours needed to prepare the information collection is 1463; the number of respondents is 19; the frequency of response for each form varies from quarterly and annually.

Status of the proposed information collection: Revision of a Currently Approved Collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 17, 2009.

Bessy Kong,

Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.

[FR Doc. E9–22966 Filed 9–22–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5282–N–07]

Notice of Proposed Information Collection: Comment Request; Neighborhood Stabilization Program 2 (NSP 2) Program

AGENCY: Office of Community Planning and Development.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410; telephone 202–402–8048 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, 451 7th Street, SW., Room 7286, Washington, DC 20410; telephone (202) 708–3587 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Department did not publish a notice in the **Federal Register** soliciting comments on the emergency request for approval of this information collection. A waiver for this **Federal Register** Notice was approved by OMB on April 13, 2009.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Neighborhood Stabilization Program 2 (NSP 2) Program.

OMB Control Number, if Applicable: 2506–0185.

Description of the Need for the Information and Proposed Use: This request identifies the reporting burden associated with information that NSP 2 grantees will report in the Disaster Recovery Grant Reporting System (DRGR) for NSP 2 assisted activities, recordkeeping requirements, and reporting requirements. Section 1512 of the Recovery Act requires that not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains: (1) The total amount of recovery funds received from that agency; (2) the amount of recovery funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including the name of the project or activity; a description of the project or activity; an evaluation of the completion status of the project or activity; an estimate of the number of jobs created and the number of jobs retained by the project or activity; and for infrastructure investments made by State and local

governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act and name of the person to contact at the agency if there are concerns with the infrastructure investment. Recipients must also report detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency act of 2006 (Pub. L. 109–282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of OMB. Not later than 30 calendar days after the end of each calendar quarter, each agency that made Recovery Act funds available to any recipient shall make the information in reports submitted publicly available by posting the information on a Web site.

Agency Form Numbers: None.

Members of the Affected Public: Eligible NSP 2 grantees (States, units of local government, non-profit organizations and consortia that may include for-profit entities).

Estimation of the total numbers of hours needed to prepare the information collection including number of responses, frequency of responses, and hours of responses: The number of respondents is estimated at 80. The proposed frequency of the response to the collection is on a quarterly basis. The total estimated burden is 10,240 annual hours.

Status of the proposed information collection: This submission is an extension of a previously approved emergency information collection. The current OMB approval expires on November 30, 2009.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 16, 2009.

Mercedes Márquez,

Assistant Secretary for Community, Planning and Development.

[FR Doc. E9–22967 Filed 9–22–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5275–N–03]

Native American Housing Assistance and Self-Determination Reauthorization Act of 2008: Notice of Proposed Membership of Negotiated Rulemaking Committee

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On March 2, 2009, HUD published a **Federal Register** notice requesting nominations for membership on the negotiated rulemaking committee that will develop regulatory changes to programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Changes to these programs were made by the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008, which also directs that HUD undertake negotiated rulemaking to implement the statutory revisions. In accordance with section 564 of the Negotiated Rulemaking Act, this notice establishes the committee, announces the names and affiliations of the committee's proposed members, requests public comment on the committee and its proposed membership, explains how additional nominations for committee membership may be submitted, and provides other information regarding the negotiated rulemaking process.

DATES: *Comment Due Date:* October 23, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number: 202–401–7914 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) program. In addition, title VI of NAHASDA authorizes Federal guarantees for financing of certain tribal activities (Title VI Loan Guarantee Program). The regulations governing the IHBG and Title VI Loan Guarantee programs are located in part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. In accordance with section 106 of NAHASDA, HUD developed the regulations with active tribal participation and using the procedures of the Negotiated

Rulemaking Act of 1996 (5 U.S.C. 561–570).

The Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Pub. L. 110–411, approved October 14, 2008) (2008 Reauthorization Act) reauthorizes NAHASDA through 2013 and makes a number of amendments to the statutory requirements governing the IHBG and Title VI Loan Guarantee programs. The 2008 Reauthorization Act amends section 106 of NAHASDA to provide that HUD shall ''initiate a negotiated rulemaking in accordance with this section by not later than 90 days after enactment of the'' 2008 Reauthorization Act.

On January 12, 2009 (74 FR 1227), HUD published a notice in the **Federal Register** announcing the initiation of the negotiated rulemaking required by the 2008 Reauthorization Act. On March 2, 2009 (74 FR 9100), HUD published another notice in the **Federal Register** soliciting nominations for membership on the negotiated rulemaking committee. The notice provided that the negotiated rulemaking committee must consist of representatives of interests that are potentially affected by the rulemaking, such as tribally designated housing entities, elected officials of tribal governments, and HUD representatives. It is not required that each potentially affected organization or entity necessarily have its own representative. However, HUD must be satisfied that the group as a whole reflects a geographically diverse cross-section of small, medium, and large Indian tribes.

II. The Negotiated Rulemaking Committee

This notice establishes the negotiated rulemaking committee, as required by section 105 of the 2008 Reauthorization Act, and announces the proposed membership of the negotiated rulemaking committee. In making its proposed selections for membership on the negotiated rulemaking committee, HUD's goal was to establish a committee whose membership reflects a balanced representation of Indian tribes. Selections were based on those nominees who met the eligibility criteria for membership contained in the March 2, 2009, **Federal Register** notice, and HUD is satisfied that the proposed membership reflects a geographically diverse cross-section of small, medium, and large Indian tribes. In addition to the tribal members of the committee, there will be one or more HUD representatives on the negotiated rulemaking committee. After careful consideration of all the public comments received on the two notices, HUD has made the following selections for proposed tribal membership on the negotiated rulemaking committee:

Steven Angasan, King Salmon Tribe, Naknek, Alaska.

Carol Gore, President/CEO, Cook Inlet Housing Authority, Anchorage, Alaska.

Blake Kazama, President, Tlingit-Haida Regional Housing Authority, Juneau, Alaska.

Marty Shuravloff, Executive Director, Kodiak Island Housing Authority, Kodiak, Alaska.

Michael Cook, Executive Director, United South and Eastern Tribes, Inc., Nashville, Tennessee.

Ray DePerry, Housing Director, Red Cliff Chippewa Housing Authority, Bayfield, Wisconsin.

Robert Durant, Executive Director, White Earth Reservation Housing Authority, Waubun, Minnesota.

Leon Jacobs, Lumbee Tribe of North Carolina, Mystic, Connecticut.

Susan Wicker, Executive Housing Director, Poarch Band of Creek Indians, Atmore, Alabama.

Jason Adams, Executive Director, Salish Kootenai Housing Authority, Pablo, Montana.

Lafe Haugen, Executive Director, Northern Cheyenne Tribal Housing Authority, Lame Deer, Montana.

Rebecca Phelps, Development Specialist, Turtle Mountain Housing Authority, Belcourt, North Dakota.

S. Jack Sawyers, Paiute Indian Tribe of Utah, Cedar City, Utah.

Marguarite Becenti, Interim Director, Umatilla Reservation Housing Authority, Pendleton, Oregon.

Henry Cagey, Chairman, Lummi Nation, Bellingham, Washington.

Larry Coyle, Executive Director, Cowlitz Indian Tribal Housing, Chehalis, Washington.

Karin Foster, Legal Counsel, Yakama Nation Housing Authority, Toppenish, Washington.

Marvin Jones, Manager, Housing Oversight, Cherokee Nation, Tahlequah, Oklahoma.

Thomas McGeisey, Director, Seminole Nation Housing Authority, Wewoka, Oklahoma.

Shawna Pickup, Secretary, Eastern Shawnee Tribe of Oklahoma, Wyandotte, Oklahoma.

Russell Sossamon, Executive Director, Choctaw Nation Housing Authority, Hugo, Oklahoma.

Ervin Keeswood, Member, Navajo Housing Authority Board of Commissioners, Window Rock, Arizona.

Judith Marasco, Executive Director, Yurok Indian Housing Authority, Klamath, California.

Alvin Moyle, The Honorable Chairman, Fallon Business Council, Fallon Paiute-Shoshone Tribe, Fallon, Nevada.

Darlene Tooley, Executive Director, Northern Circle Indian Housing Authority, Ukiah, California.

III. Request for Comments and Committee Nominations

Persons may submit comments on HUD's establishment of the negotiating rulemaking committee and may submit additional nominations for committee membership in accordance with the **ADDRESSES** section above. Nominations for membership on the Committee must include:

1. The name of your nominee and a description of the interests the nominee would represent;

2. Evidence that your nominee is authorized to represent a tribal government, which may include the tribally designated housing entity of a tribe, with the interests the nominee would represent, so long as the tribe provides evidence that it authorizes such representation;

3. A written commitment that the nominee will actively participate in good faith in the development of the rule; and

4. The reasons that the persons proposed above do not adequately represent the interests of the person submitting the nomination.

IV. Committee Meetings

At this time, HUD has not finalized the schedule and agenda for the committee meetings. HUD will provide administrative support to the committee. Notice of committee meetings will be published in the **Federal Register**. Meetings of the negotiated rulemaking committee will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be provided with an opportunity to make statements during the meeting, to the extent that time permits, and to file written statements with the committee for its consideration. In the event that the logistics of the committee meetings are changed, HUD will advise the public through **Federal Register** notice.

Dated: September 15, 2009.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E9–22835 Filed 9–22–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2009–OMM–0003]

MMS Information Collection Activity: 1010–NEW, Alaska Subsistence Study, Notice of a New Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a new information collection (1010–NEW).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request for approval of the paperwork requirements in the study being conducted in Alaska, Alaska Subsistence Study. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATE: Submit written comments by October 22, 2009.

ADDRESSES: Submit comments by either fax (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–NEW). Please also submit a copy of your comments to MMS by any of the means below.

- *Electronically:* go to *http://www.regulations.gov.* Under the tab More Search Options, click Advanced Docket Search, then select Minerals Management Service from the agency drop-down menu, then click submit. In the Docket ID column, select MMS–2009–OMM–0003 to submit public comments and to view supporting and related materials. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's User Tips link. The MMS will post all comments.
- *Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention:* Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference Information Collection 1010–NEW in your subject line and include your name and address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the study that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Alaska Subsistence Study.

OMB Control Number: 1010–NEW.

Abstract: The United States Congress, through the 1953 Outer Continental Shelf (OCS) Lands Act (OCSLA) [Pub. L. 95–372, Section 20] and its subsequent amendments, requires the Secretary of the Department of the Interior to monitor and assess the impacts of resource development activities in Federal waters on human, marine, and coastal environments. The OCSLA amendments authorize the Secretary of the Interior to conduct studies in areas or regions of sales to ascertain the ''environmental impacts on the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas or other mineral development'' (43 U.S.C. 1346).

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347) requires that all Federal Agencies use a systematic, interdisciplinary approach to ensure the integrated use of the natural and social sciences in any planning and decision making that may have an effect on the human environment. The Council on Environmental Quality's Regulations for Implementing Procedural Provisions of NEPA (40 CFR 1500–1508) state that the ''human environment'' is to be ''interpreted comprehensively'' to include ''the natural and physical environment and the relationship of people with that environment'' (40 CFR 1508.14). An action's ''aesthetic, historic, cultural, economic, social or health'' effects must be assessed, ''whether direct, indirect, or cumulative'' (40 CFR 1508.8).

The U.S. Department of the Interior/Minerals Management Service (DOI/MMS) is the Federal administrative agency created both to conduct OCS lease sales and to monitor and mitigate adverse impacts that might be associated with offshore resource development. Within the MMS, the Environmental Studies Program functions to implement and manage the responsibilities of research. This study will facilitate the meeting of DOI/MMS information needs on subsistence food harvest and sharing activities in coastal Alaska areas.

Planning areas in Alaska can include up to and more than 50,000 square miles—a large geographic area with diverse, abundant, and environmentally sensitive resources. Within these areas, DOI's Proposed OCS Oil and Gas Leasing Program considers that there will be an oil and gas lease sale in the future. The proposed sale area or adjacent areas support major productive commercial and subsistence fisheries, provide habitat to numerous marine mammals, and are significant migration and staging areas for internationally important waterfowl. Numerous communities in the State of Alaska rely heavily on subsistence or commercial fisheries.

This information collection request involves a study that will assess the vulnerabilities of several coastal communities in Alaska, during various times, to the potential effects of offshore oil and gas development on subsistence food harvest and sharing activities. It will investigate the resilience of local sharing networks that structure contemporary subsistence-cash economies using research methods that involve residents of these communities most proximate to future sale area(s).

Potential respondents number approximately 128 from the total number of households. Given the small number of households, all will be interviewed. The frequency of responses submitted will be a one-time event for each study and responses are voluntary. The respondent will be asked questions by the interviewee who will also record responses. This study will be conducted in a face-to-face setting. The questionnaires will be administered under the guidelines of 45 CFR 46. The introduction that will be covered with each participant stresses that participation is voluntary and anonymity will be maintained. No names will appear on the study form, no photographs will be taken of any informant, and no videotaping will be conducted. Minor children and prisoners will not be interviewed. Procedures designed to protect the confidentiality of the information provided will include the use of coded selection and identification numbers to protect the identities of respondents.

The MMS will use the information collected to gain knowledge about local social systems that will help shape development leasing strategies and serve as an interim baseline for impact monitoring to compare against future research in these areas. This study being conducted was requested by the Environmental Assessment section of the Alaska region specifically for use in future Environmental Impact Statements and Environmental Assessments. Without this data, MMS will not have sufficient information to make informed leasing and development decisions for these areas.

Frequency: Voluntary, one-time event, per study.

Estimated Number and Description of Respondents: Approximately 128 respondents from all persons in the Native Alaskan household/community.

Estimated Reporting and Recordkeeping Hour Burden: The MMS estimates the total annual burden hours to be 192 (128 respondents × 1.5 hours per questionnaire = 192 total burden hours).

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no paperwork non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on May 1, 2009, we published a **Federal Register** notice (74 FR 20329) announcing that we would submit this information collection request to OMB for approval. The notice provided the required 60-day comment period. This notice also informed the public that they may comment at any time on the collection of information and provided the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by October 22, 2009.

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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: July 9, 2009.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E9–22832 Filed 9–22–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0051

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collection of information for 30 CFR part 840—Permanent Program Inspection and Enforcement Procedures. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned control number 10290051.

DATES: Comments on the proposed information collection activities must be received by November 23, 2009, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information about this collection of information, contact John Trelease, at (202) 208–2783 or by e-mail listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSM will be submitting to OMB for renewed approval. The collection is contained in 30 CFR part 840—Permanent Program Inspection and Enforcement Procedures. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

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 following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR part 840—Permanent Program Inspection and Enforcement Procedures.

OMB Control Number: 1029–0051.

Abstract: This provision requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports and other related documents for OSM and public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and its public participation provisions. Public review assures the public that the State is meeting the requirements for the Act and approved State regulatory program.

Bureau Form Number: None.
Frequency of Collection: Once, monthly, quarterly, and annually.
Description of Respondents: State Regulatory Authorities.
Total Annual Responses: 80,284.
Total Annual Burden Hours: 526,985.

Dated: September 14, 2009.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E9–22800 Filed 9–22–09; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2009–OMM–0012]

MMS Information Collection Activity: 1010–0176, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf Forms, Extension of a Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0176).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will resubmit to the Office of Management and Budget (OMB) for review and approval. The resubmission of this information collection request (ICR) is necessary to include forms we have developed to clarify and facilitate submission of certain paperwork requirements in the regulations under 30 CFR 285, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf. The new forms are Forms MMS–0002, MMS–0003, MMS–0004, MMS–0005, and MMS–0006. These forms will entail no additional information collection burden to that already approved by OMB for the 30 CFR 285 regulations.

DATES: Submit written comments by November 23, 2009.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon or Timothy Redding (703) 787–1219, to obtain a copy, at no cost, of the regulation and the forms that require the subject collection of information. Also, you can view or print the forms via *regulations.gov.* See the instructions listed in the **ADDRESSES** section.

ADDRESSES: Follow the instructions under ''Electronically'' to view or print out the forms that are attached in the supporting and related materials section of the docket. You may submit comments by either of the following methods listed below:

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled ''Select Document Type'', click Notice in the drop down menu. In the entry titled, ''Enter Keyword or ID,'' enter docket ID MMS–2009–OMM–0012, then click Search. Look for the subject Information Collection notice and under the Actions column on the right, click the ''submit a comment'' button. Include your name and return address in your comment. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference Information Collection 1010–0176 in your subject line and mark your message for return receipt. Include your name and return address in your comment text.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 285, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.

Form(s): MMS–0002, MMS–0003, MMS–0004, MMS–0005, and MMS–0006.

OMB Control Number: 1010–0176.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to issue leases, easements, or rights-of-way on the OCS for activities that produce or support production, transportation, or transmission of energy from sources other than oil and gas (renewable energy). Specifically, subsection 8(p) of the OCS Lands Act, as amended by section 388 of the Energy Policy Act of 2005 (Pub. L. 109–58), directs the Secretary of the Interior to issue any necessary regulations to carry out the OCS renewable energy program. The Secretary delegated the authority to issue such regulations and implement an OCS renewable energy program to the Minerals Management Service (MMS).

Under 30 CFR part 285, respondents will operate commercial and noncommercial technology projects that include installation, construction, operation and maintenance, and decommissioning of offshore facilities, as well as possible onshore support facilities. The MMS must ensure that these activities and operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources. To do this, MMS needs information concerning the proposed activities, facilities, safety equipment, inspections and tests, and natural and manmade hazards near the site, as well as assurance of fiscal responsibility.

Specifically, MMS will use the information collected under part 285 to:

- Determine if applicants and assignees are qualified to hold leases on the OCS. Information is used to track ownership of leases and right-of-way (ROW) or right of use and easement (RUE), as well as to approve requests to designate an operator to act on the lessee's behalf. Information is necessary to approve assignment, relinquishment, or cancellation requests. Information is used to document that a lease, ROW, or RUE has been surrendered by the record title holder and to ensure that all legal obligations are met and facilities are properly decommissioned.
- Determine if an application for a ROW or RUE serves the purpose specified in the grant.
- Review and approve SAPs, COPs, and GAPs prior to allowing activities to commence on a lease to ensure that the activities will protect human, marine, and coastal environments of the OCS; to review plans for taking safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the facilities. The MMS inspectors monitor the records concerning facility inspections and tests to ensure safety of operations and protection of the environment and to schedule their workload to permit witnessing and inspecting operations. Provide lessees greater flexibility to comply with regulatory requirements through approval of alternative equipment or procedures and departures to regulations if they demonstrate equal or better compliance with the appropriate performance standards.
- Ensure that, if granted, proposed routes of a ROW or RUE do not conflict with any State requirements or unduly interfere with other OCS activities.
- Determine if all facilities, project easements, cables, pipelines, and obstructions, when they are no longer needed, are properly removed or decommissioned, and that the seafloor is cleared of all obstructions created by operations on the lease, project easement, RUE or ROW.
- Improve safety and environmental protection on the OCS through collection and analysis of accident reports to ascertain the cause of the accidents and to determine ways to prevent recurrences.

Subsequent to the approval of the information collection requirements in the final 30 CFR 285 regulations, MMS developed five new forms that respondents will be required to submit certain information collection requirements in subpart D, Lease and Grant Administration, and subpart E, Payments and Financial Assurance Requirements. These forms entail no additional burden as they only clarify and facilitate the submission of the currently approved information collection requirements to which the forms pertain. This resubmitted information collection request (ICR) is revised only to reflect the inclusion of the new Forms MMS–0002, MMS–0003, MMS–0004, MMS–0005, and MMS–0006.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 285.113, How will data and information obtained by MMS under this part be disclosed to the public? No items of a sensitive nature are collected. Responses are mandatory or are required to obtain or retain a benefit.

Frequency: Varies depending upon the requirement, but usually on occasion or annual.

Description of Respondents: Primary respondents comprise Federal OCS companies that submit unsolicited proposals or responses to **Federal Register** notices; or are lessees, designated operators, and ROW or RUE grant holders. Other potential respondents are companies or State and local governments that submit information or comments relative to alternative energy-related uses of the OCS; certified verification agents (CVAs); and surety or third-party guarantors.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 31,124 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden
		Non-hour cost burdens
Subpart A—General Provisions		
102; 105; 110	These sections contain general references to submitting comments, requests, applications, plans, notices, reports, and/or supplemental information for MMS approval—burdens covered under specific requirements.	
102(e)	State and local governments enter into task force or joint planning or coordination agreement with MMS.	1.
103; 904	Request general departures not specifically covered elsewhere in part 285.	2.
105(c)	Make oral requests or notifications and submit written follow up within 3 business days not specifically covered elsewhere in part 285.	1.
106; 107; 212(f); 230(f); 302(a); 408(b)(7); 409(c); 1005(c); 1007(c); 1013(b)(7).	Submit evidence of qualifications to hold a lease or grant, required information and supporting information.	2.
106(b)(1)	Request exception from exclusion or disqualification from participating in transactions covered by Federal non-procurement debarment and suspension system.	1.
106(b)(2), (3); 225; 527(c); 705(b)(2); 1016.	Request reconsideration and/or hearing	Requirement not considered IC under 5 CFR 1320.3(h)(9).
108; 530(b)	Notify MMS within 3-business days after learning of any action filed alleging respondent is insolvent or bankrupt.	1.
109	Notify MMS in writing of merger, name change, or change of business form no later than 120 days after earliest of either the effective date or filing date.	Requirement not considered IC under 5 CFR 1320.3(h)(1).
111	Within 30 days of receiving bill, submit processing fee payments for MMS document or study preparation to process applications and requests.	.5. $4,000 per study.
111(b)(2), (3)	Submit comments on proposed processing fee or request approval to perform or directly pay contractor for all or part of any document, study, or other activity, to reduce MMS processing costs.	2.
111(b)(3)	Perform, conduct, develop, etc., all or part of any document, study, or other activity; and provide results to MMS to reduce MMS processing fee.	19,000.
111(b)(3)	Pay contractor for all or part of any document, study, or other activity, and provide results to MMS to reduce MMS processing costs.	$950,000 per payment.
111(b)(7); 118(a); 436(c)	Appeal MMS estimated processing costs, decisions, or orders pursuant to 30 CFR 290.	Exempt under 5 CFR 1320.4(a)(2), (c).
113(b)	Respondents submit agreement to allow MMS to disclose the data and information exempt from disclosure under the Freedom of Information Act.	4.
115(c)	Request approval to use later edition of a document incorporated by reference or alternative compliance.	1.
116	The Director may occasionally request information to administer and carry out the offshore alternative energy program via **Federal Register** Notices.	4.
118(c); 225(b)	Within 15 days of bid rejection, request reconsideration of bid decision or rejection.	Requirement not considered IC under 5 CFR 1320.3(h)(9).

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden
		Non-hour cost burdens
Subpart B—Issuance of OCS Alternative Energy Leases		
200; 224; 231; 235; 236; 238	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.	
210; 211(a), (b), (c); 213 thru 216	Submit comments in response to **Federal Register** notices on Request for Interest in OCS Leasing, Call for Information and Nominations (Call), Area Identification, and the Proposed Sale Notice.	4.
211(d); 216; 220 thru 223; 231(c)(2).	Submit bid, payments, and required information in response to **Federal Register** Final Sale Notice.	5.
224	Within 10 business days, execute 3 copies of lease form and return to MMS with required payments, including evidence that agent is authorized to act for bidder; if applicable, submit information to support delay in execution.	1.
230; 231(a)	Submit unsolicited request and acquisition fee for a commercial or limited lease.	5.
231(b)	Submit comments in response to **Federal Register** notice re interest of unsolicited request for a lease.	4.
231(g), (h)	Submit decision to accept or reject terms and conditions of non-competitive lease.	2.
235(b); 236(b)	Request additional time to extend preliminary or site assessment term of commercial or limited lease, including revised schedule for SAP, COP, or GAP submission.	1.
237(b)	Request lease be dated and effective 1st day of month in which signed.	1.
Subpart C—ROW Grants and RUE Grants for Alternative Energy Activities		
306; 309; 315; 316	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.	
302(a); 305; 306	Submit 1 paper copy and 1 electronic version of a request for a new or modified ROW or RUE and required information, including qualifications to hold a grant.	5.
307; 308(a)(1)	Submit comments on competitive interest in response to **Federal Register** notice of proposed ROW or RUE grant area or comments on notice of grant auction.	4.
308(a)(2), (b); 315; 316	Submit bid and payments in response to **Federal Register** notice of auction for a ROW or RUE grant.	5.
309	Submit decision to accept or reject terms and conditions of non-competitive ROW or RUE grant.	2.
Subpart D—Lease and Grant Administration		
400; 401; 402; 405; 409; 416, 433	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.	
401(b)	Take measures directed by MMS in cessation order and submit reports in order to resume activities.	100.
405(d)	Submit written notice of change of address	Requirement not considered IC under 5 CFR 1320.3(h)(1).
405(e); Form MMS–0006	If designated operator (DO) changes, notify MMS and identify new DO for MMS approval.	1.
408 thru 411; Forms MMS–0002 and MMS–0003.	Within 90 days after last party executes a transfer agreement, submit 1 paper copy and 1 electronic version of a lease or grant assignment application, including originals of each instrument creating or transferring ownership of record title, eligibility and other qualifications; and evidence that agent is authorized to execute assignment.	1 (30 minutes per form × 2 forms = 1 hour).
415(a)(1); 416; 420(a), (b); 428(b)	Submit request for suspension and required information no later than 90 days prior to lease or grant expiration.	10.
417(b)	Conduct, and if required pay for, site-specific study to evaluate cause of harm or damage; and submit 1 paper copy and 1 electronic version of study and results.	100. $950,000 per study.
425 thru 428; 652(a)	Request lease or grant renewal no later than 180 days before termination date of your limited lease or grant, or no later than 2 years before termination date of operations term of commercial lease.	6.
435; 658(c)(2); Form MMS–0004	Submit 1 paper copy and 1 electronic version of application to relinquish lease or grant.	1.
436; 437	Provide information for reconsideration of MMS decision to contract or cancel lease or grant area.	Requirement not considered IC under 5 CFR 1320.3(h)(9).

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden
		Non-hour cost burdens
Subpart E—Payments and Financial Assurance Requirements		
An * indicates the primary cites for providing bonds or other financial assurance, and the burdens include any previous or subsequent references throughout part 285 to furnish, replace, or provide additional bonds, securities, or financial assurance. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.		
500 thru 509; 1011	Submit payor information, payments and payment information, and maintain auditable records according to subchapter A regulations or guidance.	Burdens covered by information collections approved for 30 CFR Subchapter A.
506(c)(4)	Submit documentation of the gross annual generation of electricity produced by the generating facility on the lease—use same form as authorized by the EIA. (Burden covered under DOE/EIA OMB Control Number 1905–0129 to gather info and fill out form. MMS's burden is for submitting a copy.)	10 min.
510	Submit application and required information for waiver or reduction of rental or other payment.	1.
* 515; 516(a)(1), (b); 525(a) thru (f)	Execute and provide $100,000 minimum lease-specific bond or other approved security; or increase bond level if required.	1.
* 516(a)(2), (3), (b), (c); 517; 525(a) thru (f).	Execute and provide commercial lease supplemental bonds in amounts determined by MMS.	1.
516(a)(4); 521(c)	Execute and provide decommissioning bond or other financial assurance; schedule for providing the appropriate amount.	1.
517(c)(1)	Submit comments on proposed adjustment to bond amounts	1.
517(c)(2)	Request bond reduction and submit evidence to justify	5.
* 520; 521; 525(a) thru (f); Form MMS–0005	Execute and provide $300,000 minimum limited lease or grant-specific bond or increase financial assurance if required.	1.
525(g)	Surety notice to lessee or ROW/RUE grant holder and MMS within 5-business days after initiating insolvency or bankruptcy proceeding, or Treasury decertifies surety.	1.
* 526	In lieu of surety bond, pledge other types of securities, including authority for MMS to sell and use proceeds.	2.
526(c)	Provide annual certified statements describing the nature and market value, including brokerage firm statements/reports.	1.
* 527	Demonstrate financial worth/ability to carry out present and future financial obligations, annual updates, and related or subsequent actions/records/reports, etc.	10.
528	Provide third-party indemnity; financial information/statements; additional bond info; executed guarantor agreement and supporting information/documentation.	10.
528(c)(6); 532(b)	Guarantor/Surety requests MMS terminate period of liability and notifies lessee or ROW/RUE grant holder, etc.	1.
* 529	In lieu of surety bond, request authorization to establish decommissioning account, including written authorizations and approvals associated with account.	2.
530	Notify MMS promptly of lapse in bond or other security/action filed alleging lessee, surety or guarantor et al. is insolvent or bankrupt.	1.
533(a)(2)(ii), (iii)	Provide agreement from surety issuing new bond to assume all or portion of outstanding liabilities.	3.
536(b)	Within 10 business days following MMS notice, lessee, grant holder, or surety agrees to and demonstrates to MMS that lease will be brought into compliance.	16.
Subpart F—Plans and Information Requirements		
Two ** indicate the primary cites for Site Assessment Plans (SAPs), Construction and Operations Plans (COPs), and General Activities Plans (GAPs); and the burdens include any previous or subsequent references throughout part 285 to submission and approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.		
** 600(a); 601(a), (b), (c); 605 thru 613.	Within 6 months after issuance of a competitive lease or grant, or within 60 days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a SAP, including information to assist MMS to comply with NEPA such as hazard info, air quality, and all required information, certifications, etc.	240.
** 600(b); 601(c), (d)(1); 606(b); 618; 620 thru 629; 633.	If requesting an operations term for commercial lease, at least 6 months before the end of site assessment term, submit 1 paper copy and 1 electronic version of a COP, or FERC license application, including information to assist MMS to comply with NEPA such as hazard info, air quality, and all required information, surveys and/or their results, reports, certifications, project easements, supporting data and information, etc.	1,000.

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden
		Non-hour cost burdens
** 600(c); 601(a), (b); 640 thru 648	Within 6 months after issuance of a competitive lease or grant, or within 60 days after determination of no competitive interest, submit 1 paper copy and 1 electronic version of a GAP, including information to assist MMS to comply with NEPA such as hazard info, air quality, and all required information, surveys and reports, certifications, project easements, etc.	240.
** 601(d)(2); 622; 628(f); 632(b); 634.	Submit revised or modified COPs, including project easements, and all required additional information.	50.
602 [1]	Until MMS releases financial assurance, respondents must maintain, and provide to MMS if requested, all data and information related to compliance with required terms and conditions of SAP, COP, or GAP.	2.
** 613(d), (e); 616	Submit revised or modified SAPs and required additional information	50.
612(b); 647(b)	Noncompetitive leases must submit copy of SAP or GAP consistency certification and supporting documentation.	1.
614(a)	Notify MMS in writing within 30 days of completion of construction and installation activities under SAP.	1.
614(b)	Submit annual report summarizing findings from site assessment activities.	30.
614(c)	Submit annual, or at other time periods as MMS determines, SAP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	40.
617(a)	Notify MMS in writing before conducting any activities not approved, or provided for, in SAP; provide additional information if requested.	10.
627(c)	Include oil spill response plan as required by part 254.	Burden covered 30 CFR part 254, 1010–0091.
631	Request deviation from approved COP schedule	2.
633(b)	Submit annual, or at other time periods as MMS determines, COP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	80.
634(a)	Notify MMS in writing before conducting any activities not approved or provided for in COP, and provide additional information if requested.	10.
635	Notify MMS any time commercial operations cease without an approved suspension.	1.
636(a)	Notify MMS in writing no later than 30 days after commencing activities associated with placement of facilities on lease area.	1.
636(b)	Notify MMS in writing no later than 30 days after completion of construction and installation activities.	1.
636(c)	Notify MMS in writing at least 7 days before commencing commercial operations.	1.
** 642(b); 648(e); 655; 658(c)(3)	Submit revised or modified GAPs and required additional information	50.
651	Before beginning construction of OCS facility described in GAP, complete survey activities identified in GAP and submit initial findings. This only includes the time involved in submitting the findings; it does not include the survey time as these surveys would be conducted as good business practice.	30.
653(a)	Notify MMS in writing within 30 days of completing installation activities under the GAP.	1.
653(b)	Submit annual report summarizing findings from activities conducted under approved GAP.	30.
653(c)	Submit annual, or at other time periods as MMS determines, GAP compliance certification, recommendations, reports, etc.	40.
655(a)	Notify MMS in writing before conducting any activities not approved or provided for in GAP, and provide additional information if requested.	10.
656	Notify MMS if at any time approved GAP activities cease without an approved suspension.	1.
658(c)(1)	If after construction, cable or pipeline deviate from approved COP or GAP, notify affected lease operators and ROW/RUE grant holders of deviation and provide MMS evidence of such notices.	3.
659	Determine appropriate air quality modeling protocol, conduct air quality modeling, and submit 3 copies of air quality modeling report and 3 sets of digital files as supporting information to plans.	70.
Subpart G—Facility Design, Fabrication, and Installation		
Three *** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.		

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden
		Non-hour cost burdens
*** 700(a)(1), (b), (c); 701	Submit Facility Design Report, including 1 paper copy and 1 electronic copy of the cover letter, certification statement, and all required information (1–3 paper or electronic copies as specified).	200.
*** 700(a)(2); (b), (c); 702	Submit 1 paper copy and 1 electronic copy of a Fabrication and Installation Report, certification statement and all required information.	160.
705(a)(3); 707; 712	Certified Verification Agent (CVA) conducts independent assessment of the facility design and submits reports to lessee or grant holder and MMS—interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	100. 100.
705(a)(3); 708; 709; 710; 712	CVA conducts independent assessments on the fabrication and installation activities, informs lessee or grant holder if procedures are changed or design specifications are modified; and submits reports to lessee or grant holder and MMS—interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	100. 100.
705(a)(3); *** 711; 712	CVA/project engineer monitors major project modifications and repairs and submits reports to lessee or grant holder and MMS—interim reports if required, and 1 electronic copy and 1 paper copy of the final report.	20. 15.
705(b)	Request waiver of CVA requirement in writing; lessee must demonstrate standard design and best practices.	40.
706	Submit for approval with SAP, COP, or GAP, initial nominations for a CVA or new replacement CVA nomination, and required information.	16.
708(b)(2)	Lessee or grant holder notify MMS if modifications identified by CVA/project engineer are accepted.	1.
709(a)(14); 710(a)(2), (e) [1]	Make fabrication quality control, installation towing, and other records available to CVA/project engineer for review (retention required by § 285.714).	1.
713(a)	Notify MMS within 10 business days after commencing commercial operations.	1.
714 [1]	Until MMS releases financial assurance, compile, retain, and make available to MMS and/or CVA the as-built drawings, design assumptions/analyses, summary of fabrication and installation examination records, inspection results, and records of repairs not covered in inspection report. Record original and relevant material test results of all primary structural materials; retain records during all stages of construction.	100.
Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPs		
801(c), (d)	Notify MMS if endangered or threatened species, or their designated critical habitat, may be in the vicinity of the lease or grant or may be affected by lease or grant activities.	1.
801(e), (f)	Submit information to ensure proposed activities will be conducted in compliance with the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA); including, agreements and mitigating measures designed to avoid or minimize adverse effects and incidental take of endangered species or critical habitat.	6.
802; 902(e)	Notify MMS of archaeological resource within 72 hours of discovery ..	3.
802(b)	If requested, conduct further archaeological investigations and submit report.	10.
803(d)	If applicable, submit payment for MMS costs in carrying out National Historic Preservation Act responsibilities.	.5.
804(b), (c)	If required, conduct additional surveys to define boundaries and avoidance distances and submit report.	15.
810	Submit safety management system description with the SAP, COP, or GAP.	35.
813(b)(1)	Report within 24 hours when any required safety equipment taken out of service for more than 12 hours; provide written confirmation if oral report.	.5.
813(b)(2)	Submit written confirmation when equipment removed from service for greater than 60 days.	1.
813(b)(3)	Notify MMS when equipment returned to service; provide written confirmation if oral notice.	.5.
815(c)	When required, analyze cable, P/L, or facility damage or failures to determine cause and as soon as available submit comprehensive written report.	1.5.
816	Submit plan of corrective action report on observed detrimental effects on cable, P/L, or facility within 30 days of discovery; take remedial action and submit report of remedial action within 30 days after completion.	2.

Section(s) in 30 CFR 285	Reporting and recordkeeping requirement	Hour burden
		Non-hour cost burdens
822(a)(2)(iii), (b); 824(a) [1]	Until MMS releases financial assurance, maintain records of design, construction, operation, maintenance, repairs, investigation on or related to lease or ROW/RUE area, and make available to MMS for inspection.	1.
823	Request reimbursement within 90 days for food, quarters, and transportation provided to MMS reps during inspection.	2.
824(a)	Develop annual self inspection plan covering all facilities; retain with records, and make available to MMS upon request.	24.
824(b)	Conduct annual self inspection and submit report by November 1	36.
825	Based on API RP 2A–WSD, perform assessment of structures, initiate mitigation actions for structures that do not pass assessment process, retain information, and make available to MMS upon request.	60.
830(a), (b), (c); 831 thru 833	Immediately report incidents to MMS via oral communications, submit written follow-up report within 15 business days after the incident, and submit any required additional information.	Oral—.5. Written—4.
830(d)	Report oil spills as required by part 254.	Burden covered by 1010–0091, 30 CFR part 254.
Subpart I—Decommissioning		
Four **** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.		
**** 902(b), (c), (d), (f); 905, 906; 907; 908(c); 909.	Submit for approval 1 paper copy and 1 electronic copy of the SAP, COP, or GAP decommissioning application and site clearance plan at least 2 years before decommissioning activities begin, 90 days after completion of activities, or 90 days after cancellation, relinquishment, or other termination of lease or grant. Include documentation of coordination efforts w/States, local of tribal governments, requests that certain facilities remain in place for other activities, be converted to an artificial reef, or be toppled in place. Submit additional information requested or modify and resubmit application.	20.
902(d); 908	Notify MMS at least 60 days before commencing decommissioning activities.	1.
910	Within 60 days after removing a facility, verify to MMS that site is cleared.	1.
912	Within 60 days after removing a facility, cable, or pipeline, submit a written report.	8.
We don't anticipate decommissioning activities for at least 5 years so the requirements have been given a minimal burden.		
Subpart J—RUEs for Energy and Marine-Related Activities Using Existing OCS Facilities		
1004, 1005, 1006	Contact owner of existing facility and/or lessee of the area to reach preliminary agreement to use facility and obtain concurring signatures; submit request to MMS for an alternative use RUE, including all required information/modifications.	1.
1007(a), (b), (c)	Submit indication of competitive interest in response to **Federal Register** notice.	4.
1007(c)	Submit description of proposed activities and required information in response to **Federal Register** notice of competitive offering.	5.
1007(f)	Lessee or owner of facility submits decision to accept or reject proposals deemed acceptable by MMS.	1.
1010(c)	Request renewal of Alternate Use RUE	6.
1012; 1016(b)	Provide financial assurance as MMS determines in approving RUE for an existing facility, including additional security if required.	1.
1013	Submit request for assignment of an alternative use RUE for an existing facility, including all required information.	1.
1015	Request relinquishment of RUE for an existing facility	1.
30 CFR Parts 250 & 290 Proposed Revisions		
250.1730	Request departure from requirement to remove a platform or other facility.	Burden covered by 1010–0142, 30 CFR 250, subpart Q.
250.1731(c)	Request deferral of facility removal subject to RUE issued under this subpart.	1.
250.290.2	Request reconsideration of an MMS decision concerning a lease bid	Requirement not considered IC under 5 CFR 1320.3(h)(9).

[1] Retention of these records is usual and customary business practice; the burden is primarily to make them available to MMS and CVAs.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: There are three non-hour cost burdens to industry. They are as follows:

• *§ 285.111—$4,000:* This section requires respondents to pay a processing fee of $4,000 for MMS document or study preparation when necessary for MMS processing of applications and requests.

• *§ 285.111(b)(3)—$950,000:* This section allows respondents to pay a contractor instead of MMS for all or part of any document, study, or other activity, and provide the results to MMS to reduce MMS processing costs. We estimate the non-hour cost burden of this payment could range from $100,000 to $2,000,000; therefore, we are estimating the cost at $950,000.

• *§ 285.417(b)—$950,000:* This section requires respondents to pay for a site-specific study to evaluate the cause of harm or damage to natural resources, and submit a report to MMS. We estimate the non-hour cost burden of this study could range from $100,000 to $2,000,000, depending on the nature of the study; therefore, we are estimating the cost at $950,000.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: September 16, 2009.

William S. Hauser,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. E9–22834 Filed 9–22–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2009–N174; 92220–1113–0000–C6]

Endangered and Threatened Wildlife and Plants; Draft Post-Delisting Monitoring Plan for the Concho Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft post-delisting monitoring plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our Post-Delisting Monitoring Plan for the Concho water snake (*Nerodia paucimaculata*). The draft post-delisting monitoring (PDM) plan describes the methods we propose to monitor the status of the snake and its habitat, in cooperation with the State of Texas and other conservation partners, for a 15-year period if we remove this species from the Federal list of endangered and threatened wildlife under another pending action. The draft PDM plan also provides a strategy for identifying and responding to any future population declines or habitat alterations.

DATES: To ensure consideration, please send your written comments on the draft PDM plan for Concho water snake by October 23, 2009.

ADDRESSES: The draft PDM plan is available for review on the Internet at *http://endangered.fws.gov* and *http://www.fws.gov/southwest/es/AustinTexas/*. To request a copy of the draft PDM plan, write to U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512–490–0057; facsimile 512–490–0974. Supporting documentation we used in preparing the draft PDM plan is available for public inspection, by appointment, during normal business hours, at the above office. You may submit comments by mail to the above office address.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (*see* **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Concho water snake is a reptile endemic to central Texas. We listed this species as threatened under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), effective September 3, 1986, because of threats from habitat modification and destruction (51 FR 31412). On July 8, 2008, we published a proposed rule to remove the Concho water snake from the list of threatened species (73 FR 38956). We based the proposal on our finding that the best available scientific and commercial data, including new information, indicate that the Concho water snake has recovered because threats have been eliminated or reduced to the point that the species no longer meets the definition of threatened or endangered under the Act. We are in the

process of making a final determination on whether or not to delist the Concho water snake.

For more background information on the Concho water snake, refer to our 1986 final listing rule published in the **Federal Register** (51 FR 31412), our 2008 proposed delisting rule published in the **Federal Register** (73 FR 38956), Werler and Dixon (2000, pp. 209–216), Campbell (2003, pp. 1–4), Forstner *et al.* (2006, pp. 1–22), Whiting *et al.* (2008, pp. 438–445), and the 1993 Concho Water Snake Recovery Plan (Service 1993, available online at *http://endangered.fws.gov*).

Section 4(g)(1) of the Act requires us to implement a system, in cooperation with the States, to effectively monitor the status of each species we remove from the Federal List of Endangered and Threatened Wildlife and Plants due to recovery. The monitoring must occur for at least 5 years. The purpose of post-delisting monitoring (PDM) is to verify that a species we delist due to recovery remains secure from risk of extinction after we remove the protections of the Act.

To fulfill the PDM requirement, we drafted a monitoring plan for the Concho water snake in cooperation with the Texas Parks and Wildlife Department and the Colorado River Municipal Water District. Over a 15-year period, we propose to conduct surveys to measure the presence and abundance of snakes 2 times a year at 18 sample sites across the range of the snake. Biological monitoring frequency will occur in three phases, decreasing over time, resulting in 7 years of surveys over the 15-year PDM period. Evaluation of stream conditions will consist of analysis of hydrologic data collected at eight existing stream gages from across the snake's range. The PDM plan describes specific monitoring triggers where certain outcomes of monitoring will result in specific actions. For example, if snakes are not captured from at least 75 percent of sample sites in any year, sampling effort will be intensified the following year beyond the minimum called for in the PDM plan. The monitoring triggers (both quantitative and qualitative) are based on the snake's distribution, presence, reproduction, and abundance, as well as evaluation of instream flow conditions.

The draft PDM plan includes annual reporting requirements. If PDM results in concern regarding the status of the snake or increasing threats, possible responses may include an extended or intensified monitoring effort, additional research (such as modeling metapopulation dynamics or assessing the status of the fish prey base), enhancement of riverine or shoreline habitats, or an increased effort to improve habitat connectivity by additional translocation of snakes between reaches. If future information collected from the PDM, or any other reliable source, indicates an increased likelihood that the species may become in danger of extinction, we will initiate a status review of the Concho water snake and determine if relisting the species is warranted.

In addition to public review of the draft PDM plan, we concurrently are requesting independent expert peer review from knowledgeable individuals with scientific expertise that includes ecology of water snakes and conservation biology principles. Peer review of the draft PDM plan is in accordance with our policy published on July 1, 1994 (59 FR 34270).

Viewing Documents

Comments and materials we receive from the public and peer reviewers, as well as supporting documentation we used in preparing the draft PDM Plan, will be available for public inspection by appointment, during normal business hours at the Austin Ecological Services Field Office (*see* **ADDRESSES**). Once approved, the final PDM plan for the Concho water snake and any future revisions to the PDM plan will be available on our Web page (*http://endangered.fws.gov*) and the Austin Ecological Services Field Office Web page (*http://www.fws.gov/southwest/es/AustinTexas/).* We will announce our final decision on whether to delist the snake with a final rule in a future **Federal Register** publication, and we will also make this final decision available on the above-referenced Web pages.

Request for Public Comments

We intend for our final PDM plan to be as accurate and as effective as possible. Therefore, we request comments or suggestions on the Concho water snake draft PDM plan from the public, concerned governmental agencies, the scientific community, industry, or any other interested party. We will take into consideration substantive comments we receive by the comment due date (*see* **DATES**). These comments, and any additional information we receive, may lead us to adopt a final PDM plan that differs from this draft PDM plan. Please note that comments merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination.

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

References Cited

A complete list of all references we cited in this notice is available upon request from the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (*see* **ADDRESSES**).

Authors

The primary authors of this document are staff at the Austin Ecological Services Field Office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 7, 2009.

Benjamin N. Tuggle,

Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. E9–22872 Filed 9–22–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Walker River Basin Acquisition Program Draft Environmental Impact Statement (EIS), Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Reopening of comment period for review of the Draft Environmental Impact Statement (DEIS).

SUMMARY: The Bureau of Reclamation is reopening the comment period for the DEIS to Monday, October 5, 2009. The notice of availability of the DEIS was published in the **Federal Register** on July 24, 2009 (74 FR 36737). The public review period ended on September 14, 2009.

DATES: Written comments on the DEIS will be accepted on or before October 5, 2009.

ADDRESSES: Send written comments on the DEIS to Mrs. Caryn Huntt DeCarlo, Bureau of Reclamation, 705 N Plaza, Room 320, Carson City, NV 89701 or e-mail to *chunttdecarlo@usbr.gov.*

Copies of the DEIS may be requested from Mrs. Caryn Huntt DeCarlo by

writing to Bureau of Reclamation, 705 N Plaza, Room 320, Carson City, NV 89701; by calling 775–884–8352, or e-mail *chunttdecarlo@usbr.gov.*

The DEIS is also accessible from the following Web site: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=2810. See* **SUPPLEMENTARY INFORMATION** section for locations where copies of the DEIS are available for public review.

FOR FURTHER INFORMATION CONTACT: Mrs. Caryn Huntt DeCarlo, Bureau of Reclamation, at 775–884–8352, or e-mail *chunttdecarlo@usbr.gov.*

SUPPLEMENTARY INFORMATION: Due to public interest, Reclamation is reopening the comment period until October 5, 2009. All comments received prior to October 5, 2009 will be considered.

Copies of the DEIS are available for public review at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001.
- Bureau of Reclamation, Mid-Pacific Regional Office Library, 2800 Cottage Way, W–1825, Sacramento, CA 95825–1898.
- Bureau of Reclamation, Lahontan Basin Area Office, 705 N Plaza, Room 320, NV 89701.
- Lyon County Library—Smith Valley, 32 Day Lane, Smith Valley, NV 89444–0156.
- Lyon County Library –Yerington, 20 Nevin Way, Yerington, NV 89447.
- Mineral County Library—Hawthorne, P.O. Box 1390, Hawthorne, NV 89415.
- Walker River Paiute Tribe—P.O. Box 220, Schurz, NV 89427.
- Yerington Paiute Tribe—171 Campbell Lane, Yerington, NV 89447.

Public Disclosure

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

Dated: September 3, 2009.

Mike Chotkowski,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E9–22884 Filed 9–22–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: New York University College of Dentistry, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of New York University College of Dentistry, New York, NY. The human remains were removed from an unknown location or locations.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by New York University College of Dentistry professional staff in consultation with representatives of the Comanche Nation, Oklahoma.

At an unknown date, human remains representing a minimum of two individuals were removed from an unknown location or locations. At an unknown date, Dr. Joseph Jones of Louisiana added the human remains to his collection. In 1906, the widow of Dr. Jones sold his collection to the Museum of the American Indian, Heye Foundation. In 1956, the human remains were transferred to Dr. Theodore Kazamiroff, New York University College of Dentistry. No known individuals were identified. No associated funerary objects are present.

The original records of Dr. Jones identify the human remains as Comanche, but do not list a locality for them. Museum records also identify the human remains as ''Comanche.'' The attribution of a tribal affiliation of Comanche in the museum records suggests that the human remains may date to the historic period. Forensic data corroborate the tribal attribution and estimated age for the individuals. One cranium has cutmarks that appear to have been made near the time of death by a metal knife. The other cranium shows evidence of cradleboarding, which was practiced by the Comanche in the historic period. Both sets of remains exhibit weathering that would be expected for the rock or scaffold burial locations that were preferred by the Comanche during the historic period. During consultation, the tribal representative for the Comanche Nation supported the identification of the human remains as Comanche.

Officials of New York University College of Dentistry have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of New York University College of Dentistry also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Comanche Nation, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Louis Terracio, New York University College of Dentistry, 345 East 24th St., New York, NY 10010, telephone (212) 998–9917, before October 23, 2009. Repatriation of the human remains to the Comanche Nation, Oklahoma may proceed after that date if no additional claimants come forward.

The New York University College of Dentistry is responsible for notifying the Comanche Nation, Oklahoma, that this notice has been published.

Dated: September 2, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–22773 Filed 9–22–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 7817]

Public Land Order No. 7736; Partial Revocation of the Bureau of Reclamation Order Dated February 19, 1952; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Bureau of Reclamation Order insofar as it affects

20 acres of National Forest System land withdrawn for reclamation purposes. This order also opens the land to exchange.

DATES: *Effective Date:* September 23, 2009.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Realty Specialist, Bureau of Land Management, at (916) 978–4675 or via e-mail at *Duane_Marti@ca.blm.gov;* or Janice Gordon, Realty Specialist, Forest Service, at (530) 621–5266 or via e-mail at *jgordon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The land was withdrawn on behalf of the Bureau of Reclamation as part of the American River Division, Sly Park Unit of the Central Valley Reclamation Project. The land is part of the National Forest System land managed by the Eldorado National Forest. The partial revocation is needed to facilitate the completion of a pending land exchange between the Forest Service and the El Dorado Irrigation District. The land is no longer needed for reclamation purposes and the Bureau of Reclamation has concurred with the partial revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2006), it is ordered as follows:

1. The Bureau of Reclamation Order dated February 19, 1952, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 10 N., R. 13 E.,
Sec. 16, W½NE¼NW¼.

The area described contains 20 acres in El Dorado County.

2. At 10 a.m. on September 23, 2009, the land described above will be open to exchange pursuant to the General Exchange Act of 1922, 16 U.S.C. 485 (2006), and Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (2006).

Dated: September 9, 2009.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E9–22846 Filed 9–22–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Consistent with Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on September 17, 2009, the United States lodged a Consent Decree with the South Tahoe Public Utility District (''the District'') in *United States of America* v. *El Dorado County, California, et al.,* Civil No. S–01–1520 MCE GGH (E.D. Cal.), with respect to the Meyers Landfill Site, located in Meyers, El Dorado County, California (the ''Site'').

El Dorado County, California filed a Third Party Complaint for contribution against a number of third parties, including the District. The District asserted CERCLA claims against the United States Department of Agriculture, Forest Service (''Forest Service'') as well as non-CERCLA claims related to a Forest Service Special Use Permit for a portion of their sewer line. The proposed Consent Decree resolves the District's CERCLA claims against the Forest Service and the Forest Service's potential CERCLA claims against the District.

In addition, attached to the proposed Consent Decree is a separate, related, Settlement Agreement resolving the non-CERCLA claims between the Forest Service and the District. The Settlement Agreement's effectiveness is conditioned on the Court's entry of the proposed Consent Decree. Under the proposed Consent Decree the District is not paying any money towards the Forest Service's past costs, but it has agreed to provide access to its sewer line and to cooperate and to provide its expertise in implementing the OU–1 Remedy. In addition, the District will dismiss it's CERCLA claims against the Forest Service. The District will receive from the United States a covenant not to sue or to take administrative action pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. 9606 and 9607, as amended, for the United States' past and future response costs at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *El Dorado County, California, et al.,* Civil No. S–01–1520 MCE GGH (E.D. Cal.) (DOJ Ref. No. 90–11–3–06554).

The Consent Decree with the District may be examined at U.S. Department of Agriculture, Office of General Counsel, 33 New Montgomery Street, 17th Floor, San Francisco, CA 94150 (contact Rose Miksovsky, (415) 744–3158). During the public comment period, the Consent Decree with the District may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree with the District may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States of America* v. *El Dorado County, California, et al.,* Civil No. S–01–1520 MCE GGH (E.D. Cal.) (DOJ Ref. No. 90–11–3–06554) (Consent Decree with District), and enclose a check in the amount of $9.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–22870 Filed 9–22–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 17, 2009, an electronic version of a proposed consent decree was lodged in the United States District Court for the Central District of California in *Preservation Aviation, Inc. et al.* v. *United States et al.*, No. SACV 07–1219 SJO (AJWx). The consent decree settles the United States' claims and counterclaims in connection with a complaint filed by Plaintiffs Preservation Aviation, Inc., Jeffrey Pearson and Ann Pearson against the United States Environmental Protection

Agency (''EPA''), among others, under the Federal Tort Claims Act, 28 U.S.C. 1346 (''FTCA''), for destroying vintage aircraft instruments owned by Preservation Aviation and stored at a facility in North Hollywood, California and at a facility at the Chino Airport at 7000 Merrill Avenue, Chino, California (the ''Sites''). The United States filed a counterclaim against Preservation Aviation and Mr. Pearson under 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607(a), for the costs of responding to a release and a threatened release of hazardous substances at and from the Preservation Aviation facility, including aircraft instruments containing radium-226, a hazardous substance. The counterclaim also sought treble punitive damages and fines pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. 9607(c)(3), and Section 106(b) of CERCLA, 42 U.S.C. 9606(b), based on the failure of Preservation Aviation, Inc. and Jeffrey Pearson to comply with a Unilateral Administrative Order issued by EPA. In addition, the counterclaim sought civil penalties for an alleged failure to respond to a request for information issued by EPA pursuant to Section 104(e) of CERCLA, 42 U.S.C. 9604(e)(2). The United States has no unreimbursed costs at the Chino Airport Site and did not file a counterclaim relating to the Chino Site.

Pursuant to the proposed consent decree the Plaintiffs and related corporate entities will give the United States a covenant not to sue for the Sites and dismiss their claims with prejudice. In return, the United States is giving a covenant not to sue for past and future response costs for the Sites and the penalty claims and will dismiss its claims with prejudice.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *Preservation Aviation, Inc. et al.* v. *United States et al.*, No. SACV 07–1219 SJO (AJWx) and DOJ #90–11–2–08809/1.

The consent decree may be examined at the Office of the United States Attorney for the Central District of California 300 North Los Angeles Street, Room 7516, Los Angeles, California 90012. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–22938 Filed 9–22–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the the Clean Water Act

Notice is hereby given that on September 17, 2009, a proposed Consent Decree in *United States and State of Indiana* v. *City of Jeffersonville, Indiana*, Civil Action No. 09–cv–0125 was lodged with the United States District Court for the Southern District of Indiana.

In this action the United States and the State of Indiana seek civil penalties and injunctive relief for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, in connection with the City of Jeffersonville's operation of its municipal wastewater and sewer system. The United States' and State of Indiana's Complaint alleges that Jeffersonville violated the Clean Water Act and Indiana law by: (1) Discharging untreated waste water from Jeffersonville's combined sewer system in a manner which violates the terms of the Clean Water Act and Indiana law; (2) discharging untreated waste water from Jeffersonville's separate sanitary sewer system in violation of the Clean Water Act and Indiana law; and (3) discharging pollutants from the final effluent of the Jeffersonville Wastewater Treatment Plant at levels exceeding pollutant limits set by the Clean Water Act and Indiana law.

Under the proposed Decree, the City will be required to remedy the deficiencies in the capacity, operation and maintenance of Jeffersonville's WWTP, combined sewer system, and sanitary sewer system at an approximate cost of $100–150 million. Jeffersonville must make these improvements by calendar year 2020 or, if Jeffersonville demonstrates a lack of financial capability, by calendar year 2025. In addition, the proposed Decree requires Jeffersonville to pay the United States a civil penalty of $49,500 and the State of Indiana a civil penalty of $8,250, and spend at least $248,050 to build two constructed wetlands at an industrial site in the City of Jeffersonville and to improve stormwater drainage at a local park.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Indiana* v. *City of Jeffersonville, Indiana*, D.J. Ref. 90–5–1–1–08723.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Indiana, 10 W. Market Street, Suite 2100, Indianapolis, IN 46204 (contact Assistant United States Attorney Tom Kieper (317/226–6333)), and at U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3590 (contact Associate Regional Counsel John Tielsch (312/353–7447)). During the public comment period, the proposed Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $ 22.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–22905 Filed 9–22–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1499]

NIJ Restraints Standard Workshop

AGENCY: National Institute of Justice.

ACTION: Notice of meeting.

SUMMARY: The National Institute of Justice (NIJ) is hosting a Restraints Standard Workshop for manufacturers on Tuesday, October 6, 2009. The meeting will be held from 10 to 11 a.m. at the Hyatt Regency Denver Tech Center, 7800 East Tufts Avenue, Denver, Colorado 80237. NIJ is hosting this workshop specifically to introduce manufacturers to the new *NIJ Restraints Standard* that is under development and to receive feedback. This standard is a revised and enhanced version of the *NIJ Standard for Metallic Handcuffs* from 1982. Participants are strongly encouraged to come prepared to ask questions and to voice suggestions and concerns.

Space is limited at this workshop, and as a result, only 50 participants will be allowed to register. We request that each manufacturer limit their representatives to no more than two per organization. Exceptions to this limit may occur, should space allow. Participants planning to attend are responsible for their own travel arrangements. Please send your registration request to *standards@nlectc-rm.org* and indicate in the email that the workshop you are requesting to attend is the Restraints Standard Workshop. You will receive a response to your request within 2 business days.

DATES: The meeting will be held from 10 to 11 a.m. on Tuesday, October 6, 2009.

ADDRESSES: Hyatt Regency Denver Tech Center, 7800 East Tufts Avenue, Denver, Colorado 80237.

FOR FURTHER INFORMATION CONTACT: Vanessa Castellanos, by telephone at 202–514–5272 [**Note:** this is not a toll-free telephone number], or by e-mail at *vanessa.castellanos@ojp.usdoj.gov.*

Dated: September 17, 2009.

Kristina Rose,

Acting Director, National Institute of Justice.

[FR Doc. E9–22987 Filed 9–22–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1500]

NIJ Vehicular Digital Multimedia Evidence Recording System Standard Workshop

AGENCY: National Institute of Justice, Office of Justice Programs, DOJ.

ACTION: Notice of meeting.

SUMMARY: The National Institute of Justice (NIJ) is hosting a Vehicular Digital Multimedia Evidence Recording System Standard Workshop for manufacturers on Tuesday, October 6, 2009. The meeting will be held from 1 to 2 p.m. at the Hyatt Regency Denver Tech Center, 7800 East Tufts Avenue, Denver, Colorado 80237. NIJ is hosting this workshop specifically to introduce manufacturers to the new *NIJ Vehicular Digital Multimedia Evidence Recording System Standard* that is under development and to receive feedback. Participants are strongly encouraged to come prepared to ask questions and to voice suggestions and concerns.

Space is limited at this workshop, and as a result, only 50 participants will be allowed to register. We request that each manufacturer limit their representatives to no more than two per organization. Exceptions to this limit may occur, should space allow. Participants planning to attend are responsible for their own travel arrangements. Please send your registration request to *standards@nlectc-rm.org* and indicate in the e-mail that the workshop you are requesting to attend is the Vehicular Digital Multimedia Evidence Recording System Standard Workshop. You will receive a response to your request within 2 business days.

DATES: The meeting will be held from 1 to 2 p.m. on Tuesday, October 6, 2009.

ADDRESSES: Hyatt Regency Denver Tech Center, 7800 East Tufts Avenue, Denver, Colorado 80237.

FOR FURTHER INFORMATION CONTACT: Vanessa Castellanos, by telephone at 202–514–5272 [**Note:** this is not a toll-free telephone number], or by e-mail at *vanessa.castellanos@ojp.usdoj.gov.*

Dated: September 17, 2009.

Kristina Rose,

Acting Director, National Institute of Justice.

[FR Doc. E9–22988 Filed 9–22–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1498]

Law Enforcement Duty Holster Retention Standard Workshop

AGENCY: National Institute of Justice.

ACTION: Notice of meeting.

SUMMARY: The National Institute of Justice (NIJ) is hosting a Law Enforcement Duty Holster Retention Standard Workshop for manufacturers on Tuesday, October 6, 2009. The meeting will be held from 8:30 to 9:30 a.m. at the Hyatt Regency Denver Tech Center, 7800 East Tufts Avenue, Denver, Colorado 80237. NIJ is hosting this workshop specifically to introduce manufacturers to the new *NIJ Duty Holster Retention Standard* that is under development and to receive feedback. Participants are strongly encouraged to come prepared to ask questions and to voice suggestions and concerns.

Space is limited at this workshop, and as a result, only 50 participants will be allowed to register. We request that each manufacturer limit their representatives to no more than two per organization. Exceptions to this limit may occur, should space allow. Participants planning to attend are responsible for their own travel arrangements. Please send your registration request to *standards@nlectc-rm.org* and indicate in the email that the workshop you are requesting to attend is the Law Enforcement Duty Holster Retention Standard Workshop. You will receive a response to your request within 2 business days.

DATES: The meeting will be held from 8:30 to 9:30 a.m. on Tuesday, October 6, 2009.

ADDRESSES: Hyatt Regency Denver Tech Center, 7800 East Tufts Avenue, Denver, Colorado 80237.

FOR FURTHER INFORMATION CONTACT: Vanessa Castellanos, by telephone at 202–514–5272 [**Note:** this is not a toll-free telephone number], or by e-mail at *vanessa.castellanos@ojp.usdoj.gov.*

Dated: September 17, 2009.

Kristina Rose,

Acting Director, National Institute of Justice.

[FR Doc. E9–22989 Filed 9–22–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1501]

NIJ Metal Detector Standards Workshop

AGENCY: National Institute of Justice.

ACTION: Notice of meeting.

SUMMARY: The National Institute of Justice (NIJ) is hosting a Metal Detector Standards Workshop for manufacturers on Tuesday, October 6, 2009. The meeting will be held from 2:30 to 4 p.m. at the Hyatt Regency Denver Tech Center, 7800 East Tufts Avenue, Denver, Colorado 80237. NIJ is hosting this workshop specifically to introduce manufacturers to the revised *NIJ Walk-through Metal Detector Standard* and the revised *NIJ Handheld Metal Detector Standard* that are under development and to receive feedback. Participants are strongly encouraged to come prepared to ask questions and to voice suggestions and concerns.

Space is limited at this workshop, and as a result, only 50 participants will be allowed to register. We request that each manufacturer limit their representatives to no more than two per organization. Exceptions to this limit may occur, should space allow. Participants planning to attend are responsible for their own travel arrangements. Please send your registration request to *standards@nlectc-rm.org* and indicate in the email that the workshop you are requesting to attend is the Metal Detector Standards Workshop. You will receive a response to your request within 2 business days.

DATES: The meeting will be held from 2:30 to 4 p.m. on Tuesday, October 6, 2009.

ADDRESSES: Hyatt Regency Denver Tech Center, 7800 East Tufts Avenue, Denver, Colorado 80237.

FOR FURTHER INFORMATION CONTACT: Vanessa Castellanos, by telephone at 202–514–5272 [**Note:** this is not a toll-free telephone number], or by e-mail at *vanessa.castellanos@ojp.usdoj.gov.*

Dated: September 17, 2009.

Kristina Rose,

Acting Director, National Institute of Justice.

[FR Doc. E9–22990 Filed 9–22–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1502]

Meeting of the Department of Justice's (DOJ's) Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of DOJ's Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *www.it.ojp.gov/global*.

DATES: The meeting will take place on Wednesday, October 21, 2009, from 8:30 a.m. to 4 p.m. ET.

ADDRESSES: The meeting will take place at the Embassy Suites Washington DC—Convention Center Hotel, 900 10th Street, Northwest, Washington, District of Columbia, 20001; *Phone:* (202) 739–2001.

FOR FURTHER INFORMATION CONTACT: J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Northwest, Washington, DC 20531; *Phone:* (202) 616–0532 [**Note:** this is not a toll-free number]; *E-mail: James.P.McCreary@usdoj.gov*.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least seven (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

Purpose

The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

J. Patrick McCreary,

Global DFE, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. E9–22991 Filed 9–22–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Gamma Radiation Exposure Records

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections 57.5047; Gamma Radiation Exposure Records.

DATES: Submit comments on or before November 23, 2009.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to

Rowlett.John@dol.gov, along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 103(c) of the Federal Mine Safety and Health Act of 1977, the Mine Safety and Health Administration (MSHA) is required to '' * * * issue regulations required operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act.''

Gamma radiation occurs anywhere that radioactive materials are present, and has been associated with lunch cancer and other debilitating occupational diseases. Gamma radiation hazards may be found near radiation sources at surface operations using X-ray machines, weightometers, nuclear and diffraction units.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing Statutory and Regulatory Information and **Federal Register** Documents.

III. Current Actions

Annual gamma radiation surveys are required to be conducted—in all underground mines where radioactive ores are mined. Where the average gamma radiation measurements are in excess of 2.0 milliroentgens per hour in the working place, all persons affected are to be provided with gamma radiation dosimeters and records of cumulative individual gamma radiation exposures are to be kept.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Gamma Radiation Exposure Records.

OMB Number: 1219–0039.

Recordkeeping: Records of cumulative occupational radiation exposures aid in the protection of workers, in the control of subsequent radiation exposure, and are used by MSHA in evaluation of the effectiveness of the protection program in demonstrating compliance with regulatory requirements.

Frequency: Annually.

Affected Public: Business or other for-profit.

Respondents: 4.

Total Burden Hours: 8 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 17th day of September 2009.

John Rowlett,

Director, Management Services Division.

[FR Doc. E9–22882 Filed 9–22–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

Special Transfers for Unemployment Compensation Modernization and Administration and Relief From Interest on Advances

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration has provided guidance to State workforce agencies to assist them in qualifying for the incentive payments to modernize their State unemployment compensation (UC) law as well as to clarify the special transfer of funds, the suspension of interest on Federal loan advances and Federal tax on UC authorized by Public Law 111–5. The original guidance was issued as Unemployment Insurance Program Letter (UIPL) No. 14–09 on February 26, 2009 (available at: *http://wdr.doleta.gov/directives/attach/UIPL/UIPL14–09.pdf*). Additional guidance was issued on March 19, 2009 as UIPL 14–09, Change 1 (available at: *http://wdr.doleta.gov/directives/attach/UIPL/UIPL14–09c1.pdf*). Both UIPLs are published below to inform the public. There are no rescissions on this continuing guidance.

SUPPLEMENTARY INFORMATION:

UIPL No. 14–09—Special Transfers for Unemployment Compensation Modernization and Administration and Relief From Interest on Advances

1. *Purpose.* To advise States of amendments to Federal law providing for unemployment compensation (UC) modernization incentive payments to States, a special administrative transfer to States, relief from interest on advances to State unemployment funds, and the partial suspension of Federal income tax on UC.

2. *References.* The Assistance for Unemployed Workers and Struggling Families Act, Title II of Division B of Public Law No. 111–5, enacted February 17, 2009; Section 1007 of Public Law 111–5; the Social Security Act (SSA); the Federal Unemployment Tax Act (FUTA); Unemployment Insurance Program Letter (UIPL) No. 39–97; and Training and Employment Guidance Letter (TEGL) No. 18–01.

3. *Background.* Public Law 111–5 made the following changes affecting the UC program:

- Extended the Emergency UC program, commonly known as EUC08.
- Created a new federally-funded program which temporarily increases UC benefits by $25 a week.
- Temporarily modified provisions in the permanent Federal-State extended benefits program.
- Provided for two special distributions from the Unemployment Trust Fund (UTF) to the States.
- For States receiving advances to pay benefits under Title XII, SSA, waived interest due on these advances for a specified period.
- Suspended the Federal income tax on the first $2,400 paid in UC for tax year 2009.

The first three items are addressed in separate UIPLs. This UIPL addresses the special distributions, the provisions affecting Title XII loans, and the taxation of UC benefits.

In general, the first special distribution relates to UC ''modernization incentive payments.'' The total amount available for all States is $7 billion. To obtain its share, the State must make an application to the Department of Labor demonstrating that its UC law contains certain benefit eligibility provisions. Attachment I discusses eligibility for these incentive payments and the application and approval process. Attachments II and III discuss these matters in greater detail. The last date on which an incentive distribution may be made is September 30, 2011, so applications must be received no later than August 22, 2011.

The second distribution is a ''special transfer'' of $500 million to the States' accounts in the UTF to be used for certain administrative purposes. This administrative transfer is made regardless of whether the State qualifies for a modernization incentive payment. States do not need to apply to receive these amounts. Attachment IV discusses this administrative transfer and the permissible uses of the amounts transferred. Attachment VII contains the amounts distributed under this administrative transfer and each State's potential share under the modernization incentive payments.

Attachment V discusses the provisions related to suspension of interest on advances and the partial suspension of Federal income tax on UC. Attachment VI sets forth the text of the amendments discussed in this UIPL.

4. *Action.* State administrators should distribute this advisory to appropriate staff.

5. *Inquiries.* Questions should be addressed to your Regional Office.

6. *Attachments.*

Attachment I—Modernization Incentive Payments—Overview
Attachment II—Modernization Incentive Payments—Base Period Provision—Questions and Answers
Attachment III—Modernization Incentive Payments—Other Eligibility Provisions—Questions and Answers
Attachment IV—Special Administrative Transfers—Questions and Answers
Attachment V—Suspensions—Interest on Advances and Federal Taxation of UC
Attachment VI—Text of Sections 2003 and 2004 of Public Law 111–5
Attachment VII—UC Modernization Distributions—Amount

Attachment I

Modernization Incentive Payments—Overview

In General

Section 2003(a) of Public Law 111–5 added new subsection (f) to Section 903, SSA, to provide for incentive payments to States.

These incentive payments are calculated in the same manner as a ''Reed Act'' distribution. This means each State's share is based on its proportionate share of FUTA taxable wages multiplied by the $7 billion authorized by the amendments. For purposes of computing each State's proportionate share, the Secretary of Labor will use the taxable wages that would have been used for calculating any Reed Act distribution occurring on October 1, 2008. As provided by Section 903(f)(1)(B), SSA, tax year 2007 data is used for determining each State's share.

A State's share will be reserved in the Federal Unemployment Account (FUA) in the UTF for purposes of making incentive payments. As of the close of Federal fiscal year 2011 (that is, September 30, 2011), this limitation expires, and any unused amounts again become available for any FUA use.

A State's eligibility for its maximum incentive payment is conditioned on its law containing specific provisions:

- To obtain the first one-third of its share, the State law must provide for either a base period that uses recent wages or an alternative base period (ABP) using recent wages. This ''base period provision'' is discussed in Attachment II.
- If a State qualifies under this base period provision, it may obtain the remaining two-thirds if its State law contains two of four options related to benefit eligibility. These options are discussed in Attachment III.

State Applications

In General. The State must apply to the Department of Labor to receive any incentive payment. A complete application must document which provisions of State law meet the requirements for obtaining an incentive payment as interpreted by this UIPL. The application must also describe how the State intends to use any incentive payment to improve or strengthen the State's UC program. Attachment II discusses what constitutes a complete application for purposes of the base period provision and Attachment III discusses what constitutes a complete application for purposes of the other benefit eligibility provisions.

Applications are to be signed by the State agency administrator and addressed to: Cheryl Atkinson, Administrator, Office of Workforce Security, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210.

States may submit applications by mail, fax, or e-mail. States may fax applications to 202–693–2874 to the attention of the Division of UC Legislation. E-mail submissions should be sent to *Atkinson.Cheryl@dol.gov* with a cc to *Hildebrand.Gerard@dol.gov.* Copies should be provided to the appropriate Regional Office. For purposes of determining the date of receipt (as described immediately below), the date of receipt in the National Office will be used.

Review Process. Within 30 days of receipt by the Department of a State's complete application, the State will be notified whether it qualifies for an incentive payment. If it does, the Secretary of Treasury will transfer the amount of the incentive payment within seven days of receipt of the Department's certification. Since all incentive payments must be made before October 1, 2011, and since the Department must have adequate time to review any application, all applications must be received by the Department no later than August 22, 2011.

To expedite processing of applications and distribution of incentive payments to the States, the Department is providing for a two-tiered application process under which a State may make one application regarding the base period provisions and a separate application regarding the other benefit eligibility provisions. Nothing prohibits States from making a single application. However, since the Department anticipates relatively swift action on base period applications, it may be advantageous for States to make two applications.

State Law Status. Applications should only be made under provisions of State laws that are currently in effect *as permanent law* and not subject to discontinuation. This means that the provision is not subject to any condition—such as an expiration date, the balance in the State's unemployment fund, or a legislative appropriation—that might prevent the provision from becoming effective, or that might suspend, discontinue, or nullify it.

There is one exception to this limitation. In some cases, a State might enact a new provision of law to qualify for the incentive payment, but delay its effective date due to implementation requirements. In these cases, if the State law provision takes effect within 12 months of the date of the Secretary of Labor's certification, then the provision will be considered to be in effect as of the date of the Secretary's certification to the Secretary of Treasury. In the case of a provision that is not effective until more than 12 months (which may be the case with ABP provisions) the State

should time its application so that the Secretary's certification will be made no more than 12 months prior to its law's effective date. Thus, for example, since the Secretary must rule on any application within 30 days, the application should be submitted no more than 13 months before the State law's effective date. Note, however, as discussed above, the Department will not consider applications received after August 22, 2011. As a result, the latest effective date of a provision must be on or before September 21, 2012.

Receipt and Use of Incentive Payments

Following the Secretary's certification for an incentive payment, the entire amount certified will be transferred to the State's account in the UTF. A State may use its incentive payment: (1) To pay UC (including dependents' allowances); or (2) upon appropriation of its State legislature, to pay UC and employment service administrative costs. The conditions for administrative use of the incentive payment are the same as those applicable to the $8 billion Reed Act distribution made in 2002. Refer to Q&As 9 through 19 and Q&A 21 in Attachment I to TEGL 18–01 for guidance. Like the $8 billion Reed Act distribution, there is no time limit on the use of the incentive payment for benefit or administrative purposes. Incentive payments available for the payment of UC must, however, be expended before the State may obtain an advance to pay UC under Title XII, SSA.

Paperwork Reduction Act (PRA) Statement

The public reporting burden for this collection of information is estimated to average approximately eight hours per response including time for gathering and maintaining the data needed to complete the required disclosure.

This UIPL contains a new collection of information in the form of an application for UC Modernization Incentive Payments. According to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Department is planning to submit an Information Collection Request (ICR) to OMB requesting a new OMB Control Number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 44 U.S.C. 3512. The Department will notify States of OMB's decision upon review of the Department's ICR, including any changes that may result from this review process.

Attachment II

Modernization Incentive Payments

Base Period Provisions

Questions and Answers

II–1. Question. What provisions must my law contain to qualify for an incentive payment under the base period provision?

Answer. There are two options:

- A regular base period that includes the most recently completed calendar quarter before the start of the benefit year, or
- An ABP that includes the most recently completed calendar quarter, when the claimant cannot meet monetary qualifying requirements using a ''regular'' base period that excludes this quarter.

II–2. Question: I believe my State law qualifies for the incentive payment. What should my application State?

Answer: The application must:

- Identify the State;
- Cite the specific base period provision of State law supporting the application;
- Certify that the provision of State law is either currently in effect or will become effective for claims filed on or after a specified date;
- Contain a certification that the provision is permanent (that is, not temporary) and is not subject to discontinuation under any circumstances other than repeal by the legislature;
- Address how the State intends to use the incentive payment to improve or strengthen its UC program; and
- Attach the relevant provision of State law.

II–3. Question: Is the Department aware of any existing ABP provisions that will not qualify for the incentive payment?

Answer: Yes. A provision providing that an ABP will be used only if the unemployment fund is above a certain ''solvency'' threshold would not qualify because the ABP is subject to discontinuation under a specified condition. Also, a State law that permits use of an ABP only after a specified number of days have elapsed since the end of the last completed quarter in order for wage records to be received would not qualify because it does not permit use of the ABP during the days immediately following the end of the quarter.

Attachment III

Modernization Incentive Payments

Other Eligibility Provision

Questions and Answers

In General

III–1. Question: If my State qualifies for the one-third incentive payment related to its base period provision, what provisions must my law contain to qualify for certification for the remaining two-thirds of its incentive payment?

Answer: In brief, a State law must contain provisions carrying out at least two of the following:

- UC is payable to certain individuals seeking only part-time work.
- An individual is not disqualified from UC for separations due to certain compelling family reasons.
- An additional 26 weeks of UC is paid to exhaustees who are enrolled in and making satisfactory progress in certain training programs.
- Dependents' allowances of at least $15 per dependent per week, subject to a minimum aggregation, are paid to eligible beneficiaries.

Part-Time Workers

III–2. Question: What is the part-time work option?

Answer: State law must provide that an individual will not be denied UC under any provision relating to availability for work, active search for work, or refusal to accept work, solely because such individual is seeking only part-time work as defined by the Secretary of Labor.

The State law may, however, deny benefits if a majority of the weeks of work in the individual's base period do *not* include part-time work. States are not required to have this exception in their laws in order to qualify for the incentive payment under this option. In fact, a State may determine that an individual who has previously worked full time may be eligible for UC even if the individual limits him/herself to seeking part-time work.

III–3. Question: For purposes of ''seeking only part-time work,'' how does the Department define ''seeking only part-time work''?

Answer: For purposes of the incentive payment, the Department defines

''seeking only part-time work'' as work meeting any one of the following situations:

• Situations where the individual is willing to work at least 20 hours per week.

• Situations where the individual is available for a number of hours per week that are comparable to the individual's part-time work experience in the base period. For example, if the individual worked 16 hours per week in the base period, the State may require the individual to seek jobs offering at least 16 hours of work. If the individual worked 32 hours per week, the State may require the individual to seek jobs offering at least 32 hours of work.

• Situations where the individual is available for hours that are comparable to the individual's work at the time of the most recent separation from employment. This is similar to the preceding definition except that it allows the State to take into account periods between the end of the base period and the filing of the first claim for UC.

The Department will approve a State's application if the State uses any one of the above definitions. The State may also use a combination of these definitions. For example, a State may define part-time work as work having comparable hours to the individual's work in the base period, except that an individual must be available for at least 20 hours of work per week.

A State may also have a broader definition of part-time work. For example, the State may require the individual to be available for only 10 or more hours per week. Of course, the State may not allow the individual to limit his or her availability to the extent that it constitutes a withdrawal from the labor market. (*See* 20 CFR 604.5(a)(1).)

III–4. Question: My State law provides for payment to individuals seeking part-time work only if they have worked part-time during the entire base period. Would an application containing this limitation be certified?

Answer: No. To qualify for the incentive payment, a State law must permit an individual to seek part-time work, except that the State may deny benefits if a *majority* of weeks of work in the base period do not include part-time work (i.e., were full-time). Requiring part-time work throughout the entire base period is more restrictive than the ''majority'' standard and would not qualify.

III–5. Question: My State law provides for payment to individuals seeking part-time work only if my agency determines the individual has a legitimate reason to limit employment to part-time work. Would an application containing this limitation be certified?

Answer: No. To qualify for the incentive payment, a State law must permit an individual to seek part-time work, except that the State may deny benefits if a *majority* of weeks of work in the base period do not include part-time work (i.e., were full-time). Requiring agency approval is more restrictive.

III–6. Question: My State law provides for payment to individuals who have a history of part-time work. Would an application containing this limitation be certified?

Answer: It depends on how the State interprets and applies this provision. To obtain certification, the State's application must demonstrate that, at a minimum, all individuals who work the majority of weeks in the base period in part-time employment will not be determined ineligible because they are seeking only part-time work.

III–7. Question: My State will use the option that permits us to examine whether the majority of weeks of work in the individual's base period are in part-time work. If the individual worked 40 weeks in the base period and 21 weeks are part-time, must my State's law provide that this individual may limit his/her availability to only part-time work?

Answer: Yes, the State's law must provide that the individual may limit his/her availability to only part-time work under the facts as stated. Since the individual has worked the majority of weeks in the base period in part-time work, this individual must be allowed to seek only part-time work, as defined by the Department. For purposes of this option, a ''week of work'' is a calendar week.

III–8. Question: My State law requires an individual to be available for the same schedule of work as previously worked. For example, if the individual worked (either part-time or full-time) during specific hours Monday through Friday, the individual will be denied if he or she is not available for the same schedule on these calendar days. Will my State's application be certified if it contains this provision?

Answer: Yes. The Federal requirement is that an individual not be denied ''solely because the individual is seeking only part-time work.'' In this case, the State is placing another, additional test of availability on all individuals seeking work, regardless of whether the work is full-time (as defined under State law) or part-time (as defined consistent with Q&A III–3).

In cases where a test applies only to part-time workers, the Department will evaluate the test to determine if it is consistent with the definition of ''seeking suitable part-time work'' contained in this UIPL. For example, if a State required that only individuals seeking part-time work be available for the same work schedule, the State's application would be denied since this UIPL does not interpret ''suitable part-time work'' to include such a requirement. If a State test, although worded in a way that is applicable to both full-time and part-time workers, is in fact applicable only to part-time workers, it will be reviewed as described in this paragraph.

Quits Due to Compelling Family Reasons

III–9. Question: For purposes of qualifying for the incentive payment, what are ''compelling family reasons?''

Answer: To qualify for the incentive payment using the ''compelling family reason'' option, the State law must provide that an individual will not be disqualified for separating from work under *any and all* of the following circumstances:

• Domestic violence (verified by reasonable and confidential documentation as the State law may require) which causes the individual reasonably to believe that the individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family (as defined by the U.S. Department of Labor (Department)).

• The illness or disability of a member of the individual's immediate family (as these terms are defined by the Department).

• The need for the individual to accompany his/her spouse: (1) To a place from which it is impractical for such individual to commute; *and* (2) due to a change in location of the spouse's employment.

III–10. Question: An employer discharges an individual for chronic absenteeism that constitutes misconduct under my State's law. Only after the separation does the individual indicate that the absences were to care for a member of his/her immediate family. Would my State's application be denied if individuals in this situation were disqualified under a misconduct separation?

Answer: No. The Federal law provides that an ''individual shall not be disqualified from [UC] for separating from employment'' for compelling family reasons. In some cases, such as when the individual fails to advise the employer of an absence, the basis for the separation may go beyond ''compelling

family reasons.'' That is, misconduct may exist despite the existence of what otherwise would be compelling family reasons, and the State may deny the individual under its misconduct provisions.

To be certified, a State law must reasonably define misconduct. The fact that the employer initiated the discharge does not mean misconduct exists. For example, an individual who is hospitalized as a result of domestic violence may be unable to contact the employer. If the individual is discharged in such cases, the State law, to be certified, must consider the individual to have separated from work due to compelling family reasons. Similarly, if the employer discharges an individual who has informed the employer of expected absences to care for an ill child, the State law must consider the individual to have been separated from work due to compelling family reasons.

Many State misconduct provisions have been interpreted to require a willful and wanton disregard of the employer's interest. The Department anticipates that these State law provisions are generally expected to meet the conditions pertaining to compelling family reasons since separations for compelling family reasons do not in themselves constitute a willful and wanton disregard of the employer's interest. However, to assure the State's law does not provide for a denial due to misconduct for such separations, the State's application will need to address the application of its misconduct provisions to compelling family reasons.

III–11. Question: For purposes of the domestic violence provision, what is meant by ''verified by such reasonable and confidential documentation as the State law may require?''

Answer: As in other UC adjudications, the State must gather sufficient facts to support any eligibility determination, which may include verification of the individual's belief that his/her continued employment would jeopardize the safety of the individual or a member of the immediate family. When the State verifies the individual's belief, the Department has determined the State may reasonably require a statement supporting recent domestic violence from a qualified professional from whom the individual has sought assistance such as a counselor, shelter worker, member of the clergy, attorney, or health worker.

The State must accept any other kind of evidence that reasonably proves domestic violence. The State may accept, but may not require, as evidence (1) an active or recently issued protective or other order documenting domestic violence, or (2) a police record documenting recent domestic violence as doing so will create an unreasonable bar to benefits.

If the State obtains one instance of information that adequately verifies the individual's belief, it would defeat the purpose of the new Federal provisions for the State to burden the individual by requiring additional information. Therefore, any application that indicates that multiple verifications are necessary will not be certified.

At a minimum, for purposes of holding information about domestic violence confidential, the Department's regulations at 20 CFR Part 603 addressing the confidentiality of UC information will apply, as it does to all confidential UC information. Given the sensitivity of the kind of information that may be needed to prove domestic violence, as well as the confidential sources from which it may have to be obtained, the Department views the language about ''confidential information'' as an authorization to seek information which may come from confidential sources and as a reminder that such information must be kept confidential.

III–12. Question: For purposes of the domestic violence and illness/disability options, what is meant by ''immediate family member?''

Answer: At a minimum, a State must include spouses, parents and minor children under the age of 18 in its definition of ''immediate family member'' for its provision to qualify for certification. States may provide for a more inclusive definition (for example, including grandparents, sisters, brothers, domestic partners, adult children or foster children), but they are not required to do so for their provisions to be certified.

III–13. Question: For purposes of the illness/disability option, what is meant by ''illness'' and ''disability?''

Answer: ''Illness'' means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave (paid or otherwise). Similarly, ''disability'' means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant leave (paid or otherwise) for. ''Disability'' encompasses all types of disability, including (1) mental and physical disability; (2) permanent and temporary disabilities; and (3) partial and total disabilities. What is key is that the individual's illness or disability necessitates care by another individual and the employer does not accommodate the employee's request for time-off.

This is a minimum standard for a State to receive its incentive payment. States may have broader eligibility provisions. However, a State law provision would not be certified if it has a narrower definition of illness or disability or provides for overly restrictive limits on the types of verification of illness. For example, if the State requires a medical doctor to verify an illness or disability when other sources of verification are available, the application would not be accepted. As another example, if a State law's provisions only apply when the family member is terminally ill, the provision will not be certified.

III–14. Question: My State law pertaining to separations to care for family members is limited to cases where no reasonable, alternative care was available. Would this provision be certified?

Answer: No. The new Federal provisions broadly require, as a condition of certification, that the State law not disqualify an individual separating because of the ''illness or disability of a family member. * * *'' The Act does not permit a State to limit eligibility to particular circumstances surrounding a separation for this reason. Thus, a provision would not be certified if it applies only when no reasonable, alternative care is available.

III–15. Question: For purposes of quitting to accompany a spouse to a new location from which it is impractical to commute, what is meant by ''impractical?''

Answer: What is ''impractical'' will be based on commuting patterns in the locality. States should assure that their provisions reasonably reflect these commuting patterns.

III–16. Question: My State looks at whether it is impractical for the individual to commute from the new location. We do not examine the reason why the spouse relocated. Would this provision qualify for an incentive payment?

Answer: In this case, the State permits payment of UC in all situations required for the State to qualify for an incentive payment. State law may provide for broader eligibility than required for certification, such as where it is not practical to commute from the new location.

III–17. Question: Do the provisions on compelling family reasons affect my State's availability requirements as a condition of claimant eligibility?

Answer: There is no effect. States must continue to require, at a minimum,

that individuals be able to and available for work as defined by the Department's regulations at 20 CFR part 604. The new Federal provisions on compelling family reasons relate only to whether the reason for quitting work is disqualifying, and do not address issues related to the individual's continuing unemployment. Thus, for example, an individual who quits employment for a compelling family reason may not be disqualified for quitting, but the individual will be ineligible if unavailable for work.

Training Benefits

III–18. Question: If a State elects the training benefit option, under what conditions must it be payable?

Answer: The State law must provide that a training benefit be payable to any individual who is unemployed (as determined under State law, including partial and part-total unemployment), has exhausted all rights to regular UC, and is enrolled in and making satisfactory progress in either:

- A State-approved training program, or
- A job training program authorized under the Workforce Investment Act of 1998 (WIA).

The State law must provide for payment of the training benefit to individuals who are enrolled in and making satisfactory progress in *both* of the above types of programs. However, the State law is not required to provide for payment of the training benefit to an individual who is receiving ''similar stipends'' or other training allowances which can be used for non-training costs. (In addition, the State may treat such stipends as disqualifying income.) In this case, ''similar stipend'' means an amount provided under a program with similar aims, such as providing training to increase employability, and in approximately the same amounts.

WIA or other approved job training programs for which training benefits are paid may be limited to those that prepare an individual for entry into a high-demand occupation if the individual has been:

- Separated from a declining occupation, or
- Involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment.

The requirements related to the job training program are *minimum* requirements for purposes of certification. If the State pays training benefits to a broader class of individuals participating in training than specified above, the State will meet the requirements for this option. For example, a State law may pay additional training benefits to any individual who is preparing for a job in a ''demand occupation'' as opposed to a ''high-demand occupation.'' However, a State law would not qualify for certification if it limits training benefits to a narrower class of individuals. For example, if the training benefits are payable only to individuals in job training programs leading to high-wage occupations, the State law would not be certified because the Federal provision does not authorize a high-wage restriction.

Whether an occupation is ''declining'' or ''high-demand'' will be determined by the State using available labor market information data.

III–19. Question: How must the amount of training benefits be determined for purposes of this option?

Answer: The amount of UC payable for a week of unemployment must, at a minimum, equal the individual's weekly benefit amount (including dependents' allowances) for the most recent benefit year less any deductible income as determined under State law. The total amount of UC payable to any individual must equal at least 26 times the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year.

III–20. Question: What is meant by ''State-approved training program''?

Answer: A program that the State determines is reasonably expected to lead to employment in an occupation, including high-demand occupations.

III–21. Question: What evidence may my State require for purposes of determining whether an individual is making satisfactory progress in the training program?

Answer: The State may require reasonable evidence of satisfactory progress, such as reports from training providers and evidence of attending training when attendance is a necessary part of such training.

III–22. Question: My State has a training benefit provision, but amounts must be appropriated each year by the legislature. Will this provision qualify for the incentive payment?

Answer: No. To qualify for an incentive distribution, the State law provision may not be subject to discontinuation. A provision subject to appropriation may be capped with the result that it could be discontinued within the State's fiscal year for which the appropriation is made. Further, there is no guarantee any appropriation will be made for future years.

III–23. Question: May the training benefit be paid after federally-funded extensions of UC?

Answer: Yes. The training benefit may be paid after the individual exhausts eligibility under the current Emergency Unemployment Compensation program or under the permanent Federal-State Extended Benefits program.

III–24. Question: May eligibility for the training benefit be terminated by the expiration of a benefit year, or may it be limited to individuals who have not previously received it?

Answer: No. Federal law does not contain these limitations.

Dependents' Allowances

III–25. Question: What is meant by ''dependent'' for purposes of qualifying for an incentive payment under the option related to dependents' allowances, as well as in other provisions relating to incentive payments?

Answer: The term ''dependent'' is defined under State law for all of these purposes.

III–26. Question: With respect to the dependents' allowances option, what dollar amounts must be paid as dependents' allowances to qualify for the incentive payment?

Answer: The State must pay an amount equaling at least $15 per dependent per week. However, the State may cap the total allowance paid to an individual for dependents at $50 per week of unemployment or 50 percent of the individual's weekly benefit amount for the benefit year, whichever is less.

The State is not, however, required to pay the full dependents' allowance when the individual has earnings for the week. Instead, the State may provide for a reasonable reduction in the amount of any such allowance for such week. A State law will qualify for certification under this ''reasonableness'' test if it provides for the same pro rata reduction in the dependents' allowance as was applied to the weekly benefit amount. For example, if the individual is eligible for one-half of the weekly benefit amount, the State may reduce the dependents' allowance by one-half. If a State applies another reduction test that it believes is reasonable, the State's application must explain why the test is reasonable.

III–27. Question: My State does not pay a dependents' allowance if the individual qualifies for the maximum weekly benefit amount. Would my State's dependents' allowances provision qualify?

Answer: No. The new Federal provisions require, as a condition of certification, that a State pay dependents' allowances, but permits some limitation on their aggregation. Because this State provision places an

additional limitation on dependents' allowances, the Department would not certify it. Similarly, the Department would not certify a State provision that does not pay dependents' allowances to individuals who qualify for the minimum weekly benefit amount.

Regular Compensation

III–28. Question: The options relating to part-time work, compelling family reasons, and dependents' allowances specify that they must be applied to ''regular compensation.'' Does this mean they are not required to be applied to other payments of UC?

Answer: For UC programs where benefits are funded by the Federal government, Federal ''equal treatment'' requirements apply. Therefore, except where the laws and regulations governing these programs provide otherwise, benefits for the following UC programs must be paid in the same amount, on the same terms, and under the same conditions as regular compensation:

- The permanent Federal-State Extended Benefits program.
- The UC programs for former Federal employees and ex-military personnel. Moreover, these programs are also included in the definition of ''regular compensation'' in Section 205(2) of the Federal-State Extended Unemployment Compensation Act of 1970, as amended.
- The current emergency UC program, commonly called the EUC08 program.
- The Disaster Unemployment Assistance program.
- Trade Readjustment Allowances payable under the Trade Act, as amended.

However, unless a State's law contains an ''equal treatment'' requirement for ''additional compensation,'' it need not apply the requirements relating to part-time work, compelling family reasons and, with one possible exception for the training benefit (explained in the next paragraph), dependents' allowances in the payment of additional compensation. Additional compensation is not regular compensation, but, rather, compensation totally financed by a State and payable under State law by reason of high unemployment or other special factors. Thus, the limitation to ''regular compensation'' means, for example, that for a State's provision relating to part-time workers to be certified, the State law need not pay additional compensation to part-time workers.

Note that benefits under the training benefits option are a form of additional compensation. However, as discussed above for the training benefits option, the State must include dependents' allowances in calculating the individual's weekly benefit amount for the training benefit. Those dependents' allowances must be calculated for the training benefit in the same manner as they are calculated for regular compensation. Thus, if a State selects its dependents' allowances provision for certification, it must apply it to the training benefit.

Applications for Incentive Payments

III–29. Question: I believe my State law qualifies for an incentive payment under two or more of the above options. What should my application State?

Answer: For each option under which the State is applying, the application must:

- Name the State;
- Cite to and attach the specific provisions of State law supporting the application;
- Certify that the provision of State law is either currently in effect or will become effective for claims filed after a specified date;
- Contain a certification that the provision is permanent (that is, not temporary) and is not subject to discontinuation under any circumstances other than repeal by the legislature; and
- Address how the State intends to use the incentive payment to improve or strengthen its UC program.

The following additional information is also required:

- When an application is based on an interpretation of State law rather than explicit statutory language (as may be the case under the options for part-time workers and compelling family reasons), the State must provide evidence of its interpretation. This evidence may include regulations, court cases, precedent decisions, or administrative procedures. An application that merely asserts a provision of State law is interpreted in a certain way will be deemed incomplete and denied. Similarly, an application that cites to a court case as an authoritative interpretation will be deemed incomplete and denied unless the State provides regulations or procedures demonstrating the court case has been implemented. The application must describe these authorities and attach copies of any relevant material.
- For an application pertaining to compelling family reasons, the State must (1) explain its requirements for verification of domestic violence and why they are reasonable, and (2) describe how the State's misconduct provisions are consistent with Q&A III–10. The application must attach copies of any relevant material supporting the application's statements.
- For an application that provides for a ''reasonable reduction'' in dependents' allowances for weeks with earnings, describe the reduction and why it is believed to be reasonable.

III–30. Question: My State has submitted an application under the base period provision for the first one-third of its incentive payment. Should we wait until that application is approved prior to submitting an application for the remaining two-thirds?

Answer: No. It is not necessary to wait for approval of the base period application. However, the Department will not certify the State for the remaining two-thirds until it certifies the base period provision.

Attachment IV

Special Administrative Transfers

Questions and Answers

IV–1. Question: How was Federal law amended to authorize the special administrative transfer?

Answer: Section 2003(a) of Public Law 111–5 added a new subsection (g) to Section 903, SSA, to make a special administrative transfer to all States totaling $500,000,000 within 30 days of the date of enactment, which was February 17, 2009. A State need take no action to receive its share of the distribution.

IV–2. Question: How is my State's share of the special administrative transfer determined?

Answer: It is calculated in the same manner as a ''Reed Act'' distribution. This means each State's share is based on its proportionate share of FUTA taxable wages multiplied by the $500,000,000 authorized by the amendments. For purposes of computing each State's proportionate share, the Secretary of Labor will use the taxable wages that would have been used for calculating any Reed Act distribution occurring on October 1, 2008. As provided by the SSA, data for tax year 2007 is used for determining each State's share.

IV–3. Question: What are the permissible uses of the administrative transfer?

Answer: The administrative transfer may be used only for—

- Implementing and administering the provisions of State law that qualify the State for the incentive payments;
- Improved outreach to individuals who might be eligible by virtue of these provisions;

• The improvement of UC benefit and tax operations, including responding to increased demand for UC; and

• Staff-assisted reemployment services for UC claimants.

IV–4. Question: Must my State legislature appropriate these special administrative transfers?

Answer: Federal law does not require such an appropriation. (This is unlike the incentive payments discussed in Attachment I, which must be appropriated by the State legislature before they can be used for administrative purposes.) However, nothing prohibits a State legislature from appropriating such money or from attaching more specific or limiting conditions to the use of such money.

IV–5. Question: Do I need to amend my State's UC law?

Answer: Most State UC laws contain permanent provisions regarding the use of moneys transferred under Section 903, SSA. These provisions usually mirror the requirements of Section 903(c)(2), SSA, pertaining to ''traditional'' Reed Act distributions, including a provision that the moneys be used for the payment of UC unless appropriated by the legislative body of the State for the administration of the State's UC law or the State's system of public employment offices.

The special administrative transfer is not, however, available for the payment of UC and its administrative uses are more limited. As a result, if the State's UC law permits a broader use, the State must either (1) amend its UC law to reflect the more limited use of the special administrative transfer, or (2) interpret its UC law consistent with the limited uses specified in Section 903(g), SSA. States exploring the latter option may be able to base their interpretation on State UC law provisions that require interpretations of State UC law in a manner consistent with Federal law.

Attachment II to UIPL 39–97 contains draft language for State Reed Act provisions, which many States used to create their permanent provisions. For these States, we recommend the following language be added:

(6) Notwithstanding paragraph (1), moneys credited with respect to the special transfer made under section 903(g), SSA, may be used solely for the purposes specified in such section *and are not subject to appropriation by the legislature.* [Emphasis added.]

States should modify this language to accord with State usage and to assure correct State law citations. The emphasized language is necessary only if the State chooses to avoid the appropriation process for the special administrative transfer. As an alternative to this approach, States may also consider a broader amendment that automatically authorizes the State law to take into account any Federal law limitations on use not contained in State law.

IV–6. Question: My State has an advance under Title XII, SSA, so that it can continue to pay benefits. Does this affect my administrative transfer?

Answer: No. Eligibility for the transfer does not depend upon a State having no outstanding advance. Therefore, the entire amount of the special administrative transfer for a State will be transferred to the State's account in the UTF, notwithstanding any advance.

Attachment V

Suspensions

Interest on Advances and Federal Taxation of UC

Interest Payments

V–1. Question: How did the amendments made by Section 2004 of Public Law 111–5 affect interest due on Title XII advances?

Answer: Section 2004 added new paragraph (10) to Section 1202(b), SSA. Under this new paragraph, any interest payment due during the period beginning on the date of enactment (that is beginning February 17, 2009) and ending on December 31, 2010, shall be ''deemed to have been'' paid by the State. This effectively waives all interest due during this period. Further, no interest accrues on any advance or advances made to a State during this period.

V–2. Question: Will interest accrue on advances made prior to the date of enactment?

Answer: Yes. Although interest will accrue on such advances, any interest due within the period beginning February 17, 2009, and ending on December 31, 2010 will, as discussed in the previous Q&A, be waived. However, interest accrued after September 30, 2010, will not be due within this period. Instead, such accrued interest will be due no later than September 30, 2011.

V–3. Question: How is interest after December 31, 2010, determined?

Answer: The normal rules for determining the amounts of interest accrued and the dates interest is due will again apply.

Partial Suspension of Federal Income Tax

V–4. Question: How did the amendments made by Public Law 111–5 affect the taxation of unemployment benefits?

Answer: For tax year 2009 only, the first $2,400 paid in unemployment benefits is not subject to Federal income tax. Amounts above $2,400 remain taxable.

V–5. Question: Will this suspension require any operational changes by my agency?

Answer: States are to continue to (1) report UC payments on Form 1099 and (2) withhold Federal income tax from UC benefits when requested by the individual. States are encouraged to promptly update information provided to individuals about the taxation of UC so that individuals may make informed decisions about whether to elect (or continue) the withholding of Federal income tax from UC.

Attachment VI

Text of Sections 2003 and 2004 of Public Law 111–5

Text may be found at: *http://wdr.doleta.gov/directives/attach/UIPL/UIPL14–09f.pdf.*

Attachment VII

UC MODERNIZATION DISTRIBUTIONS—AMOUNTS

State	$500 M Admin Distribution	$7.0 Billion Distribution	⅓ Share	⅔ Share
AK	$1,115,660	$15,619,234	$5,206,411	$10,412,823
AL	7,176,668	100,473,351	33,491,117	66,982,234
AR	4,283,524	59,969,332	19,989,777	39,979,555
AZ	10,721,206	150,096,885	50,032,295	100,064,590
CA	59,905,736	838,680,283	279,560,094	559,120,189
CO	9,104,983	127,469,762	42,489,921	84,979,841
CT	6,272,238	87,811,338	29,270,446	58,540,892
DC	1,973,784	27,632,982	9,210,994	18,421,988
DE	1,562,028	21,868,398	7,289,466	14,578,932

UC MODERNIZATION DISTRIBUTIONS—AMOUNTS—Continued

State	$500 M Admin Distribution	$7.0 Billion Distribution	⅓ Share	⅔ Share
FL	31,733,965	444,275,516	148,091,839	296,183,677
GA	15,734,725	220,286,144	73,428,715	146,857,429
HI	2,180,480	30,526,725	10,175,575	20,351,150
IA	5,058,171	70,814,387	23,604,796	47,209,591
ID	2,304,345	32,260,831	10,753,610	21,507,221
IL	21,510,763	301,150,687	100,383,562	200,767,125
IN	10,607,023	148,498,323	49,499,441	98,998,882
KS	4,926,439	68,970,143	22,990,048	45,980,095
KY	6,441,139	90,175,943	30,058,648	60,117,295
LA	7,027,524	98,385,331	32,795,110	65,590,221
MA	11,620,239	162,683,341	54,227,780	108,455,561
MD	9,053,580	126,750,124	42,250,041	84,500,083
ME	2,016,519	28,231,263	9,410,421	18,820,842
MI	14,877,327	208,282,572	69,427,524	138,855,048
MN	9,290,259	130,063,620	43,354,540	86,709,080
MO	9,522,006	133,308,082	44,436,027	88,872,055
MS	4,009,761	56,136,656	18,712,219	37,424,437
MT	1,394,697	19,525,764	6,508,588	13,017,176
NC	14,647,397	205,063,552	68,354,517	136,709,035
ND	1,039,443	14,552,205	4,850,735	9,701,470
NE	3,116,126	43,625,769	14,541,923	29,083,846
NH	2,242,944	31,401,220	10,467,073	20,934,147
NJ	14,773,097	206,823,364	68,941,121	137,882,243
NM	2,787,327	39,022,582	13,007,527	26,015,055
NV	5,495,529	76,937,412	25,645,804	51,291,608
NY	29,481,579	412,742,107	137,580,702	275,161,405
OH	18,893,471	264,508,588	88,169,529	176,339,059
OK	5,420,463	75,886,483	25,295,494	50,590,989
OR	6,112,474	85,574,641	28,524,880	57,049,761
PA	19,521,393	273,299,496	91,099,832	182,199,664
PR	2,946,268	41,247,756	13,749,252	27,498,504
RI	1,675,756	23,460,578	7,820,193	15,640,385
SC	6,961,392	97,459,490	32,486,497	64,972,993
SD	1,260,545	17,647,634	5,882,545	11,765,089
TN	10,129,145	141,808,031	47,269,344	94,538,687
TX	39,690,810	555,671,344	185,223,781	370,447,563
UT	4,356,943	60,997,206	20,332,402	40,664,804
VA	13,460,932	188,453,049	62,817,683	125,635,366
VI	143,065	2,002,911	667,637	1,335,274
VT	994,136	13,917,898	4,639,299	9,278,599
WA	10,470,988	146,593,828	48,864,609	97,729,219
WI	9,566,720	133,934,079	44,644,693	89,289,386
WV	2,369,759	33,176,630	11,058,877	22,117,753
WY	1,017,509	14,245,130	4,748,377	9,496,753
US	500,000,000	7,000,000,000	2,333,333,331	4,666,666,669

UIPL No. 14–09, Change 1—*Special Transfers for Unemployment Compensation Modernization and Administration and Relief From Interest on Advances*

1. *Purpose.* To provide additional guidance to States concerning unemployment compensation (UC) modernization incentive payments, the recent special administrative transfers, and to correct guidance related to relief from interest on advances to State unemployment funds.

2. *References.* The Assistance for Unemployed Workers and Struggling Families Act, Title II of Division B of Public Law 111–5, enacted February 17, 2009; the Social Security Act (SSA); the Federal Unemployment Tax Act (FUTA); and Unemployment Insurance Program Letter (UIPL) No. 14–09.

3. *Background.* UIPL No. 14–09 provided guidance to States on the UC provisions of Public Law 111–5, including how to qualify for UC modernization payments. This UIPL, using a Question and Answer (Q&A) format, provides, among other things:

- Additional guidance concerning applications for UC modernization incentive payments and on using a training benefit provision to qualify for such payments.
- Additional guidance related to the special administrative transfer.
- A correction to earlier guidance related to relief from interest on advances.

4. *Action.* State administrators should distribute this advisory to appropriate staff.

5. *Inquiries.* Questions should be addressed to your Regional Office.

6. *Attachment.* QUESTIONS AND ANSWERS

Attachment

Questions and Answers

UC Modernization—Applications Under "Permanent" Laws

CH 1–1. Question. UIPL No. 14–09 provides that applications for incentive payments should only be made under provisions of State laws that are currently in effect as *permanent law* and not subject to discontinuation. Does this mean that my State may never repeal

any of the provisions that qualified it for a UC Modernization payment?

Answer: No. If a State eventually decides to repeal or modify any of these provisions, it may do so, and it will not be required to return any incentive payments. However, in providing the incentive payments, Congress clearly intended to support States that had already adopted certain eligibility provisions and to expand eligibility to additional beneficiaries by encouraging other States to adopt these provisions. By specifying that the provisions must be in effect as permanent law, Congress also made clear its intention that the benefit expansions not be transitory. While States are free to change or repeal the provisions on which modernization payments were based subsequent to receipt of incentive payments, Congress and the Department rely on States' good faith in adopting the eligibility criteria, and the application must attest to this good faith as required by the following Q&A.

CH 1–2. Question: Are there any changes to the application procedure?

Answer: Yes. Each State's application for incentive payments must contain a certification that the application is submitted in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions on which the application is based.

UC Modernization—Training Benefits

CH 1–3. Question: May my State establish a limitation on when the individual must enroll in training to be eligible for the training benefit?

Answer: Yes. As a general matter, individuals who were separated from declining occupations or businesses reducing operations, and who would benefit from job training, should be placed in appropriate training as soon as possible. A State law would qualify for certification if it provided that an individual must be enrolled in training no later than the end of the benefit year established with respect to the separation that makes the individual eligible for the training benefit. (That is, a separation from a declining occupation, or a separation due to a permanent reduction of operations at the individual's place of employment.) A State may provide for a longer period of time, but its application would not be certified if it provided for a period of time ending prior to the end of the individuals' benefit year.

States adopting this limitation must notify individuals of the limitation at the time the State approves their initial claims.

CH 1–4. Question: Q&A III–24 in UIPL No. 14–09 provides that eligibility for the training benefit may *not* be terminated by the expiration of a benefit year. Does this mean that my State may set no outside limits on payment of the training benefit?

Answer: No. Q&A III–24 was intended to assure that an individual enrolled and making satisfactory progress in training did not have eligibility for the training benefit terminated because the benefit year ended. A State may, however, terminate an individual's training benefit after the individual has been provided a reasonable period to collect the entire training benefit. A State law would qualify for certification if it provided that no training benefits are payable one year following the end of the benefit year. If a State adopts a shorter termination date, its application must justify why the date is reasonable.

CH 1–5. Question: An individual voluntarily quit a job. May my law deny this individual the training benefit?

Answer: The answer depends upon the facts. Section 903(f)(3)(C)(ii), SSA, as amended, provides that the training benefit is payable to an individual who was either ''separated from a declining occupation, or [was] involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment. * * *'' Since these two conditions are in the disjunctive, a State must pay the training benefit if a claimant meets either one. Accordingly, the State must pay the training benefit to an individual who voluntarily quit a job in a ''declining occupation,'' because Federal law does not condition eligibility on the cause of the separation where the separation is from a declining occupation. Further, the State must pay the benefit where the individual was ''involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment. * * *'' However, the State may deny the benefit where neither condition is met: an individual voluntarily quit a job and the job was not in a declining occupation.

Special Administrative Transfers

CH 1–6. Question: Section 903(g)(3)(C) of the SSA provides that my State's share of the $500 million special administrative transfer is available for, among other things, ''improvement of unemployment benefit and tax operations, including responding to increased demand for unemployment compensation.'' Does this mean that my State may use this money to fund the hiring of additional staff due to increased workload?

Answer: Yes. Adding staff to respond to workload is ''responding to increased demand for unemployment compensation.''

CH 1–7. Question: May my State use its share of the $500 million special administrative transfer to pay costs individuals might otherwise incur in using their UC debit cards?

Answer: Yes. Reducing costs to individuals in accessing their UC payments is an ''improvement'' in UC benefit operations because it facilitates the payment of benefits.

CH 1–8. Question: When was the $500 million special administrative distribution transferred to States?

Answer: March 2, 2009.

Reporting

CH 1–9. Question: Where should transactions involving UC modernization incentive payments and the $500 million special administrative distribution be reported?

Answer: The transfer of any incentive payments and the $500 million special administrative funds was authorized by Title IX of the SSA, as amended. As such, transactions involving these funds should be reported on the ETA 8403 Summary of Financial Transaction—Title IX Funds as well as on lines 15 and 44 of the ETA 2112, UI Financial Transaction Summary report. (OMB Numbers 1205–0154 and 1205–0154.)

Interest on Title XII Advances

CH 1–10. Question: How did the amendments made by Section 2004 of Public Law 111–5 affect interest due on Title XII advances?

Answer: Section 2004 added new paragraph (10) to Section 1202(b), SSA:

> (10)(A) With respect to the period beginning on the date of enactment of this paragraph and ending on December 31, 2010—
>
> (i) any interest payment otherwise due from a State under this subsection during such period shall be deemed to have been made by the State; and
>
> (ii) no interest shall accrue *during such period* on any advance or advances made under section 1201 to a State.
>
> (B) The provisions of subparagraph (A) shall have no effect on the requirement for interest payments under this subsection after the period described in such subparagraph or on the accrual of interest under this subsection after such period. [Emphasis added.]

Under this new paragraph, any interest payment due during the period beginning on the date of enactment (that is, beginning February 17, 2009) and ending on December 31, 2010, shall be ''deemed to have been'' paid by the

State. This effectively waives all interest due during this period. Further, no interest accrues on any advance or advances during this period.

This Q&A supersedes Q&A V–1 of UIPL 14–09 and corrects the text of the amendment found on page 4 of Attachment VI to UIPL 14–09.

CH 1–11. Question: Will interest accrue on advances made prior to the date of enactment during the period February 17, 2009 through December 31, 2010?

Answer: No. As discussed in the previous Q&A, no interest will accrue on advances during the period. This Q&A supersedes Q&A V–2 of UIPL No. 14–09.

CH 1–12. Question: How is interest after December 31, 2010, determined?

Answer: The normal rules for determining the amounts of interest accrued and the dates interest is due will again apply. This response is the same as Q&A V–3 of UIPL No. 14–09.

Dated this 17th day of September, 2009.

Jane Oates,

Assistant Secretary of Labor, Employment and Training Administration.

[FR Doc. E9–22917 Filed 9–22–09; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–080)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license worldwide to practice the invention described and claimed in U.S. patent 5,393,634, entitled ''Continuous Phase and Amplitude Holographic Elements'' to Snapshot Spectra, having its principal place of business in Pasadena, California. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective exclusive license may be submitted to Patent Counsel, NASA Management Office, Jet Propulsion Laboratory, Mail Code 180–200, 4800 Oak Grove Drive, Pasadena, CA 91109; or via facsimile at (818) 393–3160.

FOR FURTHER INFORMATION CONTACT: Mark Homer, Patent Counsel, NASA Management Office, Jet Propulsion Laboratory, Mail Code 180–200, 4800 Oak Grove Drive, Pasadena, CA 91109; (818) 354–7770; (818) 393–3160 [facsimile]. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/*.

Dated: September 15, 2009.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. E9–22847 Filed 9–22–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–081)]

Privacy Act of 1974; Privacy Act System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of the retirement of one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, NASA is giving notice that it proposes to retire the following Privacy Act system of records notice, Kennedy Space Center Shuttle Training Certification System (YC–04)/KSC 76STCS (October 1, 2007, 72 FR 55832) from its inventory of record systems and rely upon the Government-wide system of records notice issued by the Office of Personnel Management, OPM/Govt-1 General Personnel Records (June 19, 2006, 71 FR 35342), which is written to cover all Federal government training and certification records.

DATES: These changes will take effect 30 calendar days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: Patti F. Stockman, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (202) 358–4787, *NASA-PAOfficer@nasa.gov*.

SUPPLEMENTARY INFORMATION:

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of ongoing integration and management efforts, NASA is retiring the system of records notice, Kennedy Space Center Shuttle Training Certification System (YC–04)/KSC 76STCS (October 1, 2007, 72 FR 55832).

NASA will continue to collect and maintain records regarding individuals who are trained and certified to safely perform hazardous work and will rely upon the existing Federal Government-wide system of records notice titled OPM/GOVT–1 General Personnel Records (June 19, 2006, 71 FR 35342), which is written to cover all Federal training and certification record systems. Eliminating this notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of NASA Privacy Act record systems.

Bobby L. German,

Acting NASA Chief Information Officer.

[FR Doc. E9–22849 Filed 9–22–09; 8:45 am]

BILLING CODE 7510–03–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of September 21, 28, October 5, 12, 19, 26, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 21, 2009

Tuesday, September 22, 2009

9:25 a.m.

Affirmation Session (Public Meeting) (Tentative).

a. Final Rule Establishing Criminal Penalties for the Unauthorized Introduction of Weapons into Facilities Designated by the Nuclear Regulatory Commission. (Tentative).

b. Final Rule Related to Alternate

Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events (10 CFR 50.61a) (RIN 3150–A101) (Tentative).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

9:30 a.m.

Periodic Briefing on New Reactor Issues—Progress in Resolving Inspections, Tests, Analysis, and Acceptance Criteria (ITAAC) Closure (Public Meeting). (Contact: Debby Johnson, 301–415–1415.)

This meeting will be Webcast live at the Web address—*www.nrc.gov.*

Week of September 28, 2009—Tentative

Tuesday, September 29, 2009

1:30 p.m.

NRC All Employees Meeting (Public Meeting),

Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Wednesday, September 30, 2009

9:30 a.m.

Discussion of Management Issues (Closed—Ex. 2).

Week of October 5, 2009—Tentative

There are no meetings scheduled for the week of October 5, 2009.

Week of October 12, 2009—Tentative

There are no meetings scheduled for the week of October 12, 2009.

Week of October 19, 2009—Tentative

There are no meetings scheduled for the week of October 19, 2009.

Week of October 26, 2009—Tentative

There are no meetings scheduled for the week of October 26, 2009.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: September 17, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–23025 Filed 9–21–09; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–57; Order No. 281]

International Mail

AGENCY: Postal Regulatory Commission.

ACTION: Notice

SUMMARY: The Commission is adding Inbound International Expedited Services 2 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations.

DATES: Effective September 23, 2009 and is applicable beginning August 19, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 37739 (July 29, 2009).

I. Introduction
II. Background
III. Comments
IV. Commission Analysis
V. Ordering Paragraphs

I. Introduction

The Postal Service proposes a change in rates not of general applicability for Inbound International Expedited Services 2. For the reasons discussed below, the Commission approves the Postal Service's proposal.

II. Background

On July 28, 2009, the Postal Service filed a notice announcing changes in rates not of general applicability for Inbound International Expedited Services 2 effective January 1, 2010.[1] The Postal Service attached a redacted copy of the 2010 rates and a certified statement establishing compliance with 39 U.S.C. 3633 and 39 CFR 3015.5(c)(2) to the Notice as Attachments 1 and 2, respectively. *Id.* at 2. The Postal Service also submitted as Attachment 3 a listing of countries in each pricing tier and incorporated by reference the description of Inbound International Expedited Services 2 contained in its supporting documentation filed in Docket Nos. MC2009–10 and CP2009–12. The Postal Service submitted the rates, related financial information, and certified statement required by 39 CFR 3015.5(c)(2) under seal.

The Notice states that in Docket No. MC2009–10, the Governors established prices and classifications not of general applicability for Inbound Express Mail International (EMS). W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department certifies that the prices are in compliance with the price floor and ceiling formulas set forth in Governors' Decision No. 08–20 and 39 U.S.C. 3633(a). *See id.,* Attachment 2. In Order No. 162, the Commission added Inbound International Expedited Services 2 to the Competitive Product List as a new product under Express Mail, Inbound International Expedited Services.[2] The rates took effect on January 1, 2009.

In accordance with the provisions of the EMS Cooperative of the Universal Postal Union (UPU), rates for the delivery of inbound Express Mail International must be communicated to the UPU by August 31 of the year before which they are to take effect. As a member of the EMS Cooperative, the Postal Service may not change its rates for the coming year after August 31. In Order No. 162, the Commission raised concerns with filing these rates with the Commission after August 31, even though they do not take effect until January 1 of the following year. The Commission indicated that if a product is found to violate the Postal Accountability and Enhancement Act (PAEA), *e.g.,* does not satisfy section 3633(a)(2), the Postal Service may be without a suitable remedy until the rate change is permitted for the following year. *Id.* at 9. The Commission, therefore, appreciates the Postal Service's filing the 2010 rates well in advance of the August 31, 2009 UPU deadline.

In its Notice, the Postal Service indicates that the rates to take effect in

[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability, July 28, 2009 (Notice).

[2] *See* Docket Nos. MC2009–10 and CP2009–12, Order Adding Inbound International Expedited Services 2 to Competitive Product List, December 31, 2008 (Order No. 162).

2010 are divided into two tiers.[3] Tier one applies to postal operators with a performance level agreement, such as EMS Pay-for-Performance Plan participants and Kahala Posts Group members. Tier two applies to all other postal operators that transmit EMS to the United States. Notice at 2–3. The Postal Service provided a listing of countries in each tier, noting that this list may be subject to change on January 1, 2010. *Id.* at 3 and Attachment 3.

The Postal Service states that the China Post Group, whose inbound EMS rates were established by a bilateral agreement approved by the Commission in Docket Nos. CP2008–6 and CP2008–7, is expected to join Tier 1. *Id.* at 3. The parties have agreed that the bilateral agreement will expire at the end of the 1-year term. *Id.*

The Postal Service maintains that the rates, related financial information, and certain portions of the certified statement required by 39 CFR 3015.5(c)(2), should remain under seal. *Id.* at 4.

In Order No. 271, the Commission gave notice of the docket, appointed a Public Representative, requested supplemental information pursuant to 39 CFR 3015.6, and provided the public an opportunity to comment.[4]

The Postal Service submitted responses to the Commission's request for supplemental information on August 10, 2009.[5] In Order No. 271, among other things, the Commission requested the Postal Service to provide supplemental information including the 2010 EMS Pay-for-Performance Plan. The Postal Service response indicated this information was not yet available. On August 12, 2009, Chairman's Information Request No. 1 (CHIR No. 1) was issued requesting the 2009 EMS Pay-for-Performance Plan by August 14, 2009. On August 13, 2009, the Postal Service provided its response to CHIR No. 1 under seal.

III. Comments

Comments were filed by the Public Representative.[6] No other interested parties submitted comments. The Public Representative states that each element of 39 U.S.C. 3633(a) appears to be met by the proposed Inbound International Expedited Services 2 rate proposal. *Id.* at 2. He further states that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2–3. The Public Representative observes that the rates have been filed in a timely manner for the Commission's review and to permit notification to the UPU prior to the effective date. Additionally, he notes that the instant notice provides a current projection based upon the most recent information available and that the participation of the other postal administrations in the pricing structure may be subject to change. *Id.* at 4–5. The Public Representative concludes that the Notice comports with 39 CFR 3015, 39 U.S.C. 3632 and 3642.

IV. Commission Analysis

The Commission has reviewed the Notice, the supplemental information, and the comments filed by the Public Representative.

Statutory requirements. Planned price changes for competitive products are reviewed pursuant to 39 U.S.C. 3633(a) and Commission regulations under 39 CFR 3015, which implements section 3633. In brief, these statutory and regulatory provisions require each competitive product to cover its attributable costs (39 U.S.C. 3633(a)(2)), prohibit the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and require that competitive products collectively make an appropriate contribution to the recovery of the Postal Service's total institutional costs.

Based on the information provided, the Commission finds that the proposed rates cover attributable costs, should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C.3633(a)(3). Thus, a preliminary review of the proposed rates indicate that the rates comport with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service is directed to provide the Commission with the 2010 EMS Pay-for-Performance Plan once it is approved by the EMS Cooperative of the UPU.

Based on the record in this proceeding, the Commission finds that the proposed rates for Inbound International Expedited Services 2 are in accord with the relevant statutory and regulatory requirements of 39 U.S.C. 3633(a) and 39 CFR 3015.7.

V. Ordering Paragraphs

It is ordered:

1. The proposed rates for Inbound International Expedited Services 2 will take effect January 1, 2010 are in accordance with the relevant statutory and regulatory requirements of 39 U.S.C. 3633(a) and 39 CFR 3015.7.

2. The Postal Service is directed to provide the Commission the 2010 EMS Pay-for-Performance Plan as discussed in this order within 30 days after adoption by the EMS Cooperative of the Universal Postal Union.

3. The Secretary shall arrange for publication of this order in the **Federal Register**.

Issued: August 19, 2009.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. E9–22862 Filed 9–22–09; 8:45 am]

BILLING CODE 7710–FW–P

[3] The Postal Service states it expects that all members of the EMS Cooperative will participate in the Pay-for-Performance Plan. Therefore, the former three-tier rate structure is now consolidated into two tiers.

[4] Notice and Order Concerning Filing of Changes in Rates for Inbound International Expedited Services 2, August 4, 2009 (Order No. 271).

[5] Response of the United States Postal Service to Order No. 271, Notice of Filing Requested Materials Filed Under Seal, August 10, 2009.

[6] Public Representative Comments in Response to United States Postal Service Notice of Filing Changes for Inbound International Expedited Services 2, August 13, 2009 (Public Representative Comments). The Public Representative filed an accompanying Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Notice of Filing Changes for Inbound International Expedited Services 2, August 13, 2009. The motion is granted.

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before October 23, 2009. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of

Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Entrepreneurial Development Impact Study.

SBA Form Number: 2214.

Frequency: On Occasion.

Description of Respondents: SBA Clients.

Responses: 12,435.

Annual Burden: 2,500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9–22845 Filed 9–22–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60629; File No. SR–CBOE–2009–063]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

Correction

In notice document E9–21994 beginning on page 47034 in the issue of Monday, September 14, 2009, make the following correction:

On page 47036 in the first paragraph, the single date on the last line should read, ''October 5, 2009''.

[FR Doc. Z9–21994 Filed 9–22–09; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60653; File No. SR–NYSE–2009–89]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change As Modified by Amendment No. 1 To Amend Certain Corporate Governance Requirements

Correction

In notice document E9–22392 beginning on page 47831 in the issue of Thursday, September 17, 2009, make the following correction:

On page 47837, in the third column, in the 24th line from the top, ''October 5, 2009'' should read ''October 8, 2009''.

[FR Doc. Z9–22392 Filed 9–22–09; 8:45 am]

BILLING CODE 1505–01–D

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 8b–1 to 8b–33, SEC File No. 270–135, OMB Control No. 3235–0176.

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.

Rules 8b–1 to 8b–33 (17 CFR 270.8b–1 to 8b–33) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Act'') are the procedural rules an investment company must follow when preparing and filing a registration statement. These rules were adopted to standardize the mechanics of registration under the Act and to provide more specific guidance for persons registering under the Act than the information contained in the statute. For the most part, these procedural rules do not require the disclosure of information. Two of the rules, however, require limited disclosure of information.[1] The information required by the rules is necessary to ensure that investors have clear and complete information upon which to base an investment decision. The Commission uses the information that investment companies provide on registration statements in its regulatory, disclosure review, inspection and policy-making roles. The respondents to the collection of information are investment companies filing registration statements under the Act.

The Commission does not estimate separately the total annual reporting and recordkeeping burden associated with rules 8b–1 to 8b–33 because the burden associated with these rules are included in the burden estimates the Commission submits for the investment company registration statement forms (*e.g.,* Form N–1A (17 CFR 239.15A and 274.11A), Form N–2 (17 CFR 239.14 and 274.11a–1), Form N–3 (17 CFR 239.17a and 274.11b), Form N–4 (17 CFR 239.17b and 274.11c), and Form N–6 (17 CFR 239.17c and 274.11d)). For example, a mutual fund that prepares a registration statement on Form N–1A must comply with the rules under section 8(b), including rules on riders, amendments, the form of the registration statement, and the number of copies to be submitted. Because the fund only incurs a burden from the section 8(b) rules when preparing a registration statement, it would be impractical to measure the compliance burden of these rules separately. The Commission believes that including the burden of the section 8(b) rules with the burden estimates for the investment company registration statement forms provides a more accurate and complete estimate of the total burdens associated with the registration process. For administrative purposes, however, we are requesting approval for an information collection burden of one hour per year. This estimate of burden hours is not derived from a comprehensive or necessarily even representative study of the cost of the Commission's rules and forms.

Investment companies seeking to register under the Act are required to provide the information specified in rules 8b–1 to 8b–33 if applicable. Responses will not be 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 OMB 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.

[1] Rule 8b–3 (17 CFR 270.8b–3) provides that whenever a registration form requires the title of securities to be stated, the registrant must indicate the type and general character of the securities to be issued. Rule 8b–22 (17 CFR 270.8b–22) provides that if the existence of control is open to reasonable doubt, the registrant may disclaim the existence of control, but it must state the material facts pertinent to the possible existence of control.

Dated: September 16, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22879 Filed 9–22–09; 8:45 am]

BILLING CODE 8010–01–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 206(3)–2, SEC File No. 270–216, OMB Control No. 3235–0243.

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 206(3)–2, (17 CFR 275.206(3)–2) which is entitled ''Agency Cross Transactions for Advisory Clients,'' permits investment advisers to comply with section 206(3) of the Investment Advisers Act of 1940 (the ''Act'') (15 U.S.C. 80b–6(3)) by obtaining a client's blanket consent to enter into agency cross transactions (i.e., a transaction in which an adviser acts as a broker to both the advisory client and the opposite party to the transaction). Rule 206(3)–2 applies to all registered investment advisers. In relying on the rule, investment advisers must provide certain disclosures to their clients. Advisory clients can use the disclosures to monitor agency cross transactions that affect their advisory account. The Commission also uses the information required by Rule 206(3)–2 in connection with its investment adviser inspection program to ensure that advisers are in compliance with the rule. Without the information collected under the rule, advisory clients would not have information necessary for monitoring their adviser's handling of their accounts and the Commission would be less efficient and effective in its inspection program.

The information requirements of the rule consist of the following: (1) Prior to obtaining the client's consent, appropriate disclosure must be made to the client as to the practice of, and the conflicts of interest involved in, agency cross transactions; (2) at or before the completion of any such transaction, the client must be furnished with a written confirmation containing specified information and offering to furnish upon request certain additional information; and (3) at least annually, the client must be furnished with a written statement or summary as to the total number of transactions during the period covered by the consent and the total amount of commissions received by the adviser or its affiliated broker-dealer attributable to such transactions.

The Commission estimates that approximately 631 respondents use the rule annually, necessitating about 32 responses per respondent each year, for a total of 20,192 responses. Each response requires an estimated 0.5 hours, for a total of 10,096 hours. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the cost of Commission rules and forms.

This collection of information is found at (17 CFR 275.206(3)–2) and is necessary in order for the investment adviser to obtain the benefits of Rule 206(3)–2. The collection of information requirements under the rule is mandatory. Information subject to the disclosure requirements of Rule 206(3)–2 does not require submission to the Commission; and, accordingly, the disclosure pursuant to the rule is not kept confidential.

Commission-registered investment advisers are required to maintain and preserve certain information required under Rule 206(3)–2 for five (5) years. The long-term retention of these records is necessary for the Commission's inspection program to ascertain compliance with the Advisers Act.

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: September 16, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22878 Filed 9–22–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 24, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, September 24, 2009 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

A litigation matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 21, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–23017 Filed 9–21–09; 4:15 pm]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold an Open Meeting on Monday, October 5, 2009, in the Multipurpose Room, L–006. The meeting will begin at 9 a.m. and will be open to the public, with seating on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks.

On September 15, 2009, the Commission issued notice of the Committee meeting (Release No. 33–9064), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting. The agenda for the meeting includes: (i) A presentation by SEC staff of potential Commission initiatives; (ii) description of the composition and purpose of the Committee's subcommittees; (iii) consideration of a Committee recusal policy; (iv) reports from the Committee's subcommittees; and (v) discussion of next steps for the Committee, including regarding SEC resources.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: September 21, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–23016 Filed 9–21–09; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Federal Register *Citation of Previous Announcement:* 74 FR 47300, September 15, 2009.

Status: Open Meeting.

Place: 100 F. Street, NE., Washington, DC.

Date and Time of Previously Announced Meeting: September 17, 2009.

Change in the Meeting: Room Change.

The Open Meeting scheduled for Thursday, September 17, 2009 at 2:30 p.m. will be held in the Auditorium, Room L–002.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: September 17, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–22830 Filed 9–22–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60673; File No. SR–Phlx–2009–79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Position Limit Exemptions

September 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 8, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rules 1001 (Position Limits) and 1001A (Positions Limits) to enable Exchange members to rely on position limit exemptions granted by other options exchanges.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at the principal office of the Exchange, 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 the proposed rule change is to amend Phlx Rules 1001 and 1001A to enable Exchange members to rely on position limit exemptions granted by other options exchanges under specified circumstances.

This proposed rule change is based on two rules of The NASDAQ Stock Market LLC (''Nasdaq'').[3] The rule change is being proposed, subsequent to the merger of The NASDAQ OMX Group, Inc. (''NASDAQ OMX'') and the Philadelphia Stock Exchange, Inc. (now NASDAQ OMX PHLX, Inc.),[4] to more closely align the position limit rules of the Exchange and Nasdaq.[5]

Phlx position limits and procedures associated therewith for equity options, exchange traded fund share (''ETF'') options, currency options, and stock index warrants are located in Rule 1001. This rule deals with, in addition to numerical position limit values for the noted products, the concept of control for position limit purposes,[6] hedge exemptions,[7] firm facilitation exemptions,[8] and delta-based equity

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rules of the Nasdaq Options Market (''NOM Rules'') Chapter III, Section 8 and Chapter XIV, Section 8.

[4] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31). *See also* Securities Exchange Act Release No. 58183 (July 17, 2008), 73 FR 26182 (May 8, 2008) (SR–NASDAQ–2008–035).

[5] The proposal is similar in nature to previous proposals that, among other things, sought to more closely align the rules of the two exchanges Phlx and NOM. *See, e.g.,* Securities Exchange Act Release Nos. 59764 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR–Phlx–2009–17) (approval order regarding proposal to modify the process for nominating Phlx Governors); 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (SR–Phlx–2009–23) (approval order regarding proposal to eliminate various standing committees and making other miscellaneous changes); 60431 (August 4, 2009), 74 FR 40265 (August 11, 2009) (SR–Phlx–2009–59)(notice of filing relating to by-laws, Regulatory Oversight Committee, and referee program); and 59923 (May 14, 2009), 74 FR 23902 (May 21, 2009) (SR–NASDAQ–2009–046) (notice of filing and immediate effectiveness relating to criteria for securities that underlie options traded on NOM).

[6] *See* Commentary .06 to Rule 1001.

[7] *See* Commentary .07 to Rule 1001.

[8] *See* Commentary .08 to Rule 1001.

exemptions.[9] Phlx position limits and procedures associated therewith for index options are generally located in Rule 1001A. This rule, in addition to numerical position limits for index options, deals with position limit exemptions for index option products.[10] Rules 1001 and 1001A, however, do not have provisions that recognize position limit exemptions that are granted to Exchange members by other option exchanges, as provided for in NOM Rules in Chapter III, Section 8 for non-index options and Chapter XIV, Section 8 for index options.[11] In light of the desirability to have similar position limit standards, the Exchange is adding such exemptions to its Rules 1001 and 1001A.[12]

Specifically, new Commentary .10 to Rule 1001 and new Commentary .03 to Rule 1001A each provide that an Exchange member may rely upon any available exemptions from applicable position limits that are granted by another options exchange for any options contract traded on the Exchange provided that such member provides the Exchange either with a copy of any written exemption issued by another options exchange or with a written description of any exemption issued by another options exchange that is not in writing, where such description contains sufficient detail for Exchange regulatory staff to verify the validity of that exemption with the issuing options exchange. In addition, the member must fulfill all conditions precedent for such exemption and comply at all times with the requirements of such exemption with respect to the member's trading on the Exchange.

The Exchange notes that position limits tend to be similar across options exchanges, which is desirable in light of cross option exchange membership(s) and multiple listing and trading of similar product(s) on different exchanges. Because Exchange members and member firms frequently have membership and/or trading privileges on other options exchanges, it is important that ad hoc position limit exemptions granted by other options exchanges (''exemption grants'') are available to Exchange members to the extent that such exemption grants are reduced to writing and verifiable by Exchange staff per new Commentaries .10 and .03 to Rules 1001 and 1001A, respectively.[13] Proposed Commentaries .10 and .03 do not give the Exchange the ability to expand the exemption grants but only to recognize the exemption so that the position limit process would be the same across the exchanges.

For example, during September 2009, firm XYZ may go to another options exchange such as Chicago Board Options Exchange (CBOE), the International Securities Exchange (ISE), or NOM to request a position limit exemption (exemption grant) in respect of option contracts in the SPDRs (SPY). The other exchange provides the exemption grant until expiration in the same month of September to this particular firm (XYZ) for this particular issue (SPY). Should firm XYZ, which is an Exchange member firm, then want to trade SPY on the Exchange to the extent of the exemption grant, the Exchange's proposed rule change would allow it to do so, but only to the extent that firm XYZ provides the Exchange with a copy of the written exemption grant provided by the issuing exchange or, if the exemption is not in writing to the extent that firm XYZ provides the Exchange with sufficient detail for Exchange regulatory staff to be able to verify the validity of the exemption grant with the issuing options exchange.[14]

The Exchange believes that by adding uniformity and predictability to the position limit process, the proposed rule change should be beneficial to the Exchange, its members and traders, and their customers. Moreover, the proposed rule change should promote competition by allowing trades across options exchanges that are similar in respect of position limits.[15]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(5) of the Act[17] 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, by allowing the Exchange to have uniform position limit procedures.

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 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6)[19] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[20] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[21] The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing, thereby giving the Exchange a uniform position limit process that can recognize all exemptions.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will afford Exchange members the benefit of the proposal—the ability to rely on

[9] *See* Commentary .09 to Rule 1001.

[10] *See, for example,* Commentaries .01 (hedge exemption) and .02 (firm facilitation exemption) to Rule 1001A.

[11] *See* Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approval order regarding NOM Rules including Chapters III and XIV).

[12] Position limits for Cash Index Participations (''CIPs''), which are defined in Rule 1000B(b)(1), are established in Phlx Rule 1005B. CIPs are not currently listed and traded on the Exchange.

[13] Proposed Commentaries .10 and .03 are, in turn, wholly based on the approved rules of another options exchange, namely NOM Rules Chapter III, Section 8 and Chapter XIV, Section 8, and as such are not novel or in any way controversial.

[14] Additionally, firm XYZ would have to fulfill all conditions precedent for such exemption grant and comply with the requirements of such exemption with respect to trading on the Exchange.

[15] The Exchange notes that all reporting requirements, including Rule 1003 (Reporting of Options Positions) and Rule 1001A(c) (Reporting Requirements for Options on Market Indexes) remain in force.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *See id.*

exemptions granted by other exchanges, when appropriately documented—without unnecessary delay. For this reason, the Commission designates the proposed rule change as operative under upon filing.[22]

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–Phlx–2009–79 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–Phlx–2009–79.

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. 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–Phlx–2009–79 and should be submitted on or before October 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22876 Filed 9–22–09; 8:45 am]

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[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60679; File No. SR–Phlx–2009–81]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FLEX Option Expirations

September 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on September 15, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options) regarding permissible expiration dates for FLEX options.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at the principal office of the Exchange, 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 the proposed rule change is to modify the permissible expiration dates for FLEX options in Phlx Rule 1079.

Under current Rule 1079, FLEX options may not expire on any business day that falls on, or within two business days of an expiration day for any non-FLEX option on the same underlying security (an ''Expiration Friday'').[4] However, subject to aggregation requirements for cash settled options, the current FLEX rules do permit the expiration of FLEX options on the same day that non-FLEX quarterly index options (''QIX'' or ''Quarterly Options'') expire.[5]

The Exchange is now proposing to eliminate the expiration date restriction so that FLEX options may expire on any given business day.[6] Although the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FLEX options are flexible exchange-traded options contracts that overly index, equity, and currency securities. FLEX options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX options may have long expiration dates within five years for FLEX index options and three years for FLEX equity options and FLEX currency options. *See* Rule 1079.

[4] For example, under current Rule 1079, a FLEX option could expire on the Tuesday before Expiration Friday, but could not expire on the Wednesday or Thursday before Expiration Friday. Similarly, a FLEX option could expire on the Wednesday after Expiration Friday, but could not expire on the Monday or Tuesday after Expiration Friday. This restriction is hereinafter referred to as the ''three business day'' expiration restriction.

[5] *See* Rule 1079(a)(6)(A).

[6] Proposed Rule 1079(a)(6) states that the expiration date for FLEX options is: Any month, business day and year within five years for FLEX index options and within three years for FLEX currency options, except that (i) a FLEX index option that expires on or within two business days prior or subsequent to a third Friday-of-the-month expiration day for a non-FLEX option (except quarterly expiring index options) or underlying currency may only have an exercise settlement

Continued

expiration date restrictions would be eliminated, the Exchange notes that all other requirements for FLEX options in Rule 1079 would continue to apply. FLEX options remain subject to position limits under Rule 1079(d) and exercise limits under Rule 1079(e). Moreover the margin requirements in Rule 721 continue to apply and the Exchange has the authority, pursuant to Rule 1079(d)(2), to impose additional margin requirements as deemed advisable.

The Exchange is also proposing an aggregation requirement under Rule 1079(d) for position limit purposes. Specifically, for as long as the options positions remain open, positions in FLEX options that expire on Expiration Friday shall be aggregated with positions in non-FLEX options on the same underlying (*e.g.*, the underlying security in the case of a FLEX equity option, and the underlying index in the case of a FLEX index option) (referred to as ''comparable non-FLEX options''). Such FLEX options and comparable non-FLEX options would be subject to the position and exercise limits that are applicable to the non-FLEX options.[7]

In addition, in the case of FLEX index options only, the proposed rule change provides that FLEX index options expiring on or within two business days of an Expiration Friday may not have an exercise settlement value on the expiration date determined by reference to the closing price of the index or specified averages. Therefore, the exercise settlement value on such expiration dates may only be determined by a.m. settlement values. These limitations on exercise settlement value calculations are intended to serve as a safeguard against potential adverse effects that might be associated with triple witching.[8]

In conjunction with the elimination of the expiration date restriction, the proposed rule change also states that, provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX options will be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as non-FLEX options that are already available for trading on the same underlying security or index. The proposed rule change also provides that FLEX options will be permitted before (but not after) the options are listed for trading as non-FLEX options. Once and if an option series is listed for trading as a non-FLEX option series, then: (i) All existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective non-FLEX options series, and (ii) any further trading in the series would be as non-FLEX options subject to the Exchange's non-FLEX trading procedures and rules.

For example, a FLEX trader could establish a FLEX options position in a European-style, a.m. settled MNX 210 call option series with an expiration of August 19, 2011 (which will be an Expiration Friday). In such instance, once and if the non-FLEX, European-style, a.m. settled MNX 210 call option series that expires on August 19, 2011 is listed for trading, the established FLEX option position would be fully fungible with transactions in the non-FLEX option series. Any further trading in the series would be as non-FLEX options subject to non-FLEX option trading procedures.

The Exchange will report any undue effects or unanticipated consequences that may occur due to the elimination of the three business day expiration restriction (blackout period).

The Exchange believes that expanding the eligible dates for FLEX expirations is important and necessary to the Exchange's efforts to create a product and market that provides market participants on the Exchange including investors interested in FLEX-type options with an improved but comparable alternative to the over-the-counter (''OTC'') market in customized options, which can take on contract characteristics similar to FLEX options but are not subject to the same restrictions (such as the three business day expiration restriction or the p.m. settlement restriction).[9] By expanding the eligible expiration dates for FLEX options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. The Exchange believes that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness because of the role of The Options Clearing Corporation (''OCC'') as issuer and guarantor of FLEX options.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] 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, by providing additional opportunities to trade customized FLEX options in an exchange environment.

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 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may

value on the expiration date determined by reference to the reported level of the index as derived from the opening prices of the component securities (''a.m. settlement'') and (ii) all FLEX currency options will expire at 11:59 p.m. eastern time on their designated expiration date.

[7] Position and equity limits for non-FLEX equity, currency, and index options are governed by Rules 1001, 1002, 1001A, and 1002A.

[8] Contracts for stock index futures, stock index options, and stock options all expire on the same days occurring on the third Friday of March, June, September, and December (which is referred to as ''triple witching''). Currency options expire on the same days. The Exchange's proposed limitations on p.m. exercise settlement values and exercise settlement values based on a specified average would apply during triple witching expirations, as well as on all other Expiration Fridays.

[9] The Exchange represents that it has appropriate surveillances in place to monitor transactions in FLEX options.

[10] The Exchange also proposes technical changes in Rule 1079 such as, for example, a definitional cross-reference in subsection (a)(2); updating language to reflect the proper trading system name and deletion of an obsolete reference to AUTOM in (b); deletion of a reference to settlement currency in respect of index options because they settle in U.S. dollars in (b)(1); deletion of position limits for products that no longer trade on the Exchange in (d)(1); and deletion of an obsolete rule references (sic) in (d)(2).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[15] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

Under Rule 19b–4(f)(6) of the Act,[18] a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative date. The Exchange notes that the proposed rule change is based on the rules of another self-regulatory organization and raises no new policy issues.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and thus designates the proposal as operative upon filing.[19] The Commission notes that the Exchange's proposal is based on a similar proposed rule change adopted by the Chicago Board Options Exchange.[20] That proposal was subject to full notice and comment and no comments were received. Based on this, the Commission believes that it is appropriate to designate the proposal operative upon filing.

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–Phlx–2009–81 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–Phlx–2009–81. 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. 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–Phlx–2009–81 and should be submitted on or before October 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22877 Filed 9–22–09; 8:45 am]

BILLING CODE 8010–01–P

[15] The Exchange has fulfilled this five day requirement.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] *Id.*

[19] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also* 17 CFR 200.30–3(a)(59).

[20] Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR–CBOE–2008–115).

[21] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2008–0060]

Social Security Ruling, SSR 85–3.; Rescission of Social Security Ruling 85–3

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of the rescission of Social Security Ruling (SSR) 85–3.

DATES: *Effective Date:* This rescission will be effective October 23, 2009.

FOR FURTHER INFORMATION CONTACT: Joann S. Anderson, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–6716 or TTY 410–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: SSRs make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, special veterans benefits, and black lung benefits programs. SSRs may be based on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

SSR 85–3 states that we do not need to authorize a representative's fee when the following conditions are met:

1. The claimant or beneficiary (including any auxiliaries) is not liable to pay a fee or any expenses, or any part thereof, directly or indirectly, to the representative or to someone else.
2. The entity which pays the fee and expenses incurred, if any, on behalf of the claimant(s) or beneficiary(ies) is a nonprofit organization or a Federal, State, county, or city agency.
3. The payment of the fee and any expenses is made from funds provided or administered by a government entity.
4. The representative submits to SSA a written statement waiving the right to charge and collect a fee and expenses from the claimant or beneficiary.

We are publishing a final rule, Authorization of Representative Fees, in today's **Federal Register** that incorporates this policy as revised at 20

CFR 404.1720(e) and 416.1520(e). Accordingly, we are rescinding SSR 85–3 as obsolete.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

Dated: July 30, 2009.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E9–22843 Filed 9–22–09; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and Request for Comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is requesting written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA). The Subcommittee will consider these comments in developing recommendations on AGOA country eligibility for the President. Comments received related to the child labor criteria may also be considered by the Secretary of Labor for the preparation of the Department of Labor's report on child labor as required under section 412(c) of the Trade and Development Act of 2000. This notice identifies the eligibility criteria that must be considered under the AGOA, and lists those sub-Saharan African countries that are currently eligible for the benefits of the AGOA, and those that are currently ineligible for such benefits.

DATES: Public comments are due at the Office of the U.S. Trade Representative (USTR) by noon, Monday, October 19, 2009.

ADDRESSES: USTR strongly prefers electronic submissions made at *http://www.regulations.gov,* docket number USTR–2009–0034. *See* ''Requirements for Submission,'' below. If you are unable to make a submission at *www.regulations.gov,* please contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143 to make other arrangements.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact Gloria Blue, Office of the U.S. Trade Representative, 600 17th Street, NW., Room F516, Washington, DC, 20508, at (202) 395–3475. All other questions should be directed to Constance Hamilton, Deputy Assistant U.S. Trade Representative for Africa, Office of the U.S. Trade Representative, at (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Public Law 106–200) (19 U.S.C. 3721 *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiary sub-Saharan African countries eligible for duty-free treatment for certain additional products under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (the ''1974 Act'')), as well as for the preferential treatment the AGOA provides for certain textile and apparel articles.

The President may designate a country as a beneficiary sub-Saharan African country eligible for both the additional GSP benefits and the textile and apparel benefits of the AGOA for countries meeting certain statutory requirements intended to prevent unlawful transshipment of such articles, if he determines that the country meets the eligibility criteria set forth in: (1) Section 104 of the AGOA; and (2) section 502 of the 1974 Act. For 2009, 40 countries have been designated as beneficiary sub-Saharan African countries. These countries, as well as the 8 countries currently ineligible, are listed below. Section 506A of the 1974 Act provides that the President shall monitor and review annually the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine whether each beneficiary sub-Saharan African country should continue to be eligible, and whether each sub-Saharan African country that is currently not a beneficiary sub-Saharan African country, should be designated as such a country. Section 506A of the 1974 Act requires that, if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the eligibility requirements, he must terminate the designation of the country as a beneficiary sub-Saharan African country.

The Subcommittee is seeking public comments in connection with the annual review of the eligibility of beneficiary sub-Saharan African countries for the AGOA's benefits. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments related to the child labor criteria may also be considered by the Secretary of Labor in making the findings required under section 504 of the 1974 Act.

The following sub-Saharan African countries were designated as beneficiary sub-Saharan African countries in 2009:

Angola
Republic of Benin
Republic of Botswana
Burkina Faso
Burundi
Republic of Cape Verde
Republic of Cameroon
Republic of Chad
Federal Islamic Republic of Comoros
Republic of Congo
Democratic Republic of Congo
Republic of Djibouti
Ethiopia
Gabonese Republic
The Gambia
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya
Kingdom of Lesotho
Republic of Liberia
Republic of Madagascar
Republic of Malawi
Republic of Mali
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Sao Tome & Principe
Republic of Senegal
Republic of Seychelles
Republic of Sierra Leone
Republic of South Africa
Kingdom of Swaziland
United Republic of Tanzania
Republic of Togo
Republic of Uganda
Republic of Zambia

The following sub-Saharan African countries were not designated as beneficiary sub-Saharan African countries in 2009:

Central African Republic
Republic of Cote d'Ivoire
Republic of Equatorial Guinea
State of Eritrea
Islamic Republic of Mauritania
Somalia
Republic of Sudan
Republic of Zimbabwe

Requirements for Submissions: Comments must be submitted in English. To ensure the most timely and

expeditious receipt and consideration of petitions, USTR has arranged to accept on-line submissions via *http://www.regulations.gov.* To submit petitions via this site, enter docket number USTR–2009–0034 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''notice'' under ''Document Type'' on search-results page and click on the link entitled ''Submit a Comment.'' (For further information on using the *http://www.regulations,gov* Web site, please consult the resources provided on the Web site by clicking on ''Help'' at the top of the home page.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a ''General Comments'' field, or by attaching a document. USTR prefers comments to be submitted as attachments. When doing this, it is sufficient to type ''*See* attached'' in the ''Comments'' field. Submissions in Microsoft Word (.doc) or Adobe Acrobat (pdf) are preferred.

Persons wishing to file comments containing business confidential information must submit both a business confidential version and a public version. Persons submitting business confidential information should write ''*See* attached BC comments'' in the ''Comment'' field. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Persons submitting a business confidential comment must also submit a separate public version of that comment with the business confidential information deleted. Persons should write ''*See* attached public version'' in the ''Comment'' field of the public submission. Submissions should not attach separate cover letters; rather, information that might appear in the cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

Public versions of all documents relating to this review will be available for review no latter than two weeks after the due date at *www.regulations.gov,* docket number USTR–2009–0034.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E9–22860 Filed 9–22–09; 8:45 am]

BILLING CODE 3190–D2–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2009–0001–N–21]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on June 26, 2009 (74 FR 30662).

DATES: Comments must be submitted on or before October 23, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (*telephone:* (202) 493–6292), or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On June 26, 2009, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR that the agency was seeking OMB approval. 74 FR 30662. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30-days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden for the ICR being submitted for clearance by OMB as required by the PRA.

Title: Notice of Funding Availability and Solicitation of Applications for Grants under the Railroad Rehabilitation and Repair Grant Program.

OMB Control Number: 2130–0580.

Type of Request: Regular Approval of a Previously Approved Collection of Information under Emergency Clearance Procedures.

Affected Public: 39 States/Local Governments.

Abstract: On September 30, 2008, President Bush signed Public Law 110–329, The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. As part of this Act, Congress provided $20 million in disaster relief funds to FRA to award to States in one or more grants for eligible projects related to repair and rehabilitation of Class II and Class III railroad infrastructure damaged by hurricanes, floods, and other natural disasters in counties for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974. Approximately $5 million of these funds remain available for rehabilitation and repairs of railroad right-of-way, bridges, signals, and other infrastructure which are part of the general railroad system of transportation and primarily used by railroads to move freight traffic. The Secretary may retain up to one-half of one (1) percent of these funds for the oversight of the design and implementation of projects funded by grants under this Program. Funds provided under this grant program may constitute no more than 80 percent of the total cost of a selected project, with the remaining cost funded from other sources. The funding provided under these grants will be made available to

grantees on a reimbursement basis. FRA anticipates awarding grants to multiple eligible participants. FRA may choose to award a grant or grants within the available funds in any amount. Funding made available through grants provided under this program, together with funding from other sources that is committed by a grantee as part of a grant agreement, must be sufficient to complete the funded project and achieve the anticipated rehabilitation and repairs to Class II and Class IIII railroads. FRA will be publishing a second Notice of Funding Availability shortly and will begin accepting grant applications 10 days after publication of this second Notice of Funding Availability in the **Federal Register**. Please see this Notice for further information.

Form Number(s): SF–424.

Annual Estimated Burden Hours: 4,875 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on September 16, 2009.

Donna Alwine,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E9–22940 Filed 9–22–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0160]

Public Hearing To Determine Whether Transportation Collaborative, Inc. (TCI) Has Met Notification and Remedy Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public hearing.

SUMMARY: NHTSA will hold a public hearing to gather information on whether Transportation Collaborative, Inc. of Warwick, New York, (''TCI'') has reasonably met its obligations under the National Traffic and Motor Vehicle Safety Act, as amended, to notify owners, purchasers, and dealers and/or remedy failures to comply with federal motor-vehicle safety standards (FMVSS) or defects related to motor vehicle safety in fifteen (15) recalls involving vehicles built by U.S. Bus, Inc. of Suffern, New York (''U.S. Bus''). The proceeding may result in the issuance of an order directing TCI to provide proper notification and/or an effective remedy in one or more of the recalls.

DATES: The public hearing will be held beginning at 10 a.m. on Friday, October 23, 2009 in Room 4 of the D.O.T. Conference Center, located at 1200 New Jersey Ave., SE., Washington, DC 20590. NHTSA recommends that all persons attending the hearing arrive at least 45 minutes early in order to facilitate entry into the Conference Center. If you wish to attend or speak at the hearing, you must register in advance no later than Tuesday, October 20, 2009, by following the instructions in the PROCEDURAL MATTERS section of this notice. NHTSA will consider late registrants to the extent time and space allows, but NHTSA cannot ensure that late registrants will be able to attend or speak at the hearing. To ensure that NHTSA has an opportunity to consider comments, NHTSA must receive written comments by Tuesday, October 20, 2009.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324.

Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Zachary Dunlap, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–5263. Information related to the recalls is available through NHTSA's Web site: *http://www.safercar.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 49 U.S.C. 30118(e), 30120(e), and 49 CFR 557.7, NHTSA's Administrator has decided that it is necessary to schedule a public hearing to determine whether TCI reasonably met notification and remedy requirements for noncompliant and defective vehicles manufactured by U.S. Bus. TCI purchased U.S. Bus' assets in an asset sale on or about November 1, 2007. Prior to this sale, U.S. Bus filed at least fifteen (15) reports with NHTSA that vehicles it manufactured failed to comply with applicable FMVSS or contained safety defects. Since the date of the asset sale, neither U.S. Bus nor TCI have taken any actions to remedy the defects and noncompliances. According to current and former U.S. Bus officials, U.S. Bus ceased operations on or about October 31, 2007 and no longer manufactures buses. TCI and U.S. Bus have continuity of ownership, management, personnel, assets, and general business operations. Based on available information, the shareholders of both U.S. Bus and TCI—Debra Bess Deutsch-Corr, Steven Marksohn, Jerome B. Marksohn, Bart Marksohn, and Helena Marksohn—are the same.

A. *Requirements Applicable to Recalls:*

If a manufacturer of a motor vehicle learns that a vehicle contains a defect and determines that the defect relates to motor-vehicle safety, or determines that the vehicle does not comply with an applicable motor vehicle safety standard, the manufacturer shall notify the Secretary of Transportation and the owners, purchasers, and dealers of the vehicle. 49 U.S.C. 30118(c). Notification shall be given within a reasonable time after the manufacturer first decides that a safety-related defect or non-

49 U.S.C. 30120(c)(2). After filing a notification with the Secretary that a vehicle contains a defect or does not comply with an applicable motor vehicle safety standard, the manufacturer shall file a copy of the manufacturer's remedy program. 49 U.S.C. 30120(d). The manufacturer is required to file quarterly reports that include information about the implementation of the remedy plan. 49 U.S.C. 30120(d). The Secretary's authority has been delegated to NHTSA. 49 CFR 1.50(a).

1. Defect and Noncompliance Information Report

49 CFR 573.6 specifies the information the manufacturer must include in its Defect and Noncompliance Information Report, commonly referred to as a Part 573 report, which notifies NHTSA of the existence of a noncompliance with a FMVSS or a defect that relates to motor vehicle safety. The manufacturer is required to report the estimated date on which it will begin sending notifications to owners and to dealers that there is a noncompliance or safety-related defect and that a remedy without charge will be available to owners, and the estimated date(s) on which it will complete such notifications. The manufacturer is to describe its program for remedying the defect or non-compliance. If a manufacturer subsequently becomes aware that either the beginning or the completion dates reported to the agency for any of the notifications will be delayed by more than two weeks, it shall promptly advise the agency of the delay and the reasons therefor, and furnish a revised estimate.

2. Notification

Under 49 CFR 577.5, the manufacturer of motor vehicles is required to provide notice to owners and dealers when it determines that any motor vehicle contains a noncompliance with a FMVSS or a defect that relates to motor vehicle safety. The proposed owner notification letter must be submitted to NHTSA's Recall Management Division no fewer then five Federal Government business days before the manufacturer intends to begin mailing it to owners.

This section also states the substantive requirements for the body of the notice. In summary, it must include a statement of measures to be taken to remedy the problem, without charge. Also to be included is the earliest date on which the defect or noncompliance will be remedied without charge. In the case of remedy by repair, this date shall be the earliest date on which the manufacturer reasonably expects that dealers or other service facilities will receive necessary parts and instructions.

3. Time and Manner of Notification

49 CFR 577.7 requires the manufacturer to furnish the notification required by 49 CFR 577.5 to owners and dealers within a reasonable time after the manufacturer first decides that a noncompliance or defect that relates to motor vehicle safety exists.

4. Quarterly Reports

49 CFR 573.7 requires that each manufacturer who is conducting a noncompliance or defect notification campaign to submit on a quarterly basis, a report to NHTSA containing certain information. Included in this report is NHTSA's notification campaign number, the date notification began and was completed, and the number of vehicles or items of equipment involved in the notification campaign. The manufacturer must provide the number of vehicles and equipment items which have been inspected and repaired, the number of vehicles and equipment items inspected and determined not to need repair, and the number of vehicles or items of equipment determined to be unreachable for inspection for any reason. Finally, the number of vehicles or items or equipment in each category shall be specified.

This information must be included in a quarterly report with respect to each notification campaign, for each of six consecutive quarters beginning with the quarter in which the campaign was initiated (i.e., the date of initial mailing of the defect or noncompliance notification to owners) or corrective action has been completed on all defective or non-complying vehicles or items of replacement equipment involved in the campaign, whichever occurs first.

5. Requirement To Provide a Free Remedy

After notice is given, a manufacturer ''shall remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy.'' 49 U.S.C. 30120(a)(1). A manufacturer can remedy one of three ways: by repairing the vehicle; by replacing the vehicle with an identical or reasonably equivalent vehicle; or, by refunding the purchase price, less a reasonable allowance for depreciation. 49 U.S.C. 30120(a)(1)(A).

6. Public Hearing

As provided by 49 U.S.C. 30118(e), 30120(e), and 49 CFR 557.7, NHTSA's Administrator can conduct a hearing to decide whether a manufacturer has reasonably met its notification requirements or remedy requirements. If the Administrator determines that the manufacturer has not reasonably met his obligation to notify owners, purchasers, and dealers of a safety-related defect or failure to comply with a FMVSS or to remedy such defect or failure to comply, he can order the manufacturer to take specified action to comply with the manufacturer's obligation. In addition, the Administrator may take any action authorized by the Act. 49 U.S.C. 30118(e), 30120(e), and 49 CFR 557.8.

A. U.S. Bus and TCI

U.S. Bus is a New York corporation that formerly manufactured buses. From 2001 to 2007, U.S. Bus filed twenty-one (21) defect and noncompliance information reports (''Part 573 Report'') with NHTSA pursuant to 49 CFR 573.6. A number of the recall campaigns initiated by U.S. Bus have not been completed. In some, owners, purchasers, and dealers have not been provided notice. In a larger number of recalls, many buses have not been repaired. By mid 2007, U.S. Bus had committed to completing a number of recall and remedy campaigns that would require substantial repairs. Around November 1, 2007, U.S. Bus notified the Agency that it sold its assets to another corporation, TCI. TCI is a New York corporation that manufactures buses, and does business under the name, TransTech Bus or Trans-Tech Bus. The asset sale between TCI and U.S. Bus occurred on or about November 1, 2007. After the sale, NHTSA served Special Orders requesting information about the outstanding recalls, the asset sale and the ownership, activities, and management of both companies from TCI, U.S. Bus, and their management. After reviewing this information, NHTSA has tentatively concluded that TCI, as the successor of U.S. Bus, is legally responsible for completing the notification or remedy campaigns for the outstanding U.S. Bus recalls.

B. Affected Recalls

Fifteen (15) noncompliance or defect recalls initiated by U.S. Bus remain incomplete. A list of the incomplete recalls is listed below.

- NHTSA Recalls No. 01V–234 and 01V–235: Recall of 474 vehicles whose seat back impact barriers failed to meet the strength requirements of FMVSS No. 222, school bus passenger seating and crash protection, increasing the risk of occupant injury in a crash. U.S. Bus reported that all owners had been

notified and 216 vehicles had been repaired.

• NHTSA Recall No. 01V–281: Recall of 188 Model Year (''MY'') 1998 through 2001 Sturdibus vehicles that failed to comply with the body joint strength requirements of FMVSS No. 221, school bus body joint strength, increasing the risk that the vehicle body panels might separate in a crash. As of U.S. Bus' last official filing with NHTSA in October 2007, U.S. Bus reported that all owners had been notified but none of the vehicles had been remedied. In a subsequent response from U.S. Bus, listed as being updated on November 19, 2007, U.S. Bus reported that there were 171 affected vehicles, 165 of which had been notified, and 74 had been inspected and remedied. U.S. Bus also stated that ''[t]his recall is superceeded [sic] by Recall Number: 05V–375 Body Joint Strength,'' which is inaccurate.

• NHTSA Recall No. 05V–255: Recall of 172 MY 2004 and 2005 model year Sturdibus and Universe vehicles whose seat back impact barriers failed to meet the strength requirements of FMVSS No. 222, school bus passenger seating and crash protection, increasing the risk of occupant injury in a crash. As of August 2007, U.S. Bus reported that it had notified all owners of these vehicles but had not performed any repairs to remedy the condition cited in the recall. In a subsequent response from U.S. Bus, listed as being updated on November 19, 2007, U.S. Bus reported that 154 affected owners were notified, customer notification was complete, and that repairs were started. U.S. Bus reported that it did not know how many parts shipments were sent. U.S. Bus also reported that Norco Industries would be conducting the recall.

• NHTSA Recall No. 05V–257: Recall of 200 MY 2005 Sturdibus vehicles whose windows failed to meet the retention requirements of FMVSS 217, bus emergency exits and window retention and release, increasing the risk that passengers could be ejected in a crash. As of August 2007, U.S. Bus reported that there were 137 affected vehicles, all owners had been notified and provided with repair kits. However, it also reported that only 24 vehicles were known to have actually been repaired. In a subsequent response from U.S. Bus, listed as being updated on November 19, 2007, U.S. Bus reported that owners of 134 of the 137 affected vehicles had been notified, and 44 vehicles had been inspected and remedied. U.S. Bus reported 134 ''remedy parts kits shipped.''

• NHTSA Recall No. 05V–336: Recall of 38 vehicles equipped with stop arms that may fail to extend in cold weather conditions. As of April 2007, U.S. Bus reported that it had no information on notification or remedy of this defect and contended that the manufacturer of the stop arm was providing notice and remedy. In a subsequent response from U.S. Bus, listed as being updated on November 19, 2007, U.S. Bus reported that the notification was ''complete,'' and that Specialty Manufacturing, which made the stop arms, was determining the recall status.

• NHTSA Recall No. 05V–375: Recall of 137 MY 2005 Sturdibus HD vehicles with body joints that failed to meet the strength requirements of FMVSS No. 221, school bus body joint strength, increasing the risk that body panels might separate in a crash. As of August 2007, U.S. Bus reported that all owners had been notified, provided with repair kits, and 24 vehicles had been repaired. In a subsequent response from U.S. Bus, listed as being updated on November 19, 2007, U.S. Bus reported that owners of the 134 of the 137 affected vehicles had been notified, and 44 vehicles had been inspected and remedied. U.S. Bus also noted that ''[p]arts for Recall 01V–281 are to be shipped as part of this recall.''

• NHTSA Recall No. 06V–416: Recall of 4019 MY 1998–2006 Universe and Sturdibus vehicles manufactured with a mirror use label applied in a position where it cannot be seen by a seated driver as required by FMVSS No. 111, rearview mirrors. As of its last report to NHTSA in October 2007, U.S. Bus identified 3694 affected owners and inspected and remedied 1510 vehicles. In a subsequent response from U.S. Bus, listed as being updated on November 19, 2007, U.S. Bus reported that owners of 3694 of the 4019 affected vehicles had been notified, and 2025 vehicles had been inspected and remedied.

• NHTSA Recall No. 06V–443: Recall of 96 MY 2000–2006 Sturdibus vehicles built with seat back barriers that did not match the contour of the seats on which they were installed, as required by FMVSS No. 222, school bus passenger seating and crash protection, increasing the risk that occupants might be injured in a crash. U.S. Bus reported notifying all owners of this recall and reported shipping repair kits to these owners. In a subsequent response from U.S. Bus, listed as being updated on November 19, 2007, U.S. Bus reported that 96 remedy parts kits were shipped and 5 vehicles were repaired. However, in the same document, U.S. Bus reported that the parts are available for shipping.

• NHTSA Recall No. 07V–056: Recall of 122 MY 2005–2006 Universe and Sturdibus vehicles manufactured without the tire and loading label required by FMVSS No. 110, tire selection and rims for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less, or with the label applied incorrectly, increasing the risk that tires might be overloaded or improperly inflated. U.S. Bus reported that all owners of the affected vehicles were notified of this noncompliance and 25 of those vehicles had been remedied. In a subsequent response from U.S. Bus, listed as being updated on November 19, 2007, U.S. Bus reported that there were 129 affected vehicles. U.S. Bus also reported mailing 129 notifications on October 27, 2007, and that 25 vehicles had been reported to be remedied with repairs ''currently on-going and in-process.''

• NHTSA Recall No. 07V–069: Recall of 38 vehicles built between 2003 and January 2007 equipped with 3-passenger C.E. White Student Safety Seats. The buses have seat attachments that do not meet the attachment strength requirements of FMVSS No. 210, seat belt assembly anchorages. U.S. Bus reported to NHTSA that it notified owners of this recall in May 2007, but the number of owners who were sent these notices and the number of vehicles that were remedied is presently unknown to NHTSA. In a subsequent response from U.S. Bus, listed as being updated November 19, 2007, U.S. Bus reported that there were 38 affected vehicles, and that it had not sent notifications to owners. U.S. Bus also reported that the ''[f]inal [r]emedy for this recall has not been finalized.''

• NHTSA Recall 07V–155: Recall of 106 MY 2000–2006 Sturdibus, Sturdivan, and Universe vehicles equipped with Freedman Family Seats. The buses have seat attachments and seat spacing that does not meet the requirements of FMVSS No. 210, seat belt assembly anchorages, and FMVSS No. 222, school bus passenger seating and crash protection. U.S. Bus and TCI have not notified any owners of these vehicles of this non-compliance and have not remedied any of the vehicles involved. In a subsequent response from U.S. Bus, listed as being updated on November 19, 2007, U.S. Bus reported that the repair procedure was being written, and that it intended to file a revised 573 Notice.

• NHTSA Recall 07V–167: Recall of 25 MY 2006 U.S. Bus Sturdibus and Universe buses manufactured between January 6, 2006 and September 6, 2006 with a Ricon lift. The inner barrier interlock switch system in the lift baseplate could fail to detect the presence of a passenger. A wheelchair could tip backwards onto the lift platform. In U.S. Bus' response, listed as

being updated on November 19, 2007, U.S. Bus reported that the recall was complete and that notifications were mailed on May 1, 2007. This report is the only report NHTSA received from U.S. Bus in regard to this recall.

• NHTSA Recall 07V–223: Recall of 89 MY 2006–2007 model year Sturdibus and Universe handicap accessible buses with a wheelchair lift interlock module that may not lock the vehicle in park if the lift is operated with low battery voltage. U.S. Bus and TCI have not notified any owners of these vehicles of this non-compliance and have not remedied any of the vehicles involved.

• NHTSA Recall 07V–493: Recall of 137 MY 2007 US Bus Sturdibus School or Activity buses built on the GMT 610 Chevrolet Express Chassis, manufactured between September 1, 2006 and September 30, 2007. The buses failed to conform with FMVSS No. 108, lamps, reflected devices, and associated equipment. When the brakes are applied, the stop lamps will illuminate. When the brake pedal is released, the stop lamps are no longer illuminated but the rear brakes may still be applied. The brake may release after a few seconds or after the next firm brake pedal application. GM Dealers will reprogram the anti-lock brake system module. GM's recall began on October 17, 2007. In U.S. Bus' response, listed as being updated on November 19, 2007, U.S. Bus reported that information from GM had been collected and contact information for end users was being researched. U.S. Bus did not send out notifications.

NHTSA will conduct the public hearing to determine whether TCI reasonably met its obligations under the notification requirements of 49 U.S.C. 30118–30119 and the remedy requirements of 49 U.S.C. 30120. In the event NHTSA determines that TCI is obligated to complete the notification and/or remedy campaigns, it will order TCI to take actions to provide proper notification and/or effective remedies.

Procedural Matters: Interested persons are invited to participate in this proceeding through written and/or oral presentations. Persons wishing to make oral presentations must notify Carla Taylor, National Highway Traffic Safety Administration, W41–202, 1200 New Jersey Avenue, SE., Washington, DC 20590; *Telephone:* (202) 366–5263, or by fax at (202) 366–3820, before the close of business on Tuesday, October 20, 2009. The notifications should specify the amount of time that the presentation is expected to last, and shall include the presenter's name, organizational affiliation, phone number, and e-mail address. The agency will prepare a schedule of presentations. Depending upon the number of persons who wish to make oral presentations, and the anticipated length of those presentations, the agency may add an additional day or days to the hearing and may limit the length of oral presentations.

The hearing will be held at a site accessible to individuals with disabilities. Individuals who require accommodations, such as sign language interpreters, should contact Mr. Zachary Dunlap using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above no later than Friday, October 9, 2009. A transcript of the hearing and information received by NHTSA at the hearing will be placed in the docket for this notice at a later date.

Persons who wish to file written comments should submit them so that they are received by NHTSA no later than Tuesday, October 20, 2009. Instructions on how to submit written comments to the docket is located under the **ADDRESSES** section of this notice.

Authority: 49 U.S.C. 30118(e), 30120 (e); 49 CFR 557.7; delegations of authority at 49 CFR 1.50(a), 49 CFR 501.4(a)(3), and 49 CFR 501.8.

Issued: September 18, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–22954 Filed 9–22–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA published a meeting notice on September 10, 2009 (74 FR 46655) advising the public that a meeting of the Federal Aviation Air Traffic Procedures Advisory Committee would be held on October 6, 2009. This notice adds an additional meeting date of Wednesday, October 7, 2009 from 8 a.m. to 5 p.m.

DATES: The meeting will be held Tuesday, October 6th, 2009, from 8 a.m. to 5 p.m., and Wednesday, October 7th, 2009, from 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Jehlen, Executive Director, ATP AC, System Operations and Safety, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 493–4527.

Issued in Washington, DC, on September 17, 2009.

Richard Jehlen,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. E9–22957 Filed 9–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 17, 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 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 October 23, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0260.

Type of Review: Extension.

Form: 706–CE.

Title: Certificate of Payment of Foreign Death Tax.

Description: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by IRS section 2014. The information is used by IRS to verify that the proper tax credit has been claimed.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 3,870 hours.

OMB Number: 1545–1535.

Type of Review: Extension.

Title: Revenue Procedure 97–19 Timely Mailing Treated as Timely Filing.

Description: Revenue Procedure 97–19 provides the criteria that will be used by the IRS to determine whether a private delivery service qualifies as a designated Private Delivery Service under section 7502 of the Internal Revenue Code.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 3,069 hours.

OMB Number: 1545–1539.

Type of Review: Extension.

Title: REG–208172–91 (Final) Basis Reduction Due to Discharge of Indebtedness.

Description: The IRS will use the information provided by taxpayers owning interests in partnerships and owning section 1221(i) real property to verify compliance with sections 1017(b)(3)(C), 1017(b)(3)(E), 1017(b)(3)(F), and 1017(b)(4)(X).

Respondents: Individuals or Households.

Estimated Total Burden Hours: 10,000 hours.

OMB Number: 1545–1674.

Type of Review: Extension.

Title: Revenue Procedure 2005–16 (Master and Prototype and Volume Submitter Plans) (previously Rev. Proc. 2000–20).

Description: The master and prototype and volume submitter revenue procedure sets forth the procedures for sponsors of master and prototype and volume submitter pension, profit-sharing and annuity plans to request an opinion letter or an advisory letter from the Internal Revenue Service that the form of a master or prototype plan or volume submitter plan meets the requirements of section 401(a) of the Internal Revenue Code. The information requested in sections 5.11, 8.02, 11.02, 12, 14.05 15.02, 18, and 24 of the master and prototype revenue procedure is in addition to the information required to be submitted with Forms 4461 (Application for * * *)

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,058,850 hours.

OMB Number: 1545–1971.

Type of Review: Revision.

Form: Schedule H (Form 1040).

Title: Household Employment Taxes.

Description: Schedule H (Form 1040) is used by individuals to report their employment taxes. The data is used to verify that the items reported on the form is correct and also for general statistical use.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 734,373 hours.

OMB Number: 1545–1850.

Type of Review: Extension.

Title: REG–140930–02 (Final) Testimony or Production of Records in a Court or Other Proceeding (TD 9178).

Description: The existing regulation provides procedures for IRS officers and employees to follow upon receipt of a request or demand for disclosure of IRS records or information. This document contains proposed amendments to the existing regulation that establishes the procedures to be followed by IRS officers and employees upon receipt of a request or demand for disclosure of IRS records or information.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1,400 hours.

OMB Number: 1545–1972.

Type of Review: Extension.

Form: Schedule E (Form 1040).

Title: Supplemental Income and Loss.

Description: Schedule E (Form 1040) is used by individuals to report their supplemental income. The data is used to verify that the items reported on the form is correct and also for general statistical use.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 284,599 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

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. E9–22943 Filed 9–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee September 2009 Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee September 2009 Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for September 22, 2009.

Date: September 22, 2009.

Time: 9 a.m. to 1 p.m.

Location: 2nd Floor, Conference Room C, United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Review obverse and reverse candidate designs for the 2010 First Spouse Gold Coins and Medals, and the candidate reverse designs for the 2010 commemorative quarter-dollar coins in the United States Mint America the Beautiful Quarters™ Program.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: September 17, 2009.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E9–22869 Filed 9–22–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (10–0472)]

Agency Information Collection Activities (MOVE! Weight Management Program) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATE: Comments must be submitted on or before October 23, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (10–0472)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–New (10–0472).''

SUPPLEMENTARY INFORMATION:

Title: MOVE! Weight Management Program for Veterans Survey of Patient Experiences, VA Form 10–0472.

OMB Control Number: 2900–New (10–0472).

Type of Review: New collection.

Abstract: The data collected on VA Form 10–0472 will be used to evaluate a patient's experience in VA's weight management treatment program. VA will use the data collected to understand the program effectiveness and to design future program enhancements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 16, 2009, at page 34640.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,000.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,250.

Dated: September 18, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–22880 Filed 9–22–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
September 23, 2009

Part II

Securities and Exchange Commission

17 CFR Part 242

Elimination of Flash Order Exception From Rule 602 of Regulation NMS; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–60684; File No. S7–21–09]

RIN 3235–AK40

Elimination of Flash Order Exception From Rule 602 of Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is concerned that the exception for flash orders from quoting requirements under the Securities Exchange Act of 1934 (''Exchange Act''), which originated in the context of manual trading floors for quotations that were considered ''ephemeral,'' is no longer necessary or appropriate in today's highly automated trading environment. Accordingly, the Commission is proposing to amend Rule 602 of Regulation NMS under the Exchange Act to eliminate an exception for the use of flash orders by equity and options exchanges. In general, flash orders are communicated to certain market participants and either executed immediately or withdrawn immediately after communication. If the proposed amendment were adopted, the Commission would apply Rule 301(b) of Regulation ATS under the Exchange Act in a consistent manner with regard to the use of flash orders by alternative trading systems. The Commission also would apply the restrictions on locking or crossing quotations in Rule 610(d) of Regulation NMS in a consistent manner to prohibit the practice of displaying marketable flash orders.

DATES: Comments should be received on or before November 23, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. S7–21–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–21–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Theodore S. Venuti, Special Counsel, at (202) 551–5658, Arisa Tinaves, Special Counsel, at (202) 551–5676, Gary M. Rubin, Attorney, at (202) 551–5669, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Rule 602 of Regulation NMS [1] and Rule 301(b) of Regulation ATS [2] require exchanges and alternative trading systems (''ATSs''), respectively, to provide their best-priced quotations to the consolidated quotation data that is widely disseminated to the public.[3] The Commission is proposing to amend Rule 602 to eliminate the exception for the use of flash orders by equity and options exchanges. If the proposed amendment were adopted, the Commission would apply Rule 301(b) in a consistent manner regarding the use of flash orders by ATSs. Finally, the Commission would also apply the restrictions on locking or crossing quotations in Rule 610(d) of Regulation NMS [4] in a consistent manner to prohibit the practice of displaying flash orders with marketable prices. The practical result of the proposal, if adopted, would be that any flash orders with non-marketable prices would need to be included in the consolidated quotation data and that the more frequently used practice of flashing orders with marketable prices to certain market participants would be prohibited. Exchanges and ATSs would be required to handle marketable orders that they are unable to execute at the best displayed prices in another manner, such as by routing marketable orders away to execute against the best displayed quotations at another exchange or ATS.

As discussed in section III below, Rule 602 generally requires exchanges to make their best bids and offers in U.S.-listed securities available in the consolidated quotation data that is widely disseminated to the public. Paragraph (a)(1)(i)(A) of Rule 602, however, excludes bids and offers communicated on an exchange that either are executed immediately after communication or cancelled or withdrawn if not executed immediately after communication. Rule 602 has included this language since the original adoption of its predecessor rule in 1978. The exception was intended to facilitate manual trading in the crowd on exchange floors by excluding quotations that then were considered ''ephemeral'' and impractical to include in the consolidated quotation data.[5] As securities trading became much more automated in recent years, automated markets began to disseminate information electronically concerning orders that either were to be executed immediately or withdrawn if not executed immediately. These electronically disseminated orders had a duration that was even shorter than the ephemeral manual quotations that were contemplated in 1978. The orders qualifying for the ''immediate execution or withdrawal'' exception from Rule 602 now are widely referred to as ''flash orders.''

The Commission is concerned that the exception for flash orders, whether manual or automated, from Exchange

[1] 17 CFR 242.602.

[2] 17 CFR 242.301(b).

[3] Consolidated quotation data captures the best-priced quotations from exchanges, ATSs, and other trading centers for listed equities and options. This core data for a security is consolidated and distributed to the public by a single central processor pursuant to Commission rules.

[4] 17 CFR 242.610(d).

[5] *See infra* note 19.

Act quoting requirements is no longer necessary or appropriate in today's highly automated trading environment. The consolidated quotation data is designed to provide investors with a single source of information for the best prices in a listed security, rather than forcing investors to obtain such information by subscribing to all of the data feeds of the many exchanges and ATSs that trade listed securities. The flashing of order information could lead to a two-tiered market in which the public does not have access, through the consolidated quotation data streams, to information about the best available prices for U.S.-listed securities that is available to some market participants through proprietary data feeds. In addition, flash orders may significantly detract from incentives for market participants to display their trading interest publicly, though flash orders do offer potential benefits to certain types of market participants.[6] The Commission therefore is proposing to eliminate the exception for flash orders from Exchange Act quoting requirements.

II. Description of Flash Orders

As noted in section IV.B.1 below, the phrases ''executed immediately'' or ''withdrawn if not executed immediately'' in Rule 602(a)(1)(i)(A) can cover a variety of different trading mechanisms on both a manual trading floor and an automated trading system. In general, however, the particular type of electronic flash order that equity and options markets now use the most has the following basic features:

First, the use of a flash order type is voluntary. Markets that offer flash order types also offer order types that provide order routers with the ability to access liquidity at the market without using a flash order type.[7]

Second, flash orders almost always are ''marketable''[8]—they are buy orders that are immediately executable at the price of the national best offer and sell orders that are immediately executable at the price of the national best bid.[9] For example, if the national best bid and national best offer (''NBBO'') in a listed security are $20.10 and $20.15, respectively, marketable buy orders are executable at $20.15 and marketable sell orders are executable at $20.10. Marketable orders can be said to ''take'' liquidity. The submitter wants to trade immediately and is willing to pay the ''spread'' between the NBBO (in the example, the five cent difference between $20.10 and $20.15) for the opportunity to trade immediately. In contrast, non-marketable orders—for example, those orders that establish the national best bid and offer—are ''resting'' orders that seek to trade at better prices than those that are immediately available and to earn the NBBO spread rather than pay it. These resting orders provide quotation information for investors and add liquidity and depth to the market. Non-marketable orders run the risk, however, of missing an execution if they are unable to interact with contra side marketable order flow. That is why the Commission long has been concerned with promoting the opportunity for publicly displayed orders to interact with contra side marketable order flow.[10]

Third, on arrival at a market and prior to being flashed, flash orders first will interact immediately with any available contra side trading interest at the exchange that receives the order.[11] For example, a marketable flash order to buy can execute immediately against a displayed order at the receiving exchange that is priced at the national best offer. As a result, the public is able to interact with such orders at that market—prior to the order being flashed—by submitting a non-marketable resting order that is priced at the national best bid for buy orders and the national best offer for sell orders.

Fourth, if a market does not have available trading interest at the national best offer when a marketable flash order to buy arrives, or at the national best bid when a marketable flash order to sell arrives, the market will flash the order to its market participants at the national best offer for flash orders to buy and the national best bid for flash orders to sell.[12] The markets disseminate the order information as part of their data feeds. Some distribute the data only to members, and some provide the data to anyone who wants to receive it.[13]

Fifth, market participants that receive the flashed order information have a very brief period in which to respond with their own order to execute against the flashed order at a price that matches the NBBO price (that is, the national best offer for flash orders to buy and the national best bid for flash orders to sell).

[6] *See infra* notes 54–56 and accompanying text.

[7] The basic type of order that accesses a market's liquidity without the possibility of a flash is the ''immediate-or-cancel'' (''IOC'') order. An IOC order only seeks to take any liquidity that is currently available at a market when the order arrives with no possibility of further action by the market with the order. In contrast, a flash order is transmitted to other market participants in an effort to attract additional liquidity to the market. *See, e.g.,* Rule 600(b)(3) of Regulation NMS (for a quotation to qualify as an ''automated quotation'' that can be protected against trade-throughs, the trading center displaying the quotation must provide an immediate-or-cancel functionality); Chicago Board Stock Exchange (''CBSX'') Rule 52.6(a) (immediate-or-cancel orders will not be flashed).

[8] *See, e.g.,* Letter dated June 3, 2009 from William O'Brien, Chief Executive Officer, Direct Edge ECN LLC (''Direct Edge'') to Elizabeth M. Murphy, Secretary, Commission (''Direct Edge Letter'') at 1 (Direct Edge's Enhanced Liquidity Provider program provides optional display period for marketable orders); International Securities Exchange (''ISE'') Rule 803, Supplementary Material .02 (prior to sending a Linkage Order to another exchange, a Public Customer Order shall be exposed at the national best bid for a sell order or national best offer price for a buy order).

[9] The term ''national best bid and national best offer'' is defined in Rule 600(b)(42) of Regulation NMS as the highest priced bid and the lowest priced offer disseminated in the consolidated quotation data. The characteristics of marketable and non-marketable orders are discussed at length in the Commission's Concept Release on Market Fragmentation. Securities Exchange Act Release No. 42450 (February 23, 2000) 65 FR 10577 (February 28, 2000) (SR–NYSE–99–48) (''Concept Release on Market Fragmentation'').

[10] *See, e.g.,* Securities Exchange Act Release No. 51808 (June 9, 2005) 70 FR 37496, 37502 (June 29, 2005) (''NMS Release'') (''[T]he Commission believes that a rule establishing price protection on an order-by-order basis for all NMS stocks is needed to protect the interests of investors, promote the display of limit orders, and thereby improve the efficiency of the NMS as a whole.''); Concept Release on Market Fragmentation, *supra* note 9, at 10577 (''The Commission is concerned, however, that customer limit orders and dealer quotes may be isolated from full interaction with other buying and selling interest in today's markets. * * * To the extent that the price-setting customer's limit order remains unexecuted and subsequent buying interest is filled at the customer's price, the customer's order has been isolated, and the incentive of customers to improve prices potentially compromised.''); Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290, 48297 (September 12, 1996) (''Order Handling Rules Release'') (''In 1975, Congress envisioned an NMS in which public limit orders in qualified securities would have a central role. Congress anticipated that the NMS would make all specialists and market makers aware of public customer limit orders held anywhere in the system, and provide enhanced protection and priority for limit orders in stocks qualified for trading in the national market system.''); *see also* S. Report No. 90–75, 94th Cong., 1st Sess. 18 (1975) (''The Committee is satisfied that S. 249 grants the Commission complete and effective authority to implement a system for the satisfaction of public limit orders.'').

[11] *See, e.g.,* CBSX Rule 52.6(a) (under CBSX flash order rule, the CBSX system will automatically attempt to match market orders against orders at the best price in the CBSX book unless filling the order would result in an execution of a trade-through of another exchange's protected quotation); Boston Options Exchange Rules, ch. 5, sec. 16(b)(iii)(2) (under BOX flash order rule, if there is a quote on BOX that is equal to the NBBO, then the order will be executed against the relevant quote).

[12] *See, e.g.,* CBSX Rule 52.6(a) (orders ''flashed to CBSX Traders at the NBBO price for a period of time not to exceed 500 milliseconds as determined by CBSX''); ISE Rule 803, Supplementary Material .02 (before a Linkage Order is sent to another exchange, ''a Public Customer Order shall be exposed at the current NBBO price to all Exchange Members for a time period established by the Exchange not to exceed one (1) second'').

[13] *See, e.g.,* Direct Edge Letter, *supra* note 8, at 4 (Direct Edge provides its data feed with flash order information at no charge to any recipient who wishes to receive the data).

The time periods vary in length, but generally are one second or less.[14] As a result, although all those who take a market's data feed will receive the flashed order information, only market participants with pre-programmed systems capable of responding very rapidly will have a realistic opportunity, as a practical matter, to respond to a flashed order. In other words, only those who have invested in sophisticated trading systems are able to effectively access flash orders.

Sixth, if there is an order responding to the flashed order, the flash order will execute against the response. If there is no response to the flashed order, markets generally will route orders away to execute against the best-priced quotations on other markets.[15]

III. Flash Order Exception From Quoting Requirements

Rule 602 generally requires exchanges to make available to vendors, including the central processors for the consolidated quotation data that is widely disseminated to the public, the best bids and best offers for listed securities that are communicated on an exchange by any responsible broker or dealer.[16] The consolidated quotation data streams are the primary vehicles for public price transparency in the U.S. equity and options markets. The central processors for these data streams collect the best bids and best offers from the exchanges and Financial Industry Regulatory Authority (''FINRA'')[17] and distribute them in consolidated data streams that are widely available to the public. The consolidated data streams are designed to assure that the public has affordable, accurate, and reliable real-time information on the best prices available for listed securities.[18]

Paragraph (a)(1)(i)(A) of Rule 602, however, excepts ''any bid or offer executed immediately after communication and any bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication.'' This language was included in the predecessor to Rule 602 when it originally was adopted in 1978 and was intended to accommodate the ''ephemeral'' quotations of non-specialist participants in exchange crowds.[19] As a result, bids and offers that either are immediately executed or, if not executed, immediately cancelled or withdrawn are not required to be included in the consolidated quotation data.

By its terms, Rule 602(a)(1)(i)(A) applies only to exchanges. The relevant parts of Rule 602 in the over-the-counter context apply to national securities associations and OTC market makers. As a result, ATSs generally are not directly subject to Rule 602 requirements. Rule 301(b)(3)(ii) of Regulation ATS, however, requires certain ATSs to include their best priced orders displayed to more than one person in the consolidated quotation data made available to the public pursuant to Rule 602.[20] Consistent with the language in Rule 602 excepting exchanges from including flash orders in the consolidated quotation data, the Commission has not applied Rule 301 to require ATSs to include flash orders in the consolidated quotation data.

Similarly, the Commission has not applied the Rule 610(d) restrictions on displaying quotations that ''lock'' or ''cross'' another market's displayed quotation, to flash orders with marketable prices.[21] For many years, the restrictions on locking and crossing quotations for exchange-listed equities were imposed in the Intermarket Trading System (''ITS'') Plan.[22] In 2005, the Commission adopted Rule 610(d) of Regulation NMS to address locking and crossing quotations for NMS stocks. Among other things, Rule 610(d) requires the self-regulatory organizations (''SROs'') to adopt rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross protected quotations in NMS stocks.[23]

In January 2004, the Commission approved an exchange rule filing for orders in listed options that were flashed electronically to market participants for a three-second period, rather than manually on the floor of an exchange.[24] The Commission generally has sought to interpret its rules in such a way that they promote fair competition between manual and automated markets.[25] The Commission noted that the electronic flash process was designed to protect against trading through better displayed prices at other

[14] *See, e.g.,* BOX Rules, ch. 5, sec. 16(b)(iii)(2(a) (one second); CBSX Rule 52.6(a) (no more than 500 milliseconds); ISE Rule 803, Supplementary Material .02 (not to exceed one second).

[15] *See, e.g.,* CBSX Rule 52.6(a) (''CBSX System shall route [intermarket sweep orders] on behalf of the market order to all Protected Quotations priced better than the CBSX disseminated price''); ISE Rule 803, Supplementary Material .02(d) (if an order cannot be executed in full after exposure, ''the Primary Market Maker will proceed to send a Linkage Order on the customer's behalf for the balance of the order'' if it is marketable against the then-current NBBO).

[16] The term ''responsible broker or dealer'' is defined in Rule 600(b)(65) of Regulation NMS.

[17] FINRA collects quotation data from over-the-counter market participants, including ATSs.

[18] The consolidated quotation data streams and their policy objectives are fully described in the Commission's Concept Release on Regulation of Market Information Fees and Revenues. Securities Exchange Act Release No. 42208 (December 9, 1999) 64 FR 70613 (December 17, 1999).

[19] *See* Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978) (''This determination is consistent with the Commission's intent in providing this exception for 'ephemeral' quotations in the 1977 Proposal; that is, that the Rule as adopted reflects the fact that certain non-specialist participants in exchange 'crowds' have bids and offers which, while narrowing the exchange quotation for an instant in time, never in fact become part of the quoted market on the exchange because they are withdrawn immediately if not accepted.''). Rule 602 originally was designated as Rule 11Ac1–1 under the Exchange Act. It was redesignated as Rule 602 as part of the adoption of Regulation NMS in 2005, but its substance was unchanged.

[20] In general, ATSs that meet a 5% volume threshold in NMS stocks are required to include their best-priced displayed orders in the consolidated quotation data. *See infra* note 64.

[21] A ''locking'' quotation has a price that equals the price of the previously displayed contra side NBBO. For example, if the national best offer to sell were $20, a subsequent bid to buy with a price of $20 would be a locking quotation. A ''crossing'' quotation has a price that is higher or lower than the price of the previously displayed contra side NBBO. For example, if the national best offer to sell were $20, a subsequent bid to buy with any price higher than $20 would be a crossing quotation. Conversely, if the national best bid to buy were $19, a subsequent offer to sell with any price lower than $19 would be a crossing quotation.

[22] All equities exchanges and the NASD were participants in the ITS Plan. The ITS Plan is described in the NMS Release, *supra* note 10, at 37501.

[23] Restrictions on locking and crossing quotations for exchange-listed options currently are imposed in the Options Linkage Plan. The Options Linkage Plan is a Commission-approved national market system plan. Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.) (''Options Linkage Plan''). Similar to Rule 610(d), Section 6 of the Options Linkage Plan requires the options exchanges to adopt rules that prohibit their members from engaging in a pattern or practice of displaying locking or crossing quotations.

[24] The first exchange to use the flash order exception for electronically communicated orders was the Boston Options Exchange (''BOX'') facility of the Boston Stock Exchange (''BSE''). Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15). BOX flashed orders as part of a process called an ''NBBO filter.''

[25] *See id.* at 2776–2777 (''Overall, the Commission believes that approving the BSE's proposal to establish trading rules for the BOX facility should confer important benefits to the public and provide U.S. market participants with a new market in which to trade standardized options. As a fully electronic options market with relatively lower barriers to access, BOX's entry into the options marketplace may potentially reduce the costs of trading to investors and market professionals, enhance innovation, and increase competition between and among the options exchanges, resulting in better prices and executions for investors.'') (citations omitted).

markets, and that the process would allow exchange participants to provide efficient and competitive executions for flashed orders.[26] Subsequently, other options exchanges adopted similar rules.[27]

In September 2006, the Commission approved an exchange rule filing for the use of flash orders on the equity trading platform of the Chicago Board Options Exchange (''CBOE'').[28] The Commission received no comments on the CBOE proposal. In May 2009, two more exchanges—Nasdaq and BATS—filed proposed rule changes to begin offering flash orders for equity trading.[29] The proposed rule changes of Nasdaq and BATS cited the Commission's previous approval of the CBSX filing and were filed as immediately effective pursuant to Exchange Act Rule 19b–4(f)(6).[30] In this regard, the Nasdaq and BATS filings fell within the interpretive guidance issued by the Commission last year that was designed to streamline the handling of SRO proposed rule changes, particularly for exchange trading rules.[31]

Commenters opposed to the Nasdaq and BATS filings raised serious concerns about the effect of flash orders on investors and on the integrity of the markets.[32] NYSE Euronext noted that in today's trading environment, ''where trading and reaction time are discussed in micro seconds, an order that is held for even 500 milliseconds cannot be deemed an ''immediate'' execution.''[33] GETCO was concerned that flash orders reduce the incentive to display aggressively priced liquidity, noting that ''[m]arket participants interested in finding the best priced orders to execute against would be encouraged to join the disparate system of 'step-up' order display systems on the various exchanges so that they could execute against better priced 'step-up' orders without displaying limit orders on the public markets.''[34] Similarly, Morgan Stanley stated that ''[w]e believe that the [proposed rule changes] will provide a material disincentive to publicly display limit orders on exchanges, thereby impairing price discovery.''[35] Further, SIFMA sought a fuller public discussion of issues raised by the proposed rule changes, including ''the creation of essentially a two tiered market (with some able to pay for a non-public direct data feed to trade with better-priced quotes versus those quotes that are accessible to the general public), thus raising fair access issues and issues re: investor confidence, transparency and our market structure in general.''[36]

In contrast, Direct Edge—an alternative trading system—submitted a comment letter supporting the proposed rule changes.[37] The letter noted that Direct Edge offers a pre-routing display product to its participants—the Enhanced Liquidity Provider (''ELP'') program—pursuant to which marketable orders are displayed to any of its participants who wish to receive the information in a data feed for which there is no charge.[38] It stated that ''[l]iquidity-aggregation products like Direct Edge's ELP program seek to bring together traditional and non-traditional liquidity in a consolidated, easy-to-access manner designed to maximize the potential for execution, reduce implicit and explicit transaction costs, and otherwise improve execution quality for our customers.''[39] Another commenter, Woodbine Associates, was concerned that flash orders could have an ''undesirable impact'' if offered by market centers with a majority of order flow, but recommended that the Commission ''allow flash orders, monitor their use, and study the effect on the market.''[40]

For listed equities and listed options in July 2009, the Commission estimates that the total volume of flash orders that received an execution during the flash process was approximately 3.1% and 1.9%, respectively, of total trading volume.[41] BATS, Nasdaq, and Nasdaq OMX BX decided to discontinue offering a flash order type as of September 1, 2009.[42] Accordingly, the total volume of executed flash orders may have declined as of that date.

IV. Proposed Elimination of Flash Order Exception

A. Concerns About Flash Orders

The Commission is proposing to eliminate the flash order exception from Exchange Act quoting requirements. The Commission is concerned that the use of flash orders by exchanges and other markets, particularly if it were to expand in trading volume, could detract from the fairness and efficiency of the national market system.[43] In its analysis of flash order types, the Commission will consider the interests of long-term investors and the extent to which they are helped or harmed by these orders, rather than on the interests of professional short-term traders that may have invested in sophisticated trading systems capable of responding to flash orders. The interests of long-term investors and professional short-term traders in fair and efficient markets

[26] *Id.* at 2783.

[27] *See, e.g.,* Securities Exchange Act Release Nos. 51544 (April 14, 2005) 70 FR 20613 (April 20, 2005) (SR–Phlx-2005–03); 53167 (January 23, 2006) 71 FR 5094 (January 31, 2006) (SR–CBOE–2005–89); 57812 (May 12, 2008) 73 FR 28846 (May 19, 2008) (SR–ISE–2008–28).

[28] Securities Exchange Act Release No. 54422 (September 11, 2006) 71 FR 54537 (September 15, 2006) (SR–CBOE–2004–21).

[29] Securities Exchange Act Release Nos. 60040 (June 3, 2009) 74 FR 27577 (June 10, 2009) (SR–BATS–2009–014); 59875 (May 6, 2009) 74 FR 22794 (May 14, 2009) (SR–NASDAQ–2009–043); 60039 (June 3, 2009) 74 FR 27635 (June 9, 2009 (SR–NASDAQ–2009–050); and 60037 (June 3, 2009) 74 FR 27367 (June 9, 2009) (SR–NASDAQ–2009–048).

[30] Rule 19b–4(f)(6) permits a proposed rule change to become immediately effective so long as each policy issue raised by the proposed trading rule: (1) has been considered previously by the Commission when the Commission approved another exchange's trading rule; and (2) the rule change resolves such policy issue in a manner consistent with such prior approval. Securities Exchange Act Release No. 58092 (July 3, 2008) 73 FR 40144, 40147 (July 11, 2008).

[31] *See id.* at 40147 (''[T]he Commission recognizes that national securities exchanges registered under section 6(a) of the Exchange Act face increased competitive pressures from entities that trade the same or similar financial instruments—such as foreign exchanges, futures exchanges, ECNs, and ATSs. These competitors can change their trading rules or trade new products without filing them with the Commission.'').

[32] Letter dated May 28, 2009 from Janet M. Kissane, Senior Vice President—Legal & Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Commission (''NYSE Euronext Letter''); Letter dated June 4, 2009 from Stephen Schuler and Daniel Tierney, Managing Members, Global Electronic Trading Company to Elizabeth M. Murphy, Secretary, Commission (''GETCO Letter''); Letter dated June 4, 2009 from Ann Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association to Elizabeth M. Murphy, Secretary, Commission (''SIFMA Letter''); and Letter dated June 17, 2009 from William P. Neuberger and Andrew F. Silverman, Managing Directors, Global Co-Heads of Morgan Stanley Electronic Trading to Elizabeth M. Murphy, Secretary, Commission (''Morgan Stanley Letter'').

[33] NYSE Euronext Letter at 3; *see also* GETCO Letter at 3; Morgan Stanley Letter at 5–6.

[34] GETCO Letter at 4; *see also* NYSE Euronext Letter at 6 (''reducing publicly available liquidity in this way may impact bid-offer spreads and the execution costs to customers'').

[35] Morgan Stanley Letter at 4.

[36] SIFMA Letter at 2.

[37] *See* Direct Edge Letter, *supra* note 8.

[38] Direct Edge Letter at 4.

[39] Direct Edge Letter at 2.

[40] Letter dated June 30, 2009 from Woodbine Associates (''Woodbine Letter'') at 1, 2.

[41] The Commission's estimate of flash order trading volume in July 2009 reflects discussions with the markets that offered flash orders during that time—CBSX, Direct Edge, BATS, Nasdaq, and Nasdaq OMX BX for equity trading, and BOX, CBOE, and ISE for options trading. These volume estimates reflect executions by market participants in response to flashed order information.

[42] *See* Securities Exchange Act Release Nos. 60569 (August 26, 2009), 74 FR 45268 (September 1, 2009) (SR–BATS–2009–028); 60570 (August 26, 2009), 74 FR 45504 (September 2, 2009) (SR–NASDAQ–2009–079); 60571 (August 26, 2009), 74 FR 45502 (September 2, 2009) (SR–BX–2009–051). The Commission notes that, if the proposal is adopted, exchanges with flash order rules would need to file proposed rule changes to eliminate flash orders from their rule books.

[43] *See also supra* note 32.

often will coincide. Indeed, vigorous competition among professional short-term traders can itself lead to very important benefits for long-term investors, including narrower spreads and greater depth. If, however, the interests of long-term investors and professional short-term traders conflict, the Commission previously has emphasized that ''its clear responsibility is to uphold the interests of long-term investors.'' [44] The Commission preliminarily believes that, in today's highly automated trading environment, the exception for flash orders from Exchange Act quoting requirements may no longer serve the interests of long-term investors and could detract from the efficiency of the national market system.

Today, the overwhelming majority of trading volume in listed equities and listed options is routed and executed through highly automated systems. Among other things, these sophisticated systems have dramatically reduced the time period for collecting and disseminating quotations.[45] In contrast to the primarily manual trading when the Commission originally adopted the exception for flash orders in 1978, flash orders no longer are clearly distinguishable from quotations that are disseminated in the consolidated quotation data. As a result, the rationale for requiring markets to include their best-priced quotations in the consolidated quotation data and for prohibiting the practice of displaying quotations with prices that lock previously displayed quotations would appear to apply equally to flash orders in today's trading environment.

The Commission also is concerned that flash orders may create a two-tiered market in which the public does not have access, through the consolidated quotation data streams, to information about the best available prices for listed securities. A flash order generally is displayed at a marketable price that will be better than the best displayed price for the security in the consolidated quotation data. For example, a flash order to buy would be displayed at a higher price than the national best bid, and a flash order to sell would be displayed at a lower price than the national best offer. Yet the public does not receive this flashed order information in the consolidated quotation data. Instead, only those market participants that receive a market's individual data feed have access to the improved price information. The consolidated quotation data streams are intended to provide a single source of information on the best prices for a listed security across all markets, rather than force the public to obtain data from many different exchanges and other markets to learn the best prices.[46] This objective would not be met if exchanges and ATSs disseminate pricing information that, due to the technological evolution of the markets, is functionally quite similar to quotations, yet is not required to be included in the consolidated quotation data.

In addition, the Commission is concerned about the extent to which flash orders may discourage the public display of trading interest and harm quote competition among markets. The Commission long has emphasized the need to encourage displayed liquidity in the form of publicly displayed limit orders.[47] Such orders establish the current ''market'' for a stock and thereby provide a critical reference point for investors. Flash orders, however, generally are executed by a market at prices that match the best displayed prices for a stock at another market. In this respect, flash orders potentially deprive those who publicly display their interest at the best price from receiving a speedy execution at that price. The opportunity to obtain the fastest possible execution at a price is the primary incentive for the display of trading interest.[48] Particularly if flash orders were offered by all major markets for a security and greatly expanded in trading volume, they could significantly undermine the incentives to display limit orders and to quote competitively, and thereby detract from the efficiency of the national market system.

For example, the flash process provides a vehicle for certain market participants to match displayed prices on an order-by-order basis by responding to flashes. It therefore gives these participants a ''last-mover'' advantage over displayed orders in other markets. Rather than displaying their orders or quotations in advance of incoming marketable order flow to attract an execution, these market participants can wait to receive the flashed order and program their systems to pick and choose when to execute. The availability of this ''flash'' alternative to quoting as a means to supply liquidity may reduce their incentives to display liquidity.

Moreover, the flash process diverts a certain amount of order flow that otherwise might be routed directly to execute against displayed quotations in other markets. The Commission recognizes that orders in listed equities may be routed to venues that do not display their trading interest in the consolidated quotation data.[49] Certain benefits, including adding liquidity, may result from routing orders to undisplayed venues. Given the importance of displayed quotations for market efficiency,[50] however, the Commission is particularly concerned about additional marketable order flow—orders that are immediately executable at the national best bid or offer—that may be diverted from the public quoting markets and that could further reduce the incentives for the public display of quotations.

The Commission also is concerned that the flashing of orders at marketable prices may undermine the purposes of Rule 610(d) of Regulation NMS, which is designed to protect displayed quotations from being locked by equal-priced contra side quotations.[51] Marketable prices are, by definition, prices that at least equal the best contra side quotation for a stock. For example,

[44] NMS Release, *supra* note 10, at 37500 (noting that ''it makes little sense to refer to someone as 'investing' in a company for a few seconds, minutes, or hours''). The Commission further noted that giving priority to the interests of long-term investors is consistent with both the legislative history of the Exchange Act and the strong policy goal to reduce the cost of capital for U.S.-listed companies. *Id.* at 37499–37500.

[45] *See* NYSE Euronext Letter at 4.

[46] *See* Rule 603(b) of Regulation NMS (providing for the dissemination of all consolidated information for an individual NMS stock through a single plan processor).

[47] *See, e.g.,* NMS Release, *supra* note 10, at 37527 (''The Commission believes, however, that the long-term strength of the NMS as a whole is best promoted by fostering greater depth and liquidity, and it follows from this that the Commission should examine the extent to which it can encourage the limit orders that provide this depth and liquidity to the market at the best prices.''); Order Handling Rules Release, *supra* note 10, at 48293 (''[T]he display of customer limit orders advances the national market system goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution, and disintermediation.'').

[48] *See* NMS Release, *supra* note 10, at 37505.

[49] For example, some of these undisplayed venues are called ''dark pools,'' which are reported to execute approximately 8% of total trading volume in listed equities. *See, e.g.,* Nina Mehta, *Inching Toward Dark Pool Reporting Standards,* Traders Magazine Online News, June 26, 2009, *http://tradersmagazine.com/news/dark-pool-reporting-103943-1.html.* In addition, some exchanges, when they do not have available trading interest to execute marketable orders at the best displayed prices, give participants a choice of routing their orders in response to ''indications of interest'' from undisplayed venues that are not included in the consolidated quotation data. *See, e.g.,* NYSE Arca, ''Client Notice: NYSE Arca to Provide Indication of Interest (IOI) Routing'' (March 12, 2008) (routing service for ''non-displayed liquidity pools'').

[50] *See supra* note 10.

[51] As noted in note 23 *supra,* the Options Linkage Plan includes a prohibition on a pattern or practice of displaying locking or crossing quotations in listed options that is analogous to Rule 610(d).

a marketable flash order to buy will be displayed at the price of the national best offer and a marketable flash order to sell will be displayed at the price of the national best bid. In adopting Rule 610(d), the Commission emphasized that ''giving priority to the first-displayed quotation will encourage the posting of quotations and contribute to fair and orderly markets.'' [52] The Commission preliminarily believes that flash orders may be inconsistent with this policy. The flashing of orders is no longer distinguishable in today's highly automating trading from the dissemination of automated quotations. If marketable flash orders were included in the consolidated quotation data, for example, such orders clearly would be locking quotations in violation of Rule 610(d). The practical result of the Commission's proposal, therefore, would be that flash orders could no longer be displayed to anyone at prices that equal the best priced contra side quotation in a stock. A market that was unable to execute incoming marketable orders at the best prices would need to handle them in another fashion. Depending on the order router's wishes, a market could route the order away to access the best displayed prices on other exchanges, reprice and display the order at a permissible price, or cancel the order back to the order router. It also is possible, however, that the order may be routed to a dark venue.[53]

The proposed elimination of the exception for flash orders from Exchange Act quoting requirements also likely would affect the competition among exchanges and ATSs for trading volume. Much of a market's revenue is generated, directly or indirectly, through the execution of trades. Accordingly, markets have strong incentives to maximize their executed volume, both by attracting the largest possible volume of order flow and by executing as much of that order flow as possible. Flash orders give markets an additional opportunity to execute marketable orders even if they do not have available contra trading interest at the best displayed prices when the flash order arrives. In this respect, flash orders can be viewed as one competitive strategy to maximize a market's trading volume and revenues, which would be curtailed by adoption of the proposal.

The Commission preliminarily believes, however, that any limitation on a market's competitive choices would be justified by other effects of the proposal that would promote competition, protect investors, and enhance efficiency. As an initial matter, it is important to recognize that, both currently and if the proposal were adopted, all exchanges and ATSs would operate under the same rules for flash orders. Currently, the availability of the flash order type benefits markets that do not have available contra side trading interest at the best displayed prices when an order arrives by giving them a second chance to execute the order. In this respect, the current rule tends to benefit those markets that have the least available trading interest at the best prices, including displayed limit orders. If adopted, the proposal would give markets even greater incentives to attract trading interest at the best displayed prices, including displayed limit orders, in advance of the arrival of marketable orders, as well as better opportunities to attract marketable order flow by displaying the best prices. It thereby would promote competition for the displayed liquidity that is vital to the fairness and efficiency of the listed securities markets. In addition, the proposal would help protect the interests of investors who are willing to display their trading interest publicly.

Finally, the flashing of orders to many market participants creates a risk that recipients of the information could act in ways that disadvantage the flashed order. With today's sophisticated order handling and execution systems, those market participants with the fastest systems are able to react to information in a shorter time frame than the length of the flash order exposures. As a result, such a participant would be capable of receiving a flashed order and reacting to it before the flashed order, if it did not receive a fill in the flash process, could be executed elsewhere. For example, a recipient of a flash order that was quoting on another exchange would be capable of adjusting its quotes to avoid being hit by the flash order if it subsequently were routed to that exchange. Alternatively, a recipient would be capable of rapidly transmitting orders that would take out trading interest at other exchanges before an unfilled flash order could be routed to those exchanges. In both cases, a flashed order that did not receive an execution in the flash process would also be less likely to receive a quality execution elsewhere.

Of course, flash orders are voluntary on the part of order routers. They involve a willing decision on the part of order routers to disseminate the order information to a group that generally will include highly sophisticated professional traders. Those who choose to use the flash order type (which often will be a broker that owes a duty of best execution to its customer for the routing decision) probably already consider the extent to which flashed orders may contain significant information content that could lead the recipients of flash order information to act contrary to the interests of the orders. Stated another way, those who are highly concerned about information leakage generally would be unlikely to flash their order information to a large number of professional traders. As a result, there is an inverse relationship between the extent to which flash orders are used beneficially by order submitters and the extent to which the recipients of flash orders could gain an information advantage. If used beneficially by order submitters, the information leakage and information advantage would be minimized for the user of the flash order. If not used beneficially, however, the flash order type appears to raise particular risks for customers whose order information is flashed.

The Commission recognizes that flash orders offer potential benefits to certain types of market participants. For those seeking liquidity, the flash mechanism may attract additional liquidity from market participants who are not willing to display their trading interest publicly. Flash orders thereby may provide an opportunity for a better execution than if they were routed elsewhere.[54] There is no guarantee, for example, that an order routed to execute against a displayed quotation will, in fact, obtain an execution. The displayed quotation may already be executed against or cancelled before the routed order arrives. Of course, the delay in routing during a flash period may further decrease the likelihood of an execution in the displayed market for the flash order because prices at the displayed market may move away from the flash order during the flash process. Those who route flash orders, however, may use them selectively in those contexts where they believe an order is less likely to receive a full execution if routed elsewhere.

In addition, many markets that display quotations charge fees (often known as ''take'' fees) for accessing those quotations. Flash orders may be executed through the flash process for lower fees than the fees charged by many markets for accessing displayed quotations. Indeed, some markets have offered rebates on orders that are executed during a flash, so that the order, rather than paying a fee, will earn

[52] NMS Release, *supra* note 10, at 37547.

[53] As noted in section V below, the Commission's staff is reviewing other forms of dark trading interest that are not included in the consolidated public quotation data, and the Commission expects to consider initiatives in this area in the near future.

[54] *See* Direct Edge Letter at 2.

a rebate.[55] The combined difference between receiving a rebate for an executed flash order versus paying a fee for accessing a displayed quotation may be a significant incentive for traders to submit flash orders.[56]

Finally, some market participants that choose to receive and respond to flash orders may represent large institutional investors that are reluctant to display quotations publicly to avoid revealing their full trading interest to the market, but are willing to step up on an order-by-order basis and provide liquidity to flash orders. Such investors may have the sophisticated systems themselves to respond to flash orders or may rely on the systems of their brokers. Executions against flash orders could help lower the transaction costs of these institutional investors.

The Commission expects that any negative effect of the elimination of the exception for flash orders from Exchange Act quoting requirements would be mitigated by the ability of market participants to adapt their trading strategies to the new rules. In addition, higher incentives to display liquidity and alternative forms of competition for order flow could mitigate any negative effect of the proposal.

To summarize, the Commission recognizes that flash orders may have some benefits, but preliminarily believes that, in the context of today's highly automated trading environment, those benefits do not justify the negative aspects of flash orders. In reaching this preliminary view, the Commission also has considered the potential damage to public confidence in the securities markets caused by practices that may give professional short-term traders an unfair advantage over long-term investors. Professional short-term traders inevitably have advantages in the active trading of securities—that is, buying and selling securities repeatedly throughout the trading day. Active trading is a highly competitive endeavor, and many professional short-term traders devote substantial resources to develop the systems and expertise to trade successfully. Ultimately, this competition among professional short-term traders can greatly benefit long-term investors if it leads to better execution quality (such as narrower spreads and greater liquidity) when investors enter the market to establish or liquidate their positions in a security.

Practices that may give professional short-term traders undue advantages without creating sufficient corollary benefits to long-term investors, or that can undermine the goals of Commission rules, for example promoting displayed liquidity, may cause damage to public confidence in the fairness of the markets, and this must be considered by the Commission in fulfilling its regulatory responsibility under the Exchange Act. Indeed, the Congressional concern to maintain and promote public confidence in the fairness of the securities markets has been a hallmark of the federal securities laws for the last 75 years.[57]

The Commission also has considered the potential costs and benefits of flash orders at the level of individual transactions. When an order is flashed and receives an execution, three different market participants are most directly affected: (1) The submitter of the flash order that received an execution; (2) the receiver of the flashed information that supplied dark liquidity to the order; (3) and the market participant that was willing to supply liquidity through a publicly displayed quotation establishing the best price for a security, yet did not receive an execution at that price. Although the first two parties received the benefits of a desired trade, potentially with lower fees than they otherwise might have paid, the third party that established the best displayed price did not receive an execution and thereby suffered a cost. Moreover, displayed liquidity is a public good that benefits investors and traders generally.[58] When the market participants that generate this public good are harmed by a missed trading opportunity, it creates an externality that can detract from the efficiency of the securities markets.[59] Though the costs of failing to reward the public display of liquidity are difficult to quantify, the Commission's practical experience over the years with initiatives to promote the public display of liquidity have demonstrated their value for investors.[60]

Given all of these factors, the Commission preliminarily believes that the benefits of flash orders for some market participants do not justify their costs to other market participants, the national market system, and the public interest. It therefore is proposing to eliminate the exception for flash orders from Exchange Act quoting requirements.

B. Description of Proposal

1. Proposed Amendment of Rule 602

Under the proposal, paragraph (a)(1)(i)(A) of Rule 602 would be eliminated in its entirety. The Commission recognizes that a number of exchanges currently offer a variety of trading services other than flash orders that conceivably could be affected by the elimination of the paragraph. These may include price improvement auctions and various types of facilitation and exposure mechanisms for large orders.[61] The Commission preliminarily believes that the status of these trading mechanisms under Rule 602 would not be altered by the proposed amendment. For example, the Commission preliminarily believes that orders exposed as part of a competitive auction that provides an opportunity to obtain better prices than displayed quotations generally would not constitute bids and offers that must be provided to the consolidated quotation stream, nor would the responses to those orders if they were actionable only with respect to the exposed order. Comment is requested on the potential impact of the proposal on exchange trading services other than flash orders.

As noted in section III above, the language in Rule 602(a)(1)(i)(A) originally was adopted to accommodate ephemeral quotations on manual trading floors. Historically, exchange members located on trading floors have conducted on the spot discussions of price which could not practically be reflected in the published quotation and were generally understood to fall within the exemption of Rule 602(a)(1)(i)(A). Although trading floors have changed dramatically in recent years, some of the

[55] NASDAQ OMX, Flash Functionality, *http://www.nasdaqtrader.com/content/ProductsServices/Trading/Flash_factsheet.pdf* and BATS Global Markets, BATS Exchange Releases BOLT, *http://www.batstrading.com/resources/press_releases/BATS_Exchange_Announces_BOLT_FINAL.pdf.* As noted *supra* note 42, Nasdaq and BATS have announced that they will no longer offer a flash order functionality as of September 1, 2009.

[56] When it adopted Rule 610(d), the Commission specifically considered and disapproved the practice of deliberately locking a displayed quotation to obtain a liquidity rebate. NMS Release, *supra* note 10, at 37547 (restriction on locking quotations was intended to address a market participant that ''chooses to lock rather than execute the already-displayed quotation to receive a liquidity rebate'').

[57] *See, e.g.,* Section 2(a) of the Exchange Act (securities transactions are affected with a national public interest which makes it necessary to ''insure the maintenance of fair and honest markets in such transactions'').

[58] NMS Release, *supra* note 10, at 37516.

[59] *Id.*

[60] *See, e.g.,* Concept Release on Market Fragmentation, *supra* note 9, at 10584 n. 53 (citing academic studies finding that the required display of customer limit orders, by providing greater price transparency and enhancing public price discovery, led to substantial reductions in transaction costs for both retail and institutional investors).

[61] *See, e.g.,* BOX Rules, ch. V, sec. 18 (Price Improvement Mechanism); CBOE Rule 6.13A (Simple Auction Liaison); and ISE Rule 716(d) (Facilitation Mechanism).

historical practices may still be necessary for the effective functioning of a trading floor. For example, when floor brokers represent large discretionary orders they must be able to discuss terms of a prospective trade. If it were necessary to make such terms public, it would interfere with, and might make impossible, the effective representation of such large orders on a trading floor. Similarly, floor brokers can ''request a market'' in a security either hypothetically (or conditionally) or with a view to executing a particular order in hand. In either case, the response of the ''trading crowd'' can be different than the published quotation. It may be impractical to require such responses to be published. Even if publication were technically feasible, it could significantly impair floor brokers' ability to represent large orders effectively. There may be other examples as well of floor practices that are necessary for floors to function effectively, but that could be viewed as conflicting with Rule 602 as proposed to be amended.

The Commission preliminarily believes that the concerns about flash orders discussed above apply both with respect to the electronic flashing of orders and the manual flashing of orders to exchange crowds. These concerns include particularly the danger of a two-tiered market in which the public does not have access, through the consolidated quotation data streams, to information about the best available prices, and the effect on incentives to display trading interest publicly. In addition, the Commission has sought to establish a regulatory framework that maintains fair competition between automated markets and manual markets. The Commission requests comment on whether the elimination of the flash order exception for both automated trading systems and manual trading floors would seriously detract from the viability of trading floors in the modern, mostly electronic, trading environment. It also requests comment on whether Rule 602 should permit trading floors to continue manual ''flashing'' of orders if electronic ''flashing'' is prohibited and what, if any, conditions should apply.

In sum, the proposed amendment of Rule 602 conceivably could affect a number of practices of both electronic exchanges and manual trading floors. To the extent that particular practices do not raise the policy concerns of flash orders under specific circumstances, but would be constrained or eliminated by the proposed amendment, the Commission requests comment on whether it should adopt a narrower regulatory approach than the full elimination of the flash order exception.[62] In addition, the Commission could grant exemptions from the requirements of Rule 602, as necessary and appropriate, pursuant to Rule 602(d).[63]

2. Application of Rule 301(b)

If the Commission adopts the proposed elimination of the flash order exception from Rule 602, the Commission would apply Rule 301(b) of Regulation ATS in a consistent manner to ATSs that use flash orders. Rule 301(b) sets forth requirements for ATSs, one of which is order display and execution access. Paragraph (b)(3)(ii) of Rule 301 requires an ATS that meets a 5% volume threshold in an NMS stock[64] to provide to a national securities exchange or national securities association the prices and sizes of the orders at the highest buy price and the lowest sell price for such NMS stock, displayed to more than one person in the ATS, for inclusion in the quotation data made available by such exchange or association pursuant to Rule 602 of Regulation NMS. The Commission has sought to promote fair competition between exchanges and ATSs, consistent with their varying regulatory responsibilities.[65] The Commission has not applied Rule 301(b) in a manner inconsistent with Rule 602, with respect to flash orders or otherwise.

Accordingly, if the proposed amendment to Rule 602 is adopted, the Commission would consider orders that a threshold ATS displays to more than one person in the ATS that either are immediately executed or withdrawn if not immediately executed to be orders covered by Rule 301(b)(3)(ii) that must be provided to a national securities exchange or national securities association for inclusion in the consolidated quotation data. Such orders would be covered regardless of the particular term that an ATS might use to characterize the order, such as ''indication of interest.''[66]

3. Application of Rule 610(d)

Finally, if the Commission adopts the proposed amendment to Rule 602, the Commission would apply the restrictions on locking or crossing quotations in Rule 610(d) in a consistent manner to prohibit the practice of displaying marketable flash orders. Rule 610(d) requires each national securities exchange and national securities association to establish, maintain, and enforce rules that, among other things, prohibit members from engaging in a pattern or practice of displaying quotations that lock or cross any ''protected quotation,'' as defined in Rule 600(b)(57), in an NMS stock.[67] Under the proposed amendment of Rule 602, flash orders would no longer be excepted from the requirement to include best-priced quotations and orders in the consolidated quotation data. If that amendment is adopted, the Commission would consider the display by SRO members of quotations that either are immediately executed or withdrawn if not immediately executed to be the display of quotations that are subject to the locking and crossing restrictions of Rule 610(d), like any other quotation required by Rule 602(a) to be included in the consolidated quotation data. As a result, flash orders with non-marketable prices would not be locking or crossing quotations and would need to be included in the consolidated quotation data. Orders with marketable prices, however, could no longer be flashed, because if displayed they would be subject to the locking and crossing restrictions in Rule 610(d).

[62] *See* section V below for a more detailed discussion of alternative regulatory approaches.

[63] Rule 602(d) provides that such exemptions may be granted either unconditionally or on specified terms and conditions, if the Commission determined that such exemptions were consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system. *See, e.g.,* Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated December 8, 2004 (Commission staff acting by delegated authority to grant ISE a limited exemption from its obligations under Rule 602(a) in connection with ISE's Price Improvement Mechanism).

[64] An ATS becomes subject to the Regulation ATS display requirement if, during at least four of the preceding six calendar months, it had an average daily trading volume of 5% or more of the aggregate average daily share volume for such NMS stock as reported by an effective transaction reporting plan. 17 CFR 242.301(b)(3)(i)(B).

[65] *See, e.g.,* Section 11A(a)(1)(c)(ii) of the Exchange Act (one of the objectives of the national market system is to assure fair competition ''between exchange markets and markets other than exchange markets'').

[66] *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70850 (December 22, 1998) (''Regulation ATS Adopting Release'') (''The label put on an order—'firm' or 'not firm'—is not dispositive. For example a system claiming it displays only ''indications of interest'' that are not orders, may be covered by the new interpretation of 'exchange' if those indications are, in fact, firm in practice.)

[67] As noted in note 23 *supra,* the Options Linkage Plan includes a prohibition of a pattern or practice of displaying locking or crossing quotations in listed options that is analogous to Rule 610(d). If flash orders for listed options were no longer excepted from Rule 602 and therefore required to be included in the OPRA quotations data, the Commission also would consider the Option Linkage Plan's restrictions on locking or crossing quotations to apply to the display of marketable flash orders.

V. Request for Comments

The Commission seeks comment and data on all aspects of the proposed amendment of Rule 602, including its implications for the application of Rule 301(b) and Rule 610(d). In particular, comment and data are requested on the effect of flash orders on the fairness and efficiency of the markets for listed securities and on the interests of long-term investors in these securities. If adopted, would the proposal promote investor confidence by addressing the potential for a two-tiered market with respect to access to information about the best prices for listed securities? Would the proposal help to promote the display of quotations in public markets by eliminating one type of trading in which ''dark'' liquidity is provided that matches the prices of previously displayed public quotations? Would the proposal reduce the potential for information leakage that could detract from the execution quality of marketable orders? Conversely, would the proposal deprive investors of a trading tool that, if used beneficially, can lead to improved quality of execution for marketable orders?

Comment and data also are requested on the following questions. What are some of the trading strategies that employ flash orders? Is the use of flash orders in the best interests of these traders and how would the inability to use flash orders affect these traders? Are there alternatives to using flash orders in such trading strategies? How are market participants likely to change their behavior if unable to use flash orders? What are the likely effects of these changes? Which market centers are likely to benefit from any changes in order routing practices? How would the proposal affect transaction costs incurred by various market participants? How would overall transaction costs change? In the absence of flash orders, would the limit orders setting the best displayed price benefit with faster or more probable executions?

Comment and data also are requested on the use of flash orders by exchanges for listed options and whether concerns about flash orders should be assessed differently in that context. For example, trades in listed options are required to be executed on an exchange that has public quoting responsibilities rather than at over-the-counter venues that are not required to publish quotations. In addition, the incentives for the display of liquidity for derivative instruments such as listed options may be different from such incentives for cash equities. Finally, listed options are priced largely on the value of the underlying securities; market participants typically update quotations prices as the underlying prices change. Given these differences and others between equity and options trading, should the Commission adopt a different approach for flash orders in listed options than for flash orders in listed equities?

The Commission also requests comment and data on narrower regulatory approaches than a complete elimination of the exception for flash orders from Exchange Act quoting requirements. Section IV.B.1 above, for example, requests comment on issues relating to manual trading floors and the extent to which such floors, as they currently operate, continue to need the exception for flash orders. In addition, are there additional features or limitations that could be added to the use of flash orders that would significantly alter the respective costs and benefits discussed in this release? For example, would requiring broader dissemination of flashed order information—such as in the consolidated quotation data—address concerns about two-tiered access to information about the best prices for listed securities? Could these concerns about two-tiered access be addressed by conditioning a market's provision of a flash order type on its making available flash order information to anyone without charge, even though the data would not be in a single consolidated feed? If flash order information were more broadly disseminated, how should the Commission assess the policy objectives behind existing restrictions on the display of locking quotations? Also, could exchanges address concerns about the misuse of flash order information through tailored surveillance or other regulatory procedures? Could concerns about information leakage be addressed by requiring brokers to provide detailed disclosure to a customer about the risks, or requiring the customer's affirmative consent, before allowing the customer's order to be flashed? Would requiring the recipient of a flash order to offer price improvement ameliorate any of the concerns discussed above?

The Commission further seeks comment on the application of Rule 301(b) of Regulation ATS and Rule 610(d) of Regulation NMS consistent with the proposed amendment to Rule 602, if adopted. Are there any special considerations applicable to ATSs that would justify applying a different standard from exchanges with respect to the inclusion of ATS orders in the consolidated quotation data? Are there any special considerations applicable to flash quotes that would justify applying a different standard from other types of displayed quotations for purposes of the locking and crossing restrictions?

The Commission strongly encourages commenters to respond within the designated comment period. It intends to act quickly in reviewing the comments and assessing further action. In this regard, the Commission also is actively reviewing other forms of ''dark'' trading interest (that is, trading interest that is not included in the consolidated public quotation data) that may be detrimental to the fairness and efficiency of the national market system. Dark trading interest, as well as the information that some undisplayed venues currently disseminate to market participants concerning such trading interest, is not generally available to the public.[68] Comment and data are requested on the use of flash orders as a mechanism to interact with dark liquidity and whether other mechanisms for accessing dark liquidity either do or do not raise policy concerns that are analogous to flash orders. The Commission is developing initiatives in this area, as well as reviewing other market structure issues, including those concerning Regulation ATS thresholds, direct market access, high frequency trading, and co-location.

VI. Paperwork Reduction Act

The Commission believes that eliminating the flash order exception, if adopted, would not substantively or materially change collection burdens under the requirements of Rule 602 of Regulation NMS. If adopted, the proposal would prohibit the practice of displaying marketable flash orders. Exchanges would be required to handle marketable orders that they are unable to execute at the best displayed prices in another manner, such as by routing marketable orders away to execute against the best displayed quotations at another exchange or ATS. Because exchanges would not be permitted to display these orders in the consolidated quotation data, no new collection of information would be required under Rule 602 with regard to marketable flash orders. In contrast, non-marketable flash orders would be required to be displayed in the consolidated quotation data. The Commission preliminarily

[68] *See, e.g., Oversight Hearing on Current State and Agenda, Hearing Before the Subcomm. on Capital Markets, Insurance and Government-Sponsored Enterprises of the House of Representatives Comm. on Financial Services,* 111th Cong. (July 14, 2009) (testimony of Mary L. Schapiro, Chairman, Commission); Mary L. Schapiro, Chairman, Commission, Address before the New York Financial Writers' Association Annual Awards Dinner (June 18, 2009) (transcript available at *http://www.sec.gov*).

believes, however, that the additional burden of including non-marketable flash orders with the large volume of quotations that exchanges already include in the consolidated quotation data under Rule 602 would not be material.[69]

In addition, the Commission does not believe that the application of Rule 301(b) of Regulation ATS and Rule 610(d) of Regulation NMS consistent with the proposed amendment to Rule 602 contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[70] Rule 301(b) of Regulation ATS would apply to the use of flash orders by alternative trading systems. The Commission believes that this would affect fewer than ten entities. Rule 610(d) of Regulation NMS would prohibit the practice of displaying flash orders with prices that lock or cross previously displayed quotations. The Commission believes that Rule 610(d) does not contain a collection of information requirement as defined by the Paperwork Reduction Act. Accordingly, the Commission believes that the application of Rule 301(b) of Regulation ATS and Rule 610(d) of Regulation NMS consistent with the proposed amendment to Rule 602 imposes no new collection of information requirements. The Commission encourages comments on this point.

VII. Consideration of Costs and Benefits

We are sensitive to the costs and benefits of our proposal to eliminate the exception for flash orders from Exchange Act quoting requirements. We request comment on the costs and benefits associated with the proposed amendment. The Commission has identified certain costs and benefits of the proposal and requests comment on all aspects of its preliminary cost-benefit analysis, including identification and assessments of any costs and benefits not discussed in this analysis. The Commission also seeks comments on the value of any of the benefits identified and welcomes comments on the accuracy of any of the costs described in each section of this cost-benefit analysis, as well as elsewhere in this release. Finally, the Commission requests that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions on such estimates.

A. Benefits

As discussed above, the proposal is intended to prevent a two-tiered market in which the public does not have access, through the consolidated quotation data streams, to information about the best available prices for listed securities, to promote the goals of the consolidated quotation system, and to help promote public confidence in the fairness of the listed securities markets.[71] A flash order generally is displayed at a marketable price that will be better than the best displayed price for the security in the consolidated quotation data. For example, a flash order to buy would be displayed at a higher price than the national best bid, and a flash order to sell would be displayed at a lower price than the national best offer. Yet the public does not receive this flash order information in the consolidated quotation data. Instead, only the participants of a particular market that receive the market's data feed have access to the improved price information. The consolidated quotation data streams are intended to provide a single source of information on the best prices from all markets, rather than force the public to obtain data from many different exchanges and other markets to learn the best prices. A single source of data facilitates investor access to the best prices in the national market system, and helps promote best execution.[72] This objective would be undermined if exchanges and ATSs disseminate pricing information that is functionally quite similar to quotations, yet is not required to be included in the consolidated quotation data.

The proposal is intended to promote the public display of trading interest and quote competition among markets. The Commission long has emphasized the need to encourage displayed liquidity in the form of publicly displayed limit orders.[73] Such orders establish the current ''market'' for a stock and thereby provide a critical reference point for investors. Flash orders, however, generally are executed by a market at prices that match the best displayed prices for a stock at another market. In this respect, flash orders potentially deprive those who publicly display their interest at the best prices from receiving a speedy execution, or any execution, at that price. The opportunity to obtain the fastest possible execution at a price is the primary incentive for the display of trading interest. Particularly if flash orders were offered by all major markets for a security and greatly expanded in trading volume, they could significantly undermine the incentives to display limit orders and to quote competitively, and thereby detract from the efficiency of the national market system.

For example, the flash process provides a vehicle for certain market participants to match displayed prices on an order-by-order basis by responding to flashes. It therefore gives these participants a ''last-mover'' advantage over displayed orders in other markets. Rather than displaying their orders or quotations in advance of incoming marketable order flow to attract an execution, these market participants can wait to receive the flashed order and program their systems to pick and choose when to execute. The availability of this ''flash'' alternative to quoting as a means to supply liquidity may reduce their incentives to display liquidity.

Moreover, the flash process diverts a certain amount of order flow that otherwise might be routed directly to execute against displayed orders and quotations in other markets. The Commission recognizes that some markets route orders to dark venues rather than to displayed trading venues.

Certain benefits, including adding liquidity, may result from routing orders to undisplayed venues. Given the importance of displayed quotations for market efficiency,[74] however, the Commission is particularly concerned about additional marketable order flow—orders that are immediately executable at the national best bid or offer—that may be diverted from the public quoting markets and that could further reduce the incentives for the public display of quotations.

The Commission also is concerned that the flashing of orders at marketable prices may undermine the purposes of Rule 610(d) of Regulation NMS, which is designed to protect displayed quotations from being locked by equal-priced contra side quotations. Marketable prices are, by definition, prices that at least equal the best contra side quotation for a stock. For example, a marketable flash order to buy will be displayed at the price of the national best offer and a marketable flash order to sell will be displayed at the price of the national best bid. In adopting Rule 610(d), the Commission emphasized that ''giving priority to the first-

[69] The information collection contained in Rule 602, entitled ''Dissemination of Quotations—Rule 11Ac1–1,'' the precursor to Rule 602, has been assigned control number 3235–0461. The Commission, however, will be updating the overall burden estimate for this collection of information to account for an increase in the number of exchanges subject to the Rule.

[70] 44 U.S.C. 3501, *et seq.*

[71] *See supra* notes 18 and 57.

[72] *See supra* note 18 and accompanying text.

[73] *See supra* note 47.

[74] *See supra* note 10.

displayed quotation will encourage the posting of quotations and contribute to fair and orderly markets.'' [75] The Commission preliminarily believes that flash orders may be inconsistent with this goal because the flashing of orders is no longer distinguishable, in certain key respects, from the dissemination of automated quotations. If marketable flash orders were included in the consolidated quotation data, for example, such orders clearly would be locking quotations in violation of Rule 610(d). The practical result of the proposal, therefore, would be that flash orders could no longer be displayed to anyone at prices that equal the best priced contra side quotation in a stock. A market that was unable to execute incoming marketable orders at the best prices would need to handle them in another fashion, such as by routing the order away to access the best displayed prices on other exchanges, or cancelling the order back to the submitter. It is also possible that the order may be routed to a dark venue.[76]

The elimination of flash orders would also change markets' competitive strategies to maximize trading volume and revenues. Currently, the availability of the flash order type benefits markets that do not have available contra side trading interest at the best displayed prices when an order arrives by giving them a second chance to execute the order. In this respect, the current rule tends to benefit those markets that have the least available trading interest at the best prices, including displayed limit orders. If adopted, the proposal would give markets even greater incentives to attract trading interest at the best displayed prices, including displayed limit orders, in advance of the arrival of marketable orders. It thereby would promote competition for the displayed liquidity that is so vital to the fairness and efficiency of the listed securities markets.

Finally, the flashing of orders to many market participants creates a risk that recipients of the information could act in ways that disadvantage the flashed order. With today's sophisticated order handling and execution systems, those market participants with the fastest systems are able to react to information in a shorter time frame than the length of the flash order exposures. As a result, such a participant would be capable of receiving a flashed order and reacting to it before the flashed order, if it did not receive a fill in the flash process, could be executed elsewhere. For example, a recipient of a flash order that was quoting on another exchange could adjust its quotes to avoid being hit by the flash order if it subsequently were routed to that exchange. Alternatively, a recipient rapidly could transmit orders that would take out trading interest at other exchanges before an unfilled flash order could be routed to those exchanges. In both cases, a flashed order that did not receive an execution in the flash process would also be less likely to receive a quality execution elsewhere.

At the same time, because flash orders are voluntary on the part of order routers, they involve a willing decision on the part of order routers to disseminate the order information to a group that generally will include highly sophisticated professional traders. Those who choose to use the flash order type (which often will be a broker that owes a duty of best execution to its customer for the routing decision) probably already consider the extent to which flashed orders may contain significant information content that could lead the recipients of flash order information to act contrary to the interests of the orders. Stated another way, those who are highly concerned about information leakage generally would be unlikely to flash their order information to a large number of professional traders. As a result, there is an inverse relationship between the extent to which flash orders are used beneficially by order submitters and the extent to which the recipients of flash orders could gain an information advantage. If used beneficially, the information leakage and information advantage would be minimized. If not used beneficially, however, the flash order type appears to raise particular risks for customers whose order information is flashed.

The Commission seeks comment on the anticipated benefits of the proposal, including whether the proposal will: (1) Help prevent a two-tiered market in terms of access to information about the best available prices for listed securities; (2) promote the public display of trading interest; (3) help prevent displayed quotations from being locked by equal-priced contra-side quotations; (4) promote competition among markets for displayed liquidity; (5) reduce the risk of detrimental information leakage about customer orders. The Commission further seeks comment on whether the anticipated benefits differ between the equity markets and the options markets.

B. Costs

The proposed elimination of the exception for flash orders from Exchange Act quoting requirements could preclude potential benefits that flash orders offer to certain market participants. For those seeking liquidity, the flash mechanism may attract additional liquidity from market participants who are not willing to display their interest publicly. Flash orders thereby may provide an opportunity for a better execution than if they were routed elsewhere. There is no guarantee, for example, that an order routed to execute against a displayed quotation will, in fact, obtain an execution. The displayed quotation may already be executed against or cancelled before the routed order arrives. Of course, the delay in routing during a flash period may further decrease the likelihood of an execution for the flash order elsewhere because prices may move away from the flash order during the flash process. Those who route flash orders, however, may use them selectively in those contexts where they believe an order is less likely to receive a full execution if routed elsewhere.

Another potential cost to market participants is that many markets that display quotations charge fees (often known as ''take'' fees) for accessing those quotations. Flash orders may be executed through the flash process for lower fees than the fees charged by many markets for accessing displayed quotations. Professional short-term traders with large trading volume may be particularly sensitive to the level of these fees.

For example, the Commission estimates an average daily volume in listed equities of 8.8 billion shares per day [77] and that flash volume accounts for 0.8% of this volume.[78] The Commission believes that access fees for executed flash orders in the equities markets range from $0.0010 per share to $0.0029 per share.[79] It estimates that the average access fee is $0.0015 per share. In contrast, it estimates that the average access fee for accessing a displayed quotation is $0.0029 per share.[80] The total cost from increased fees for all flash order users on a yearly basis in listed equities, therefore, would be approximately $24,837,120 (8.8 billion

[75] *See supra* note 52.

[76] As noted in section V above, the Commission's staff is reviewing other forms of dark trading interest that are not included in the consolidated public quotation data, and the Commission expects to consider initiatives in this area in the near future.

[77] *Source: www.arcavision.com* (consolidated volume in July 2009).

[78] The estimate of the volume of flash order trading is based on discussions with markets that continue to offer flash orders as of September 2009.

[79] *See* Direct Edge Fee Schedule, *http://www.directedge.com/fee_schedule.aspx;* CBSX Fee Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf.*

[80] *Id.*

shares × .8% × $0.0014 per share increase in access fee × 252 trading days). The Commission believes this estimate is an upper bound since market participants would adapt their strategies to minimize transaction costs under the new conditions.

In addition, some options exchanges offer lower access fees for market participants using flash orders. The Commission estimates an average daily volume in listed options of 13,898,735 contracts per day [81] and that flash volume accounts for 1.9% of this volume.[82] The Commission believes that access fees for executed flash orders in the options markets range from $0.00 per contract to $0.15 per contract.[83] It estimates that an average access fee is $.01 per contract.[84] In contrast, the average access fee for accessing a displayed quotation costs the market participant $0.21 per contract.[85] The total cost from increased fees for all flash order users on a yearly basis in listed options, therefore, would be approximately $13,309,429 (13,898,735 contracts × 1.9% × $0.20 per contract increase in access fee × 252 trading days) . As noted above, the Commission expects the actual cost may be lower as market participants would minimize the impact by refining their trading strategies.

The Commission recognizes that some market participants that choose to receive and respond to flash orders may represent large institutional investors that are not willing to display their interest to avoid revealing their trading interest to the market, but are willing to step up on an order-by-order basis and provide liquidity to flash orders. Such investors may have the sophisticated systems themselves to respond to flash orders or may rely on the systems of their brokers. Executions against flash orders could help lower the transaction costs of these institutional investors. In addition, as discussed below in Section VIII, flash orders give markets an additional opportunity to execute marketable orders even if they do not have available contra trading interest at the best displayed prices when the flash order arrives. In this respect, flash orders can be viewed as a market's competitive strategy to maximize trading volume and revenues that would be eliminated by adoption of the proposed amendments.

The Commission expects that any negative effect of the elimination of the exception for flash orders from Exchange Act quoting requirements would be mitigated by the ability of market participants to adapt their trading strategies to the new rules. Also, higher incentives to display liquidity and alternative forms of competition for order flow additionally could mitigate any negative effect of the proposal.

The markets with five trading systems that offer an electronic flash order functionality would need to make systems changes to comply with the proposed elimination of the exception for flash orders from Exchange Act quoting requirements. The Commission estimates that a programming change for a market requires approximately 20–30 hours per market of coding [86] at an average hourly cost of $193 to eliminate the flash order functionality.[87] The Commission estimates that the aggregate cost of programming changes for these markets to be approximately $19,300–$28,950.

In addition, the Commission believes that three exchanges currently have rules in place that provide for flash orders on five trading systems. The Commission estimates that these markets will each need to file proposed rule changes to remove the flash order functionality from their respective rule books for each system, for a total of five rule changes. The Commission estimates that a routine rule change requires approximately 34 hours for an exchange to complete [88] at an average hourly cost of $305.[89] The Commission estimates that the aggregate cost of one proposed rule change for each trading system would total approximately $51,850.

Finally, the five exchanges that operate trading floors for equities or options may need to reflect manual trading interest at non-marketable prices in the consolidated quotation data if they currently rely on the flash order exception for any such floor activity. The Commission preliminarily believes that the five exchanges currently have systems and procedures for floor members to include trading interest in the exchanges' automated systems. Accordingly, the elimination of the flash order exception should not impose a material new systems burden on these exchanges.

The Commission requests comment on any direct or indirect costs of the proposed amendment and asks commenters to quantify those costs, where possible. Specifically, the Commission requests comments on the following questions:

- What are some of the trading strategies that employ flash orders? Is the use of flash orders in the best interest of these traders and how would the inability to use flash orders impact these traders?
- How are market participants likely to change their behavior in the absence of flash orders? What are the likely costs of these changes?
- How will the proposal impact transaction costs incurred by various market participants? On net, how will overall transaction costs change?
- How would the proposal affect competition between trading venues? What costs will be imposed as a result?
- In the absence of flash orders, will the limit orders setting the best price benefit with faster or more probable executions?

VIII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act [90] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition. Exchange Act Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[91] As discussed below, the Commission's preliminary view is that the proposed amendment should promote efficiency and competition and

[81] The Options Clearing Corporation, Volume Statistics, *http://www.optionsclearing.com/market/vol_data/2009/daily/jul_09.jsp.*

[82] The Commission estimates average daily volume of executed flash orders in July at 265,052 contracts. This figure reflects discussions with the relevant markets.

[83] *See* BOX, CBOE, and ISE fee schedules.

[84] *See* BOX, CBOE, and ISE fee schedules.

[85] This figure represents the approximate charge for a Linkage Order derived from discussions with the relevant markets.

[86] This figure reflects discussions with the relevant markets.

[87] $ 193 per hour figure for a Programmer Analyst is from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[88] *See* Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287, 60294 (October 8, 2004) (File No. S7–18–04) (adopting release requiring SROs to file proposed rule changes electronically with the Commission).

[89] $ 305 per hour figure for an Attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[90] 15 U.S.C. 78c(f).

[91] 15 U.S.C. 78w(a)(2).

will have minimal impact, if any, on promotion of capital formation.

The proposed elimination of the exception for flash orders from Exchange Act quoting requirements would affect the competition among exchanges and ATSs for trading volume. Much of a market's revenue is generated, directly or indirectly, through the execution of trading volume. Accordingly, markets have strong incentives to maximize their volume, both by attracting the largest possible volume of order flow and by executing as much of that order flow as possible after it arrives at the exchange. Flash orders give markets an additional opportunity to execute marketable orders even if they do not have available contra trading interest at the best displayed prices when the flash order arrives. In this respect, flash orders can be viewed as a market's competitive strategy to maximize trading volume and revenues that would be eliminated by adoption of the proposed amendments.

The Commission preliminarily believes, however, that any limitation on a market's competitive choices would be justified by other effects of the proposal that would promote competition and enhance efficiency. As an initial matter, it is important to recognize that, both currently and if the proposal were adopted, all markets (including exchanges and ATSs) would operate under the same rules for flash orders. Currently, the availability of the flash order type benefits markets that do not have available contra side trading interest at the best displayed prices when an order arrives by giving them a second chance to execute the order. In this respect, the current rule tends to benefit those markets that have the least available trading interest at the best prices, including displayed limit orders. If adopted, the proposal would give markets even greater incentives to attract trading interest at the best displayed prices, including displayed limit orders, in advance of the arrival of marketable orders.[92] It thereby would promote competition for the displayed liquidity that is vital to the fairness and efficiency of the listed securities markets. Encouraging the use of displayed limit orders should help improve the price discovery process, and in turn, contribute to increased liquidity and depth in the markets.[93] The deeper and more liquid the markets are, the more willing the public may be to invest its capital, thus promoting capital formation.

The proposal also is designed to promote efficiency by giving a further incentive for markets to compete to attract displayed limit orders and generally to encourage the public display of trading interest.[94] Given that the overwhelming majority of trading volume in listed securities is routed and executed through highly automated systems, flash orders are no longer clearly distinguishable from the best bids and offers for listed securities that are required to be collected and disseminated in the consolidated quotation stream. There is little practical reason to treat flash orders differently from other bids and offers with respect to Exchange Act quoting requirements.

Yet those who display bids and offers appear to be harmed by the disparity in regulatory treatment between flash orders and displayed bids and offers. For example, the flash order process permits market participants to wait to receive the flashed orders and program their systems to pick and choose when to execute. The exception for flash orders may thereby undermine the incentives for market participants to display their trading interest. If adopted, the proposal could lead market participants to display more of their trading interest. Such a result would be consistent with the Commission's emphasis on the need to encourage displayed liquidity—a critical reference point for investors.[95] Additionally, because the flash order process diverts a certain amount of order flow that might otherwise be routed directly to execute against displayed quotations in other markets, the exception for flash orders may further reduce the incentives for the public display of quotations.[96] While some flash orders may be cancelled or routed to trading venues that do not display their trading interest in the consolidation quotation stream, the Commission preliminarily believes that eliminating the exception for flash orders would result in more order flow being routed to execute against displayed trading interest and would promote the fairness and efficiency of the listed securities markets.[97]

Based on the analysis above, the Commission preliminarily believes that the proposed elimination of the exception for flash orders from Exchange Act quoting requirements would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission requests comment on all aspects of this analysis and, in particular, on whether the proposed elimination of the exception for flash orders would place a burden on competition, as well as the effect of the proposal on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [98] the Commission must advise the OMB as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation.

The Commission requests comment on the potential impact of the proposed rule amendment on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

X. Regulatory Flexibility Act

The Commission hereby certifies, pursuant to 5 U.S.C. 603(b), that the proposed amendment to the Exchange Act quoting requirements and consistent application of Rule 610(d), if adopted, would not have a significant economic impact on a substantial number of small entities to which it applies. The proposed amendment to Rule 602 and consistent application of Rule 610(d) would apply to national securities exchanges, none of which is a small entity as defined by Commission rules.[99] The consistent application of Rule 610(d) also would affect one national securities association, which is not a small entity as defined by 13 CFR

[92] *See* NMS Release, *supra* note 10, at 37516 (''Displayed limit orders benefit all market participants by establishing the best prices * * *'').

[93] *See supra* note 47.

[94] *See* Order Handling Rules Release, *supra* note 10, at 48293 (''[T]he display of customer limit orders advances the national market system goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution, and disintermediation.'').

[95] *See supra* note 58.

[96] *See supra* note 49.

[97] *See* NMS Release, *supra* note 10, at 37505 (''[M]arket orders need only be routed to markets displaying quotations that are truly accessible'').

[98] Public Law No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[99] *See* 17 CFR 240.0–10(e).

121.201. In addition, the consistent application of Rule 301(b) would only affect ATSs, none of which are small entities as defined by Commission Rules.[100]

The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

XI. Statutory Authority

Pursuant to the Exchange Act and particularly, Sections 2, 3(b), 5, 6, 11, 11A, 15, 15A, 17(a) and (b), 19, 23(a), and 36 thereof, 15 U.S.C. 78b, 78c(b), 78e, 78f, 78k, 78k–1, 78o, 78o–3, 78q(a) and (b), 78s, 78w(a), and 78mm, the Commission proposes to amend Rule 602 of Regulation NMS.

[100] *See* 17 CFR 240.0–10(c).

XII. Text of Proposed Rule Amendment

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

PART 242—REGULATIONS M, SHO, ATS, AC, AND NMS AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for Part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

§ 242.602 [Amended]

2. Section 242.602 is amended by removing and reserving paragraph (a)(1)(i)(A).

By the Commission.

Dated: September 18, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–22911 Filed 9–22–09; 8:45 am]

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