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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–FV–09–0037; FV09–927–1 FR]

Pears Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Processed Pear Committee (PPC) for the 2009–2010 and subsequent fiscal periods from $6.25 to $8.41 per ton for ''summer/fall'' pears for canning. The PPC is responsible for local administration of the marketing order regulating the handling of pears for processing grown in Oregon and Washington. Assessments upon handlers of pears for processing are used by the PPC to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

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

FOR FURTHER INFORMATION CONTACT: Susan M. Coleman or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724; Fax: (503) 326–7440; or E-mail: *Sue.Coleman@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon and Washington pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable pears beginning July 1, 2009, and continue until amended, suspended, or terminated.

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

This rule increases the assessment rate established for the PPC for the 2009–2010 and subsequent fiscal periods from $6.25 to $8.41 per ton for ''summer/fall'' pears for canning handled under the order. The assessment rate for ''winter'' and ''other'' pears for processing remain unchanged at a zero rate.

The order provides authority for the PPC, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the PPC are growers, handlers, and processors of Oregon and Washington pears. They are familiar with the PPC's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–06 and subsequent fiscal periods, the PPC unanimously recommended the following three base rates of assessment: (a) $6.25 per ton for any or all varieties or subvarieties of pears for canning classified as ''summer/fall'', excluding pears for other methods of processing; (b) $0.00 per ton for any or all varieties or subvarieties of pears for processing classified as ''winter''; and (c) $0.00 per ton for any or all varieties or subvarieties of pears for processing classified as ''other''. The assessment for ''summer/fall'' pears applies only to pears for canning and excludes pears for other methods of processing as defined in § 927.15, which includes pears for concentrate, freezing, dehydrating, pressing, or in any other way to convert pears into a processed product. This rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the PPC or other information available to USDA.

The PPC met on May 28, 2009, and unanimously recommended 2009–2010 expenditures of $1,029,554. In comparison, last year's budgeted expenditures were $882,606. The major expenditures recommended by the PPC for the 2009–2010 fiscal period include $860,310 for promotion and paid advertising; $130,944 for research; $24,200 for administration; $13,100 for PPC expenses; and $1,000 for contingency. In comparison, major expenditures for the 2008–09 fiscal period included $700,000 for promotion and paid advertising; $140,106 for research; $28,000 for administration;

$13,500 for PPC expenses; and $1,000 for contingency.

The PPC based its recommended assessment rate for ''summer/fall'' pears for canning on the 2009–2010 crop estimate, the 2009–2010 program expenditure needs, and the current and projected size of its monetary reserve. Shipments of ''summer/fall'' pears for canning for 2009–2010 are estimated at 121,000 tons, which should provide $1,017,610 in assessment income. Income derived from handler assessments, along with interest income ($5,000), and funds from the Committee's authorized reserve ($136,420), should be adequate to cover the budgeted expenditures. The estimated 2009–2010 year-end reserve is $129,476, which is within the order's limit of approximately one fiscal period's operational expenses.

Over the past five years, the Northwest processed pear industry has suffered a reduction in crop size by approximately 23 percent. With the decreasing crop size, along with the increasing costs for promotional activities, the PPC has been forced to cut back on some promotional activities and use reserve funds. The PPC recommended the higher assessment rate to increase the funding for promotional activities. As stated earlier, the budget for promotion and paid advertising is being increased from last season's $700,000 to $860,310 this fiscal period. This increase will allow the PPC to effectively carry out the promotional activities needed to maintain the existing market share and increase demand. The PPC recommended no change for the $0.00 assessment rate for both the ''winter'' and ''other'' classification of pears for processing.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the PPC or other available information.

Although this assessment rate will be effective for an indefinite period, the PPC will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the PPC's meetings are available from the PPC or USDA. The PPC meetings are open to the public and interested persons may express their views at these meetings. USDA will continue to evaluate the PPC's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The PPC's 2009–2010 budget has been reviewed and approved by USDA; those for subsequent fiscal periods will also be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,500 growers of pears for canning in the regulated production area and approximately 51 handlers subject to regulation under the order. Small agricultural growers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

According to the *Noncitrus Fruits and Nuts 2008 Preliminary Summary* issued in January 2009 by the National Agricultural Statistics Service, the total farm gate value of ''summer/fall'' processed pears grown in Oregon and Washington for 2008 was $28,868,000. Therefore, the 2008 average gross revenue for a ''summer/fall'' processed pear grower in Oregon and Washington was $19,245. Based on records of the PPC and recent f.o.b. prices for pears, all of the handlers ship less than $7,000,000 worth of processed pears on an annual basis. Thus it can be concluded that the majority of growers and handlers of Oregon and Washington pears may be classified as small entities.

There are five processing plants in the production area, with one in Oregon and four in Washington. All five processors would be considered large entities under the SBA's definition of small businesses.

This rule increases the assessment rate established for the PPC and collected from handlers for the 2009–2010 and subsequent fiscal periods from $6.25 to $8.41 per ton for ''summer/fall'' pears for canning. The PPC also unanimously recommended 2009–2010 expenditures of $1,029,554. With a 2009–2010 crop of ''summer/fall'' pears for canning estimate of 121,000 tons in Oregon and Washington, the PPC anticipates assessment income of about $1,017,610. The PPC recommended the higher assessment rate to increase the funding for promotional activities.

The major expenditures recommended by the PPC for the 2009–2010 fiscal period include $860,310 for promotion and paid advertising, $130,944 for research, $24,200 for administration, $13,100 for PPC expenses, and $1,000 for contingency. In comparison, major expenditures for the 2008–09 fiscal period included $700,000 for promotion and paid advertising, $140,106 for research, $28,000 for administration, $13,500 for PPC expenses, and $1,000 for contingency.

The PPC discussed alternatives to this recommended assessment increase. The PPC reviewed a ''critical issue analysis'' of the key components of the PPC's promotion program and discussed individual promotional activities. As a result of its review, the PCC determined that leaving the assessment rate at the current $6.25 per ton would have cut core promotional activities. Furthermore, the PCC determined that any assessment rate less than the $8.41 rate herein established would have been insufficient and would have limited promotional activities. The assessment rate of $8.41 per ton for ''summer/fall'' pears for canning enables the PPC to achieve the key components as laid out in its promotion program.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2009–2010 season could average about $250 per ton for ''summer/fall'' pears for canning. Therefore, the estimated assessment revenue for the 2009–2010 fiscal period as a percentage of total grower revenue is 3.364 percent for Oregon and Washington ''summer/fall'' pears for canning.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the order.

In addition, the PPC's meeting was widely publicized throughout the Oregon and Washington pear industry and all interested persons were invited to attend and participate in PPC deliberations on all issues. Like all PPC meetings, the May 28, 2009 meeting was

a public meeting and all entities, both large and small, were able to express views on the issues.

This rule does not impose additional reporting or recordkeeping requirements on either small or large Oregon and Washington pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

A proposed rule regarding this action was published in the **Federal Register** on August 26, 2009 (FR 74 43082). Copies of the rule were made available to all Oregon and Washington processed pear handlers. The proposal was also made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 25, 2009, was provided so that persons interested in the proposal could respond. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the PCC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because (1) The 2009–2010 fiscal period began on July 1, 2009, and the order requires that the assessment rate for each fiscal period apply to all pears for canning handled during such fiscal period; (2) the PPC needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (3) handlers are aware of this action, which was recommended by the PPC at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 927.237, the introductory text and paragraph (a) are revised to read as follows:

§ 927.237 Processed pear assessment rate.

On or after July 1, 2009, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) $8.41 per ton for any or all varieties or subvarieties of pears for canning classified as ''summer/fall'' excluding pears for other methods of processing;

* * * * *

Dated: October 6, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–24681 Filed 10–13–09; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2008–0458]

RIN 3150–AI31

Criminal Penalties; Unauthorized Introduction of Weapons

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to authorize the imposition of Federal criminal penalties on those who, without authorization, introduce weapons or explosives into specified classes of facilities and installations subject to the regulatory authority of the NRC. This action is necessary to implement section 229, ''Trespass on Commission Installations,'' of the Atomic Energy Act of 1954, as amended (AEA).

DATES: This rule is effective on April 12, 2010.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2008–0458]. Address questions about NRC dockets to Carol Gallagher at 301–415–5905, e-mail *Carol.Gallagher@nrc.gov.*

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: James E. Adler, Office of the General Counsel, telephone 301–415–1656, e-mail: *james.adler@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comments
III. Discussion of the Final Rule
IV. Voluntary Consensus Standard
V. Finding of No Significant Environmental Impact: Environmental Assessment
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis
X. Congressional Review Act
XI. Agreement State Compatibility

I. Background

Section 654 of the Energy Policy Act of 2005, ''Unauthorized Introduction of Dangerous Weapons,'' amended § 229 of the AEA (42 U.S.C. 2278a) to authorize the NRC to issue regulations that make it a Federal crime to bring, without authorization, weapons or explosives into facilities designated by the NRC.

This rule implements that legislative provision.

In 1956, Congress added § 229 to the AEA. That section made it a Federal crime to bring weapons or explosives, without authorization, into facilities owned by the Atomic Energy Commission. With the enactment of the Energy Reorganization Act in 1974, this provision covered facilities now owned or occupied by the U.S. Department of Energy (DOE) as well as the buildings occupied by the NRC. Section 229 of the AEA did not extend to facilities regulated by the NRC. Over the years, there were incidents where individuals were successful in bringing weapons into NRC-regulated facilities without authorization. Fortunately, the individuals were not terrorists or others with malevolent intent and no damage was done. In such circumstances, the NRC had the ability to take action against its licensee for violation of security requirements, but could not refer the matter to the U.S. Department of Justice (DOJ) for criminal prosecution of the individual; any criminal sanctions had to be sought by the State under State law. Beginning in the late 1980s, the NRC submitted legislative proposals to Congress requesting that Congress enact legislation that would make it a Federal crime to bring weapons or explosives, without authorization, into NRC-designated facilities.

Congress enacted the requested legislation in § 654 of the Energy Policy Act of 2005, amending § 229 of the AEA (42 U.S.C. 2278a). This section authorizes the NRC to

> issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to person or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, in the custody of the Commission, or subject to the licensing authority of the Commission or certification by the Commission under this Act or any other Act.

Section 229 also requires that ''every such regulation of the Commission shall be posted conspicuously at the location involved.''

II. Public Comments

The NRC published a proposed rule on September 3, 2008 (73 FR 51378) and provided the opportunity for public comment. The **Federal Register** notice for the proposed rule identified certain issues about which the NRC was particularly interested in receiving comments. These issues included:

(1) Whether the rule's scope should be extended beyond the facilities listed in the proposed rule to additionally cover hospitals and other classes of facilities licensed to possess nationally tracked sources that are in the National Source Tracking System;

(2) Whether terms used in the proposed rule such as ''dangerous weapon,'' ''dangerous instrument or material,'' and ''explosive'' should be further defined, and what such definitions should be;

(3) Whether such definitions, if provided at all, should be set forth in the rule itself or in a guidance document;

(4) Whether the proposed 90-day implementation period provides licensees sufficient time to acquire and install the signs that the rule would require licensees to post;

(5) Whether the proposed rule's language regarding sign location is sufficient; and

(6) Whether the proposed rule's performance-based standard (*i.e.*, ''easily readable day and night'') should be replaced with more detailed requirements or with a reference to a preexisting signage standard, such as the standards promulgated under the Americans with Disabilities Act.

Seventeen comments were received. A few commenters addressed the issue of which facilities should be covered by the rule. Some of these commenters favored extending coverage to hospitals and other facilities possessing nuclear or radioactive material. Reasons given by such commenters included:

(1) Anyone who introduces a dangerous weapon, explosive, or other dangerous material into such a facility most likely intends to do harm;

(2) Anyone bringing such an item into a hospital or other facility that stores nuclear or radioactive material should expect to be penalized for doing so;

(3) Signs will ensure that the rule is not violated by accident, although anyone who intends to cause harm in a covered facility would likely not be deterred by the rule anyway; and

(4) Those seeking to access nuclear or radioactive materials in such facilities for illicit purposes would likely be able to locate those materials even if there are no signs posted pursuant to this rule. Thus, it is not valid to view such signs as rendering sensitive materials easier to find and therefore less secure.

Another commenter, however, recommended against extending the sign-posting requirement to these facilities. This commenter (a major medical institution) reasoned that:

(1) Signs would attract attention to the location of nationally tracked sources, thereby potentially rendering them less secure, given that many licensees currently try to avoid drawing attention to the locations of such materials;

(2) The strong language in the posting could be frightening to patients in hospitals, who may already be in a vulnerable state due to their medical situations; and

(3) Persons with unescorted access to facility areas of concern can simply be trained both to understand the rule themselves and to warn persons they escort about the rule's existence.

This commenter also noted that if the National Source Tracking System is expanded to include Category 3 and 1/10th Category 3 sources, an expansion of the rule to cover hospitals or other facilities would reach substantially more facilities than it otherwise would.

Several of the comments recommended that the NRC provide definitions of terms such as ''dangerous weapon,'' ''explosive,'' and ''dangerous instrument or material.'' Commenters' justifications for recommending definitions of these terms included promoting consistency in licensee reporting of violations of this rule and minimizing ambiguity in a rule whose violation may result in criminal prosecution. One commenter suggested that the content of these definitions should relate to the security capabilities of licensees to avoid prohibiting introduction of items that could not realistically be used to overpower plant security teams. Another commenter recommended that definitions be included in the rule itself, with further information and illustrations provided in a guidance document. Another commenter recommended that the posted notices identify any items that ordinary persons would not expect to be considered dangerous, but which nonetheless pose special hazards in light of the nature of the facility or the material located at the facility. Lastly, one commenter recommended that another term used in the proposed rule, ''introduce,'' be defined more clearly to ensure that the rule will apply to a person who introduces a dangerous instrument (e.g., a bullet) into the protected area by some means that does not require the person to pass beyond a sign (e.g., by firing a gun from outside the protected area).

As to the proposed 90-day implementation period, two industry commenters recommended that the period be extended to 180 days to allow sufficient time for sign procurement and installation. No other commenters expressed views on this issue.

A few comments addressed the issue of sign location. One of these comments

recommended installing signs not only at entrances, but also within protected areas to serve as additional reminders. Another comment sought clarification regarding areas outside the protected area but which nonetheless contain nuclear or radioactive material, such as licensee effluent treatment facilities, low-enriched uranium storage facilities, and radioactive waste storage facilities. The comment recommended that the posting requirement not apply to such areas, in light of the fact that entrants to such areas are not required to be searched prior to entry. Lastly, one commenter suggested allowing licensees the option of posting notices on roadways leading to facility checkpoints or parking areas, in addition to the notices required to be posted at vehicle and pedestrian entrances, in order to provide advance warning and thus facilitate the avoidance of protected areas by people carrying weapons.

Several commenters addressed the issue of sign characteristics. Some commenters recommended inclusion of specific rules regarding text size and color. One commenter suggested requiring lighting to ensure readability at night, while other commenters preferred the more flexible performance-based standard (*i.e.*, ''easily readable day and night'') utilized in the proposed rule. No commenters objected to the requirement that the notices be readable at night.

A number of comments also addressed topics beyond those specifically identified in the statement of considerations for the proposed rule. One commenter recommended that the rule require establishment of temporary weapons storage sites at pedestrian and vehicle entrances, so that persons lawfully carrying firearms can store any weapons before entering and pick them up when they leave. Another commenter recommended that the rule be harmonized with existing DOE signage regulations to avoid confusion or redundancy for those facilities that would be required to comply with both regulatory schemes. One commenter recommended that the rule define the term ''willful'' as ''an intentional act which may include evidence of subterfuge, masking, or malevolent intent.'' Finally, the DOJ recommended that the statement of considerations for the final rule clarify that the Federal Bureau of Investigation is not the only Federal entity other than the NRC that could potentially conduct investigations of suspected violations of this rule.

All of these comments are discussed and addressed in Section III below.

III. Discussion of the Final Rule

The NRC is amending 10 CFR 73.81, ''Criminal Penalties,'' and adding § 73.75, ''Posting,'' to implement § 654 of the Energy Policy Act of 2005. Under the regulations, the unauthorized willful introduction of any dangerous weapon, explosive or any other dangerous instrument or material likely to produce substantial injury or damage to persons or property upon the facilities or installations subject to §§ 236a.(1) or (4) of the AEA will be subject to the criminal penalties set forth in § 229 of the AEA. Consistent with the Energy Policy Act § 654 requirement that the regulation be posted conspicuously at each location involved, § 73.75 will require licensees to post notices at such facilities or installations.

Facilities Covered

The NRC is primarily concerned with dangers posed by the unauthorized introduction of weapons or explosives or other dangerous items when nuclear material and radioactive material are present. By listing these facilities in section 236 of the AEA, Congress has recognized the potential danger that could result from sabotage of such facilities; consequently, the NRC believes it prudent to also make the willful unauthorized introduction of weapons or explosives into or upon these facilities a Federal crime. The covered facilities include production and utilization facilities and uranium enrichment, uranium conversion and fuel fabrication facilities. The rule also covers some of the facilities listed in AEA § 236a.(2). Specifically, this rule would apply to high-level waste storage and disposal facilities and independent spent fuel storage installations. The remaining waste facilities and installations listed in § 236a.(2) that are subject to Agreement State jurisdiction may be covered in a future rulemaking. For other classes of licensees, the unauthorized introduction of weapons or explosives will continue to be governed, absent other Federal legislation, by State law.

The final rule accounts for the fact that not all portions of the listed classes of facilities will necessarily pose sufficient security concerns to justify imposition of criminal penalties. Therefore, the rule's application is limited to areas within a facility or installation's protected area, as well as portions of facilities or installations that are not within a protected area per se but for which security plans under 10 CFR part 73 must nonetheless be in place. The term ''protected facility or installation'' has also been added to the final rule to refer solely to those portions of facilities that the criminal penalties are intended to protect. The rule's reference to security plan requirements under Part 73, which was not included in the proposed rule, should resolve the ambiguity identified by a commenter regarding certain portions of facilities that are outside the protected area but which nonetheless contain nuclear or radioactive materials.

The NRC has limited the rule's applicability to the facilities listed in §§ 73.75(a) and 73.81(c)(2)(i) because the unauthorized introduction of a weapon or explosive into these facilities poses the greatest health and safety risk and because the NRC already pervasively regulates these facilities. Other facilities—such as hospitals—that contain radioactive materials are not as extensively regulated by the NRC. In order to apply § 73.81 to these other facilities, the NRC would have needed to interact with Agreement States and other State and Federal regulators to further assess the need for application of § 73.81 to these classes of facilities and to determine the proper placement of the required notices and the best way to implement this regulation. As suggested by a public comment, adding posted notices—which, under the statute, is a required complement to the imposition of criminal penalties—to facilities such as hospitals could raise substantial policy and implementation issues. While the NRC acknowledges the recommendations of some commenters that hospitals and other facilities be addressed via this rule, the NRC believes that such extension would raise additional complexities that would be best addressed in a separate rulemaking, should the NRC determine at a future date that expansion of the scope of this rule is warranted.

The NRC is not including the following facilities or materials even though they are listed in § 236 of the AEA:

- Subsection 236a.(3) covering any nuclear fuel for a utilization facility licensed under this Act, or any spent fuel from such a facility. Section 229 of the AEA specifically applies to ''facilities and installations,'' while this subsection applies to ''nuclear fuel'' and ''spent nuclear fuel.'' Fuel is neither a facility nor installation; therefore, § 229, by its terms, is not applicable to this subsection.
- Subsection 236a.(5) covering any ''production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility'' during construction of the facility, if the destruction or damage

caused or attempted to be caused could adversely affect public health and safety. The NRC is primarily concerned with dangers posed by the unauthorized introduction of weapons or explosives into facilities when special nuclear material, byproduct material, or source material is present. Therefore, § 73.81(c) will apply only to those facilities designated in § 73.81(c)(2)(i) upon the receipt of such material. An unauthorized introduction of a weapon or explosive resulting in sabotage covered by AEA § 236 before the receipt of special nuclear material, byproduct material, or source material already constitutes a Federal crime. Although the proposed rule utilized the terms ''nuclear material'' and ''radioactive material'' instead of ''special nuclear material, byproduct material, or source material,'' the former terms are potentially vague and imprecise. Therefore, the final rule is using the latter terminology in order to avoid potential misinterpretation. This change, which appears in §§ 73.75(b)(2) and 73.81(c)(4), is intended to be clarifying rather than substantive.

- Subsection 236a.(6) covering any ''primary or backup facility from which a radiological emergency preparedness alert or warning system is activated.'' These facilities do not contain special nuclear material, byproduct material, source material, or the controls needed to operate a facility.
- Subsection 236a.(7) pertaining to other materials or property that the NRC designates by order or regulation. The NRC is excluding this section because the rulemaking implementing this subsection of § 236 has not commenced. The NRC may revisit this exclusion as part of the rulemaking implementing the Energy Policy Act of 2005 revisions to § 236, or in a separate rulemaking.

In response to a public comment, one class of facilities and installations that is exempted under the final rule includes those facilities and installations that already must comply with similar signage requirements under DOE regulations. DOE regulations already criminalize the unauthorized introduction of dangerous weapons, explosives, or other dangerous instruments or materials into or upon various facilities and installations within DOE's jurisdiction and require that such facilities and installations post notices to that effect. The DOE regulations, however, establish criminal penalties that, while not substantially different, are nonetheless not identical to those being established by this rule. Exempting these facilities from this rule avoids establishing what would in effect be identical crimes punishable by different penalties with respect to those facilities.

Criminal Penalties, Investigation, and Prosecution

Under the final rule's terms, whoever willfully introduces, without authorization, weapons or explosives into or upon any protected facility or installation (as defined in § 73.81(c)(2)) that is enclosed by a fence, wall, floor, roof, or other barrier would be guilty of a misdemeanor, and upon conviction, could be punished by a fine not to exceed $5,000, or imprisonment for not more than one year, or both, as set forth in section 229c of the AEA. Whoever willfully introduces, without authorization, weapons or explosives into or upon any other protected facility or installation would be, upon conviction, punishable by a fine of not more than $1,000, as set forth in section 229b of the AEA. The maximum penalties would vary based upon whether the facility in question is enclosed by a fence, wall, floor, roof, or other barrier. The proposed rule's version of 73.81(c)(1) was worded in a manner that, when read in conjunction with AEA sections 229b and 229c, was circular and potentially confusing. The final rule therefore contains a reworded section 73.81(c)(1). This modification is not, however, intended to change the substance of the rule in any way.

This final rule does not interfere with State prosecution of these crimes under State law, but it does allow the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, or other Federal law enforcement agencies to investigate and DOJ to prosecute in addition to, or instead of, the State government.

The NRC is also not making violations of § 73.75 criminally punishable under AEA sections 229b and 229c. The Commission's objective in this rulemaking, which the Commission believes is consistent with the Congressional intent, is to ensure that the criminal penalties in sections 229b and 229c apply to persons who introduce weapons into facilities without authorization. Furthermore, the NRC has sufficient administrative sanctions at its disposal to enforce the posting requirements.

Regulatory Burden—Posting of Signs

This regulation would not impose any burden on States. The only burden the regulation would impose on licensees is the statutorily mandated requirement that signs containing the quoted text in § 73.75 be posted conspicuously at each of the listed facilities. The rule requires that these signs be posted at all entrances to the protected area, as well as all entrances to buildings not within a protected area that nonetheless contain special nuclear material, byproduct material, or source material (except with respect to buildings for which security plans are not required under 10 CFR part 73). The link between the posting requirements and the NRC's security plan requirements under part 73 has been added to the final rule in response to a public comment to ensure consistency between the NRC's security regulations and the criminal penalties (and licensee posting obligations) being established. The signs may also include other prohibitions already posted at the point of entry.

Although one commenter recommended that additional signs be posted within each facility or installation to serve as further reminders of the regulation's criminal penalties, any person who willfully brings a prohibited item into the facility or installation will have already committed the crime by the time such reminder signs are encountered. The posting of such signs, therefore, will not be required, but licensees are not precluded from posting additional signs.

As the rule states, the signs must be easily readable day and night by both pedestrian and vehicular traffic. The NRC, in response to comments, is providing a 180-day implementation period for this requirement to allow licensees sufficient time to acquire and install the appropriate signs.

The posting requirement is primarily performance-based, stating that signs should be ''easily readable day and night.'' Accordingly, any design and placement that renders the notice ''easily readable day and night'' will satisfy this standard. Although one commenter suggested requiring lighting in order to ensure readability at night, the NRC believes it is sufficient to rely upon the performance-based standard for night readability, because different facilities, as well as different sign locations at each facility, may have different lighting needs.

Although the ''easily readable day and night'' standard is primarily performance-based, it is the NRC's view that compliance with an up-to-date version of the Americans with Disabilities Act (ADA) signage standards (currently set forth at 28 CFR part 36, appendix A, section 4.30) will satisfy the ''easily readable day and night'' standard with respect to those aspects of sign design and placement that the ADA standards address. In their present version, for instance, the ADA standards address topics such as character proportion, character height, finish and

contrast, and mounting location and height. Providing licensees the option of relying upon the ADA standards to help ensure compliance with the ''easily readable day and night'' standard should promote an appropriate balance of flexibility and predictability. The ADA standards may not, however, address all aspects of the ''easily readable day and night'' standard. For example, the current ADA standards do not address readability at night. Therefore, the ADA standards may, in practice, serve only as partial guidance with respect to sign design and placement.

One commenter recommended that the rule require licensees to provide a means for workers and visitors who lawfully possess weapons to temporarily store them at facility entrances prior to entering, such that the weapons could be retrieved later upon exiting. In the NRC's view, the presence or absence of temporary weapons storage for this purpose is primarily a convenience and logistical issue of potential concern to licensees, their employees, and other plant visitors; it is not an issue of significant regulatory concern that the NRC must address. Therefore, the final rule will neither prohibit nor mandate the presence of such temporary weapons storage at the entrances to affected facilities or installations.

Similarly, the posting of additional notices on roadways leading to checkpoints or parking areas is neither required nor prohibited by the rule and is, therefore, left to the licensee's discretion. It is important to note, however, that the location of a posted notice will define the point at which introduction into the facility occurs for purposes of this final rule, at least where introduction occurs at a traditional vehicle or pedestrian entrance to the facility. Accordingly, licensees wishing to post notices in addition to those required by § 73.75, such as to provide advance notice about the § 73.81 criminal penalties to workers or visitors who are approaching a facility entrance or a courtesy storage site for prohibited items, would be advised to ensure that such notices will not be mistaken for the notices required to be posted at facility entrances under § 73.75. This could be accomplished, for instance, by not using the precise language on the ''advance warning'' notices that is required to be used on the notices posted pursuant to § 73.75. Such additional ''advance warning'' notices, of course, would not take the place of the notices that § 73.75 requires to be posted at all vehicle and pedestrian entrances to each protected facility or installation.

Although the text of the final rule does not specifically address such situations, there may, as a practical matter, be cases in which a covered facility does not require its own posted notices. This would seem most likely to occur when one covered facility is embedded completely within the protected area of another covered facility (for example, an independent spent fuel storage facility located entirely within a nuclear power plant's protected area). Because § 73.75(b)(1) requires the posting of notices for protected areas only at the protected area's entrances, the embedded facility would not require its own notices if none of the embedded facility's entrances serve as entrances to the larger protected area.

One non-substantive change to the § 73.75 posting provision is that a new subsection 73.75(a) has been added to identify the categories of facilities to which § 73.75 applies. This eliminates an unnecessary cross reference to § 73.81(c). Another non-substantive change involves § 73.81(c)(2) of the proposed rule. The requirement found in that provision was redundant, serving merely to remind readers that there are associated posting requirements in § 73.75. Because some of the definitions in § 73.81(c) of the final rule perform a similar reminder function by referencing the § 73.75 posting requirements, § 73.81(c)(2) is unnecessary and has been removed.

Definitions of Key Terms

The unauthorized introduction—whether by carrying, transporting, discharging of a firearm, or otherwise—of weapons, explosives, or other dangerous instruments or materials into or upon the area marked by the posted notices will constitute a Federal crime under this final rule. For purposes of this final rule, ''without authorization'' means lacking authorization, as part of one's official duties, to carry the item in question. Accordingly, the introduction of weapons by security guards, peace officers, or military personnel as part of their official duties would be ''authorized'' and these individuals would not be subject to criminal sanctions under this rule. Additionally, the introduction of potentially dangerous industrial tools, machinery, or other materials into a facility as part of one's job duties would likewise not be subject to criminal sanctions under this rule.

As noted above, a new term, ''protected facility or installation,'' has been added to the final rule. This term, which encompasses solely those portions of facilities that the criminal penalties are meant to protect, is included to ensure that the posting requirements under § 73.75 and the criminal penalty provisions under § 73.81 will be consistent with one another (a task previously performed by the proposed rule's definition of ''introduce'') and to create a simple means of referring, in § 73.81(c)(1), to the facility areas that provision is meant to cover.

The terms ''dangerous weapons,'' ''dangerous instrument or material,'' and ''explosives'' are not defined in the statute that these regulations would implement. In addition, the DOE regulations referred to above utilize these same terms to define comparable criminal conduct but do not define them. The NRC has determined, however, that enforcement could be enhanced by providing definitions for at least some of these terms. Furthermore, a number of public comments recommended providing definitions to promote clarity and consistency in the rule's implementation.

Accordingly, the NRC, after consultation with DOJ, has adopted a set of definitions from existing Federal criminal statutes. A newly inserted definition for the rule's term ''dangerous weapon'' references existing definitions found at 18 U.S.C. 921(a)(3) and 26 U.S.C. 5845(a) for the term ''firearm'' and the 18 U.S.C. 930(g)(2) definition of the term ''dangerous weapon.'' [1] Although these relatively broad incorporated definitions may overlap with one another in many respects, the rule references each of them in order to ensure that no legitimately dangerous items will be inadvertently left uncovered by this rule. In addition, a new definition for ''explosive'' incorporates the definition of ''explosive'' found at 18 U.S.C. 844(j). The referenced ''firearm'' definitions do provide exceptions for antique weapons, certain recreational and sporting guns, and army surplus ordnance. Those exceptions, however, will have no effect for purposes of this final rule, because antique weapons, recreational and sporting guns, and army surplus ordnance still fall within the terms of the 18 U.S.C. 930(g)(2) definition of ''dangerous weapon,'' which broadly covers any ''weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or

[1] Because the term ''dangerous weapon'' as used in 18 U.S.C. 930(g)(2) does not expressly cover firearms, the NRC believes it is appropriate to incorporate definitions of ''firearm'' as well.

serious bodily injury.'' This is appropriate because even the types of weapons excepted under the ''firearm'' definitions are not appropriate for introduction, without authorization, into highly secure nuclear facilities.

The NRC does not plan to issue guidance for licensees beyond what is contained in this statement of considerations to further define these terms. The NRC considers extensive guidance to licensees regarding the reporting requirements associated with this final rule to be unnecessary. The purpose of the rule is to criminalize the unauthorized introduction of items that licensee security plans should already be prohibiting as part of their existing security efforts. Such items include guns, explosives, and any other items that would pose a legitimate security threat if brought into a protected facility without authorization. Unremarkable personal items such as pocket knives attached to key chains, butter knives in lunch boxes, and so on are not intended to be covered by this rule, and so would not trigger any licensee reporting requirements absent some further facts (such as, for example, evidence of intent to commit sabotage) which would implicate some other criminal provision or other basis for reporting the incident. Indeed, the 18 U.S.C. 930(g)(2) definition of ''dangerous weapon,'' which the final rule's definition of ''dangerous weapon'' incorporates, expressly excludes pocket knives with blades less than 2½ inches long. With these principles in mind, as well as the additional clarity provided by the definitions of ''dangerous weapon,'' ''firearm,'' and ''explosive'' that are being incorporated from existing Federal criminal statutes, the NRC expects that licensees will be able to comply with the reporting requirements associated with this rule without additional formal guidance. As explained in the next section of this statement of considerations, however, the NRC, after consulting with DOJ, will consider whether to adopt any additional guidance that is submitted by the regulated community to the NRC for review.

As to the term ''willful,'' the NRC is also declining a commenter's recommendation that the term be defined. The NRC expects that prosecutors and courts will define the term as it is usually defined when used in Federal criminal statutes. The U.S. Supreme Court has stated that, ''[a]s a general matter, when used in the criminal context, a 'willful' act is one undertaken with a 'bad purpose.' '' *Bryan* v. *United States,* 524 U.S. 184, 191 (1998). One common way to prove the existence of a ''bad purpose'' is to show that the defendant ''acted with knowledge that his conduct was unlawful.'' *Id.* at 192. This is consistent with one commenter's suggestion that the definition of willful should refer to ''evidence of subterfuge, masking, or malevolent intent,'' because such evidence would tend to indicate that the defendant knew the conduct in question was unlawful. Further, the easily readable notices posted at all vehicle and pedestrian entrances will help to ensure that all visitors are aware of the prohibition.

The definition of the term ''introduce,'' which was included in the proposed rule, is replaced in the final rule for clarification purposes with a new § 73.81(c)(3), which serves to define the entire phrase that is used in § 73.81(c)(1) (i.e., ''carrying, transporting, or otherwise introducing or causing to be introduced''). The new § 73.81(c)(3) removes any possible suggestion that the terms ''carrying,'' ''transporting,'' and ''otherwise introducing'' should be analyzed separately, rather than as a single concept meant to cover any conceivable method of introduction. The new provision also more expressly accounts for the fact that entrance to a protected facility or installation might occur at a location that is not a traditional vehicle or pedestrian entrance, and which therefore might not be in the vicinity of a notice posted pursuant to § 73.75. For instance, a perpetrator carrying a prohibited item might try to enter the facility by breaching a fence, wall, or other barrier, or by some other means that occurs away from the vehicle and pedestrian entrances and any § 73.75 notices. Under the proposed rule's formulation, it could have been unclear in these circumstances whether or when an introduction has actually occurred, because the proposed rule relied entirely upon the location of the notice to define when an ''introduction'' occurs. The new § 73.81(c)(3), therefore, relies upon a common sense concept of entering a facility for those instances where entry does not occur at a traditional ''entrance.'' When entrance to the facility does occur at a traditional vehicle or pedestrian entrance, however, the § 73.75 notice will remain the boundary marker for purposes of this rule.

Relationship of Rule to Licensee Security Procedures

As explained in the statements of consideration for the proposed rule, this rule should not require any changes to licensee security procedures. Under § 73.71(b)(1) and paragraph I(d) of appendix G to Part 73, licensees are required to report within one hour, followed by a written report within 60 days, ''the actual or attempted introduction of contraband into a protected area, material access area, vital area, or transport.'' For purposes of the final rule, weapons, explosives, or other dangerous instruments or materials that are introduced without authorization would be ''contraband.'' Licensees should note that the purpose of this rule is to broaden Federal prosecutorial authority, not to change licensee security practices.

With that said, licensees who suspect they have uncovered actual or attempted violations of this rule are encouraged to promptly notify local or Federal law enforcement authorities, who may provide additional guidance as circumstances warrant. Licensees may also, of course, contact the NRC for further guidance. The NRC does not currently plan to issue any additional guidance regarding the procedures that licensees should employ upon discovering actual or suspected violations or attempted violations of this rule. If licensees desire additional guidance regarding the procedural steps to follow after discovery of suspected or actual violations or attempted violations of this rule, the NRC is willing to review and consider whether to adopt any guidance that the regulated community sees fit to propose. The NRC anticipates that it would consult with DOJ before endorsing any proposed guidance.

Finally, the NRC notes that the preexisting responsibilities of licensees to maintain the security of their facilities are not altered by the fact that this rule is now making one particular class of security threat—the unauthorized introduction into protected facilities of dangerous weapons, explosives, or other dangerous instruments or materials—a Federal crime.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is establishing criminal penalties for the unauthorized introduction of weapons or explosives into or upon certain facilities and installations subject to the regulatory authority of the NRC. This action does not constitute the establishment of a standard that

contains generally applicable requirements.

V. Finding of No Significant Environmental Impact: Environmental Assessment

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and that, therefore, an environmental impact statement is not required. The basis for this determination is as follows:

The Need for the Rule:

This final rule is needed to implement § 229 of the AEA. In § 654 of the Energy Policy Act of 2005, Congress amended § 229 of the AEA, authorizing the NRC to issue regulations making it a Federal crime to, without authorization, introduce weapons or explosives into specified classes of facilities and installations subject to the regulatory authority of the NRC. Section 229 was also amended to require that each such regulation be posted conspicuously at the location involved.

Environmental Impacts of the Rule:

The NRC has completed its evaluation of the rule and concludes that it will not cause any significant environmental impact. The only action required by the rule is the requirement in § 73.75 that licensees place a notice at each entrance to the protected area and to any buildings not within a protected area that contain special nuclear material, byproduct material, or source material and which are required to have security plans under 10 CFR part 73. Licensees already post notices at the entrances to facilities, and this rule allows licensees to combine the notice required in § 73.75 with these other notices. The NRC requested public comments on the environmental assessment included with the proposed rule, which likewise predicted that there would be no significant environmental impacts, but no comments on the topic were received. The final rule includes essentially the same posting requirements that were found in the proposed rule, with only minor clarifications as to which buildings and areas are, and are not, covered by the posting requirements, as well as additional information regarding permissible sign formats. Therefore, the NRC has concluded that there will be little to no environmental impact of creating and posting the notices required by this final rule. Accordingly, the NRC concludes that there will be no significant environmental impacts associated with this action.

Alternatives to the Proposed Action:

As an alternative to the proposed action, the NRC staff considered not promulgating this rule (the ''no-action'' alternative). This would result in leaving unfulfilled the congressional authorization the NRC had sought. Moreover, because implementation of the rule would not result in any significant environmental impacts, the no-action alternative would not significantly reduce environmental impacts.

Accordingly, the NRC has determined in this environmental assessment that there will be no significant offsite impact to the public from this action.

VI. Paperwork Reduction Act Statement

This rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule does not establish any reporting requirements. In addition, the posting requirements contained in this rule are not included in the definition of information collection. This is because the text to be printed on the required notices is being completely supplied by NRC regulation (10 CFR 73.75(b)(3)), and a requirement to publicly disclose information that was originally provided by the Federal Government does not constitute an ''information collection.'' 5 CFR 1320.3(c)(2).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

VII. Regulatory Analysis

A regulatory analysis has not been prepared for this regulation. Congress authorized the NRC to implement by regulation § 654 of the Energy Policy Act of 2005, which establishes as a Federal crime the unauthorized introduction of weapons or explosives into NRC-designated facilities. The AEA requires that signs be conspicuously posted to warn facility entrants of the criminal prohibition. The only costs associated with implementing the rule are the costs to procure, post, and maintain these signs since procedures and organization required to protect against the unauthorized introduction of weapons are already required. The NRC estimates these costs to be $50 per sign, with an estimated average of six signs per affected facility, for an average total cost of $300 per facility. Based upon the number of facilities that would be covered by this rule if it were effective today, the NRC views $50,000 as a conservative industry-wide cost estimate. The NRC considers this cost to be reasonable because of the express congressional requirement that any facilities covered by regulations promulgated under AEA § 229a.(1) post such regulations ''conspicuously,'' and because the signs are required to be posted only at locations where entry into covered facilities would ordinarily occur.

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. The companies that own the facilities affected by this rule do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

IX. Backfit Analysis

The NRC has determined that a backfit rule, 10 CFR 50.109, 70.76, 72.62, 76.76, does not apply to this rule and that a backfit analysis is not required. A backfit analysis is not required because the only actions required by the rule are the procuring and posting of signs. The conspicuous posting of notices is expressly required by § 229a.(2) of the AEA for any facility covered by regulations promulgated under § 229a.(1), and so the requirement to post notices does not result from an exercise of NRC discretion. In any event, the posting of notices pursuant to this rule does not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

Likewise, the criminal penalties established by this rule merely authorize Federal prosecution of certain crimes, and therefore do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

X. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801–808), the NRC

has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

XI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the NRC on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005). Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 2. Section 73.75 is added to read as follows:

§ 73.75 Posting.

(a) This section applies to:

(1) Production or utilization facilities;

(2) High-level waste storage or disposal facilities and independent spent fuel storage installations;

(3) Uranium enrichment, uranium conversion, or nuclear fuel fabrication facilities.

(b)(1) Licensees or certificate holders operating facilities described in paragraph (a) of this section that have a protected area shall conspicuously post notices at every vehicle and pedestrian entrance to the protected area.

(2) Licensees or certificate holders operating facilities described in paragraph (a) of this section that include buildings not within a protected area that nonetheless contain special nuclear material, byproduct material, or source material shall conspicuously post notices at the personnel and vehicle entrances to each such building, except with respect to buildings for which no security plan is required under this part.

(3) The required notices must state: ''The willful unauthorized introduction of any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or upon these premises is a Federal crime. (42 U.S.C. 2278a.)''

(4) Every notice posted under this section must be easily readable day and night by both pedestrian and vehicular traffic entering the facility or installation.

(5) These notices may be combined with other notices.

(c) This section does not apply to facilities that, in addition to being regulated by the NRC under a license or certificate of compliance issued by the Commission, are also covered by U.S. Department of Energy regulations imposing criminal penalties, and associated posting requirements, under section 229 of the Atomic Energy Act with respect to unauthorized introduction of dangerous weapons, explosives, or other dangerous instruments or materials likely to produce substantial injury or damage to persons or property.

■ 3. In § 73.81, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 73.81 Criminal penalties.

* * * * *

(b) The regulations in part 73 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 73.1, 73.2, 73.3, 73.4, 73.5, 73.6, 73.8, 73.25, 73.45, 73.75, 73.80, and 73.81.

(c)(1) No person without authorization may carry, transport, or otherwise introduce or cause to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or upon a protected facility or installation. Willful violations of this provision are punishable by the criminal penalties set forth in sections 229b and 229c of the Atomic Energy Act of 1954, as amended.

(2) As used in this section:

(i) ''Protected facility or installation'' means any production or utilization facility, high-level waste storage or disposal facility, independent spent fuel storage installation, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility, but does not include those portions of such facilities that are not required under § 73.75(b) of this part to be identified by notices posted at their pedestrian and vehicle entrances, and does not include facilities described in § 73.75(c) of this part.

(ii) ''Without authorization'' means not authorized as part of one's official duties to carry the weapon, explosive, or other instrument or material;

(iii) ''Dangerous weapon'' includes any firearm, as defined in either 18 U.S.C. 921 or 26 U.S.C. 5845, or dangerous weapon, as defined in 18 U.S.C. 930;

(iv) ''Explosive'' means any explosive as defined in 18 U.S.C. 844(j).

(3) An item, such as a dangerous weapon, explosive, or other dangerous instrument or material, is considered to have been carried, transported, or otherwise introduced or caused to be introduced into or upon a protected facility or installation for purposes of paragraph (c)(1) of this section once the item has traveled past a notice posted pursuant to § 73.75 of this part at a vehicle or pedestrian entrance to the protected facility, or once the item has entered the protected facility or installation at a location that is not a vehicle or pedestrian entrance to the facility, whether such entry is accomplished through, over, under, or around a fence, wall, floor, roof, or other structural barrier enclosing the protected facility or installation or by any other means.

(4) For all protected facilities or installations that do not possess special nuclear material, byproduct material, or source material as of the effective date of this rule, this provision shall take effect upon receipt of such material at the applicable facility or installation.

Dated at Rockville, Maryland, this 5th day of October 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9–24566 Filed 10–13–09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 4, 122, 123, and 192

[CBP Dec. 09–39]

Technical Correction To Remove Obsolete Compliance Date Provisions From Electronic Cargo Information Regulations

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; technical correction.

SUMMARY: This final rule removes the compliance date provisions of various sections of the CBP regulations pertaining to mandatory advance electronic transmission of in-bound and out-bound cargo information. As all the provisions requiring advance electronic transmission of cargo information are now in effect because the various dates or events described in the compliance date paragraphs triggering the compliance date have occurred, the compliance date paragraphs are now obsolete.

DATES: The rule is effective on October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Gregory Olsavsky, Director, Cargo Control Division, Office of Field Operations, 202–344–1049.

SUPPLEMENTARY INFORMATION:

Background

As circumstances warrant, CBP sometimes publishes a regulation (a final or interim final rule) that delays its compliance date, or the compliance date for one or more of its provisions, until a future date and/or the occurrence of one or more specified events. When the condition or conditions precedent has been met, the provision becomes out of date and obsolete. This final rule removes several obsolete compliance date provisions from several sections of the CBP regulations.

Each compliance date provision being amended in this technical correction involves a final rule that was promulgated pursuant to section 343(a) of the Trade Act of 2002, as amended by the Maritime Security Act (19 U.S.C. 2071 note) (hereafter, section 343(a) of the Act). The final rule was published in the **Federal Register** (68 FR 68140) on December 5, 2003. Section 343(a) of the Act mandates the collection of cargo information through a CBP-approved electronic data interchange system before cargo is brought into or departs from the United States by any mode of commercial transportation (sea, air, rail, truck). This requirement spawned new sections of the regulations (19 CFR 122.48a, 123.91, 123.92, and 192.14) and required amendment of an existing section (19 CFR 4.7) to implement the law. Four of the five sections pertain to the advance electronic transmission requirement for cargo arriving in the United States by vessel carrier, air carrier, rail carrier, and truck carrier, and the fifth section pertains to this requirement for cargo departing from the United States onboard all modes of transportation. Because some carriers were not yet automated (with systems capable of electronic transmission through the appropriate CBP-approved data interchange system) or CBP had to upgrade its system, the new and amended regulations were drafted to contain a compliance date provision that delayed the date the carriers would be required to comply with the mandatory electronic transmission requirements. Over time, the compliance dates for these five sections of the CBP regulations have taken effect, rendering these provisions obsolete.

Changes Made in This Final Rule

This final rule amends the following five sections of the CBP regulations to remove from each an obsolete compliance date provision:

19 CFR 4.7

Under 19 CFR 4.7, applicable to commercial vessels transporting cargo to the United States, CBP must receive the CBP-approved electronic equivalent of the vessel's cargo declaration 24 hours before the cargo is laden aboard the vessel at the foreign port (19 CFR 4.7(b)(2)). This section also sets forth other requirements, such as information to be transmitted, and a compliance date. Under 19 CFR 4.7(b)(5), vessel carriers (and non-vessel operating common carriers electing to participate) must comply with the requirement to make electronic transmissions under paragraph (b)(2) within 90 days of December 5, 2003 (the date the implementing final rule was published) at all ports of entry in the United States.

Inasmuch as the compliance date has passed, this final rule removes paragraph (b)(5) from this section and makes a conforming change to paragraph (b)(2).

19 CFR 122.48a

Under 19 CFR 122.48a, applicable to commercial air carriers transporting cargo to the United States, CBP must electronically receive from an inbound air carrier (or from another party authorized under paragraph (c)(1) of this section) certain information concerning incoming cargo. In the case of flights departing directly to the United States from any port or place in North America, CBP must receive the information no later than the aircraft's departure and, for flights departing from any other foreign port or place, no later than 4 hours prior to the aircraft's arrival in the United States. Section 122.48a sets forth other requirements, including the information to be transmitted and a compliance date.

Under 19 CFR 122.48a(e)(1), air carriers must comply with the requirement to transmit cargo information to CBP electronically on and after March 4, 2004. Under 19 CFR 122.48a(e)(2), CBP may delay the compliance date set forth in paragraph (e)(1) of this section in certain circumstances (that need not be specified here). Under this paragraph (e)(2), CBP would announce any such delays in the **Federal Register**. As the March 4, 2004, compliance date was not delayed, no announcements of delay were published.

Inasmuch as the compliance date for all air carriers has passed, this final rule removes paragraph (e) from this section and makes a conforming change to paragraph (a).

19 CFR 123.91

Under 19 CFR 123.91, applicable to U.S. bound railroad trains with commercial cargo aboard, CBP must electronically receive from the rail carrier certain information concerning the incoming cargo. CBP must receive the information no later than 2 hours prior to the cargo's arrival at the first port of arrival in the United States (19 CFR 123.91(a)). This section also sets forth other requirements, including exceptions, the information to be submitted, and a compliance date. Under 19 CFR 123.91(e), carriers are required to comply with the section's electronic transmission requirements 90 days from the date that CBP publishes notice in the **Federal Register** informing carriers that the electronic data interchange system for transmission of cargo information is operational at the affected port(s).

On April 12, 2004, CBP published a notice in the **Federal Register** (69 FR 19207) providing a schedule of dates by which the electronic data interchange

system would be implemented, in three phases, at the various affected ports of entry. Phase one was for implementation at the ports that were already system-operational, and subsequent phases would follow at other ports, as set forth in the 2004 notice. Accordingly, the carriers commenced advance electronic transmissions at those ports by the specified dates, each of which was set at least 90 days after publication of the 2004 notice. The implementation was complete at all ports in 2004, rendering 19 CFR 123.91(e) obsolete. Therefore, this final rule amends 19 CFR 123.91 by removing paragraph (e) and making a conforming change to paragraph (a).

19 CFR 123.92

Under 19 CFR 123.92, applicable to U.S. bound trucks with commercial cargo aboard, CBP must electronically receive from the truck carrier certain information concerning the incoming cargo. CBP must receive the information, depending on the electronic system employed by the carrier, no later than 30 minutes or one hour, or a lesser authorized period, prior to the cargo's arrival at the first port of arrival in the United States (19 CFR 123.92(a)). This section also sets forth other requirements, including exceptions, the information to be submitted, and a compliance date. Under 19 CFR 123.92(e), carriers are required to comply with these electronic transmission requirements on and after 90 days from the date that CBP publishes a notice in the **Federal Register** announcing the operability of the electronic interchange system at the affected port(s) and that the carriers must commence presenting the required cargo information through that system.

CBP published a series of notices (cited below) in the **Federal Register** announcing the operability of the electronic system at the various affected ports and the dates by which carriers were to commence electronic transmissions at those ports, each date being at least 90 days from publication of the notice. All such ports have been system operational, and all carriers have been complying with the regulation's requirements, since February 11, 2008. As all the compliance dates have taken effect, CBP is amending 19 CFR 123.92 to remove the obsolete compliance date provision of paragraph (e) and making a conforming change to paragraph (a). (See 69 FR 51007, August 17, 2004; 71 FR 62922, October 27, 2006; 72 FR 2435, January 19, 2007; 72 FR 8109, February 23, 2007; 72 FR 18574, April 13, 2007; 72 FR 25965, May 8, 2007; 72 FR 63805, November 3, 2007.)

19 CFR 192.14

Under 19 CFR 192.14, applicable to all carrier modes departing the United States transporting commercial cargo, carriers are required to file export cargo information electronically through the Automated Export System (AES) prior to departure, as follows: 24 hours prior to departure for vessel carriers, 2 hours prior to departure for air carriers, one hour before arrival at the border for truck carriers, and two hours before arrival at the border for rail carriers. Section 192.14(e), provides that these mandatory electronic (AES) filing requirements are to be implemented concurrent with the completion of the redesign of CBP's AES commodity module and the effective date of a Department of Commerce (DOC) rulemaking pertaining to mandatory electronic filing of export cargo information. Section 192.14(e) also requires CBP to publish a notice in the **Federal Register** announcing the compliance date.

CBP completed the design of the AES module in 2004, and, on June 2, 2008, the DOC published in the **Federal Register** (73 FR 31548) U.S. Census Bureau regulations pertaining to mandatory electronic transmission of export cargo information, with an effective date of July 2, 2008, and an implementation date of September 30, 2008. Thus, on June 9, 2008, CBP published a general notice in the **Federal Register** (73 FR 32466) announcing a September 30, 2008 compliance date for the electronic transmission requirements of 19 CFR 192.14. This rendered the compliance date provision of 19 CFR 192.14(e) obsolete. Accordingly, this final rule amends 19 CFR 192.14 by removing paragraph (e) and making a conforming change to paragraph (a).

Inapplicability of Notice and Comment and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), CBP has determined that it would be impracticable, unnecessary, and contrary to the public interest to delay publication of this rule in final form, pending an opportunity for public comment, and that there is good cause for this final rule to become effective immediately upon publication. The technical corrections in this rule merely remove from five sections of the regulations compliance date provisions that have become obsolete for the reason that the date or event that triggers the compliance date in each section has passed.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Also, this amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Signing Authority

The signing authority for this final rule document falls under 19 CFR 0.2(a) pertaining to the authority of the Secretary of Homeland Security (or his or her delegate) to prescribe regulations not related to customs revenue functions.

List of Subjects

19 CFR Part 4

Customs duties and inspection, Freight, Maritime carriers, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 122

Air carriers, Aircraft, Customs duties and inspection, Freight, Reporting and recordkeeping requirements, Security measures.

19 CFR Part 123

Customs duties and inspection, Freight, Motor carriers, Railroads, Reporting and recordkeeping requirements.

19 CFR Part 192

Aircraft, Exports, Motor vehicles, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

■ For the reasons set forth in the preamble, parts 4, 122, 123 and 192 of title 19, Code of Federal Regulations (19 CFR parts 4, 122, 123, and 192) are amended as follows:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 and the specific authority citation for section 4.7 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 60105.

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a);

* * * * *

§ 4.7 [Amended]

■ 2. Amend § 4.7 by removing from the first sentence of paragraph (b)(2) the words ''subject to the effective date provided in paragraph (b)(5) of this section,'' and removing paragraph (b)(5).

PART 122—AIR COMMERCE REGULATIONS

■ 3. The general authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

§ 122.48a [Amended]

■ 4. Amend § 122.48a by removing from the first sentence of paragraph (a) the words ''and subject to paragraph (e) of this section,'' and removing paragraph (e).

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

■ 5. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i)), Harmonized Tariff Schedule of the United States (HTSUS), 1431, 1433, 1436, 1448, 1624, 1646c, 2071 note.

* * * * *

§ 123.91 [Amended]

■ 6. Amend § 123.91 by removing from the first sentence of paragraph (a) the words ''and subject to paragraph (e) of this section,'' and removing paragraph (e).

§ 123.92 [Amended]

■ 7. Amend § 123.92 by removing from the first sentence of paragraph (a) the words ''and subject to paragraph (e) of this section,'' and removing paragraph (e).

PART 192—EXPORT CONTROL

■ 8. The general authority citation for part 192 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

* * * * *

§ 192.14 [Amended]

■ 9. Amend § 192.14 by removing from the first sentence of paragraph (a) the words ''and subject to paragraph (e) of this section,'' and removing paragraph (e).

Dated: October 8, 2009.

Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E9–24668 Filed 10–13–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9462]

RIN 1545–BH91

Disregarded Entities and Excise Taxes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9462) that were published in the **Federal Register** on Monday, September 14, 2009, clarifying that a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose, but regarded as a separate entity for certain excise tax purposes, is treated as a corporation for tax administration purposes related to those excise taxes.

DATES: This correction is effective on October 14, 2009, and is applicable on September 14, 2009.

FOR FURTHER INFORMATION CONTACT: Michael H. Beker, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document is under section 7701 of the Internal Revenue Code.

Need for Correction

As published on Monday, September 14, 2009 (74 FR 46903), the final and temporary regulations (TD 9462) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9462), which was the subject of FR Doc. E9–21987, is corrected as follows:

On page 46904, column three, the signature line, the word ''Mundace'' is corrected to read ''Mundaca''.

Diane O. Williams,

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

[FR Doc. E9–24656 Filed 10–13–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY–035–FOR; Docket ID: OSM–2009–0003]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment with certain exceptions.

SUMMARY: We are issuing a final decision on an amendment to the Wyoming regulatory program (the ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Our decision approves in part, disapproves in part and defers in part the amendment. Wyoming proposed revisions to and additions of rules concerning self-bonding requirements (Administrative Record No. WY–40–01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment to reflect changes made at its own initiative. Wyoming intends to revise its program to increase the flexibility of its self-bonding program and at the same time not increase the risk to the State.

DATES: *Effective Date:* October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Fleischman, Telephone: 307.261.6550, E-mail address: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders

by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Submission of the Proposed Amendment

By letter dated March 7, 2006, Wyoming submitted a proposed amendment to its program rules concerning self-bonding requirements (Administrative Record No. WY–40–01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment to reflect changes made at its own initiative. The provisions of Wyoming's Coal Rules and Regulations that Wyoming proposed to revise and add were: Chapter 1, Section 2(k), definition of the term ''bond;'' Chapter 11, Section 2(a)(vii)(A), dealing with self-bonding application informational requirements concerning certain indicators of financial strength of an applicant; Chapter 11, Section 2(a)(xii)(A), dealing with certain self-bonding mandatory criteria, including various ratio measures of financial strength and percent limits of self-bonding obligations versus percent of tangible net worth for operator self-bonding applicants; Chapter 11, Section 2(a)(xii)(B), dealing with certain self-bonding mandatory criteria, including various ratio measures of financial strength and percent limits of self-bonding obligations versus percent of tangible net worth for parent corporate guarantor self-bonding applicants; Chapter 11, Section 2(a)(xii)(D), dealing with self-bonding application informational requirements for self-bonding operator applicants that choose to include assets outside of the United States in establishing their tangible net worth; and Chapter 11, Section 2(a)(xii)(E), detailing information that the regulatory authority will require if it accepts a foreign parent or non-parent corporate guarantee.

We announced receipt of the proposed amendment in the April 21, 2006 **Federal Register** (71 FR 20604), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. WY–40–07). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 22, 2006. We received comments from two mining associations and one Federal agency.

During our review of the amendment, we identified concerns relating to the newly-created provisions of Wyoming's Coal Rules and Regulations at Chapter 11, Section 2(a)(xii)(D) and (E) that would authorize the Administrator to accept guarantees from foreign companies for self-bonds for domestic mining companies and allow the inclusion of foreign assets as part of a company's tangible net worth when determining eligibility to guarantee a self-bond. We notified Wyoming of our concerns by letter dated May 26, 2006 (Administrative Record No. WY–40–08).

Wyoming responded in a letter dated June 23, 2006, by submitting additional explanatory information in lieu of changing the proposed rule language, as we suggested in our issue letter (Administrative Record No. WY–40–09).

Based upon Wyoming's additional explanatory information for its amendment, we reopened the public comment period in the July 31, 2006 **Federal Register** (71 FR 43092); Administrative Record No. WY–40–10). The public comment period ended on August 15, 2006. We received comments from one industry group.

In separate letters dated September 20, 2007 and May 13, 2008, we requested that Wyoming clarify the characterization and meaning of its ''Statement of Reasons'' and rationale that was submitted in support of the proposed rule changes at Chapter 11, Section 2(a)(xii)(A) and (B) concerning tangible net worth limits (Administrative Record Nos. WY–40–13 and WY–40–15). Wyoming responded to our requests on March 24 and July 1, 2008, respectively (Administrative Record Nos. WY–40–14 and WY–40–16), and are discussed in Finding III.A.3. below.

III. OSM's Findings

30 CFR 732.17(h)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR 732.15, including that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of 30 CFR Part 700. In 30 CFR 730.5, OSM defines ''consistent with'' and ''in accordance with'' to mean (a) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

A. Revisions to Wyoming's Rules That Are Not the Same as the Corresponding Provisions of SMCRA and/or the Federal Regulations

1. Chapter 1, Section 2(k), Definition of ''Bond''

In addition to several format changes, the Wyoming Land Quality Division (LQD), at its own initiative, proposes to revise its rules at Chapter 1, Section 2(k). The currently approved Wyoming provision at Chapter 1, Section 2(k) is in accordance with the Federal counterpart provision at 30 CFR 800.12 and defines ''bond'' to include surety bonds, letters of credit, cash, or a combination of any of these bonding methods in lieu of a surety bond or self-bond instrument. Wyoming proposes to expand the definition of ''bond'' to allow the Administrator to accept alternative financial assurances which provide comparable levels of assurance for reclamation performance, and require OSM approval of the alternative assurances. As proposed, the definition of ''bond'' at Chapter 1, Section 2(k) would read as follows:

(k) ''Bond'' means a surety or self-bond instrument by which the permit applicant assures faithful performance of all requirements of the Act, all rules and regulations promulgated thereunder, and the provisions of the permit and license to mine. The term shall also include the following, which the operator has deposited with the Department of Environmental Quality in lieu of a Surety Bond or Self-Bond Instrument:

(i) Federal insured certificates of deposit*;*

(ii) Cash*;*

(iii) Government securities*;*

(iv) Irrevocable letters of credit*;*

(v) An alternative method of financial assurance that is acceptable to the Administrator and provides for a comparable level of assurance for performance of reclamation obligations. The alternative method of financial assurance must first be approved by the Office of Surface Mining*;* or

(vi) A combination of any of these bonding methods.

In its ''Statement of Reasons,'' the LQD notes that the proposed rule allows

for some flexibility in evaluating alternative financial assurances but still requires OSM approval before the instruments may be accepted. OSM evaluates alternative bonding systems to assure that the regulatory authority will have sufficient money available to complete the reclamation plan for any areas which may be in default at any time, and provide a substantial economic incentive for the operator to comply with all reclamation provisions.

The Federal regulations at 30 CFR 800.12 provide that the regulatory authority may allow for—

(a) A surety bond;

(b) A collateral bond;

(c) A self-bond; or

(d) A combination of any of these bonding methods.

The preamble to 30 CFR 800.12 states that the rule lists the three types of bonds mentioned because those are three types authorized under section 509 of SMCRA. See the July 19, 1983 **Federal Register** (48 FR 32940). However, section 509(c) also provides that the Secretary may approve, as part of a State or Federal program, an alternative system that will meet the objectives and purposes of the bonding program under section 509. An alternative bonding system must meet the requirements of section 509(c) of the Act, as implemented by 30 CFR 800.11(e), in order to be approved by the Secretary. See the August 10, 1983 **Federal Register** (48 FR 36418).

The Federal regulations at 30 CFR 800.11(e) establish the criteria for approval of an alternative bonding system. Specifically, an alternative bonding system must assure (1) that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time; and (2) that the alternative will provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

Wyoming's proposed rule change is too general to meet those standards for approval. Wyoming does not identify a specific alternative bonding system in its proposed rule. Rather, it allows a permit applicant to submit an undefined alternative method of financial assurance that has not yet been approved by the Office of Surface Mining as part of the Wyoming program to the LQD Administrator for acceptance. Consistent with the state program amendment process outlined at 30 CFR 732.17, an alternative method of financial assurance (*i.e.,* an alternate bonding system) must be approved by OSM as part of a state program before it can be implemented. For example, if and when Wyoming submits a specific alternative method of financial assurance (*i.e.,* an alternate bonding system) to us, we will review that submittal as a proposed state program amendment to ensure that it meets the criteria in 30 CFR 800.11(e). If we ultimately approve Wyoming's submission as part of its program, only then will the Administrator have the authority to accept and implement the alternative method of financial assurance when it is submitted by an applicant. In this respect, nothing is gained by the current Wyoming proposal. For the reasons discussed above, we are deferring our decision on Wyoming's proposed rule change as it is not ripe for making a determination at this time.

2. Chapter 11, Section 2(a)(vii)(A), Rating Organizations

At its own initiative, Wyoming proposes to revise its rules at Chapter 11, Section 2(a)(vii) which specifies informational requirements for self-bond applications. Among other things, an operator self-bonding applicant must submit information establishing that it meets one of three criteria related to financial strength in its application. This proposed rule change would modify the alternate financial criterion dealing with ratings by certain statistical ratings organizations.

The current Wyoming regulations provide that, as one of the three alternate showings required under Section 2(a)(vii), an operator must show that it has a rating for all bond issuance actions over the past five years of ''A'' or higher as issued by either Moody's Investor Service (Moody's) or Standard and Poor's Corporation (Standard and Poor's). Wyoming proposes to amend paragraph (A) to allow operators to use any ''nationally-recognized statistical rating organization'' (NRSRO) as approved by the Securities and Exchange Commission (SEC), if acceptable to the regulatory authority, to establish its rating for all bond issuance actions over the past five years. If an SEC-approved NRSRO acceptable to the regulatory authority uses a rating system different from Moody's and Standard and Poor's, the operator must show that its rating by the NRSRO is equivalent to a rating of ''A'' or higher by either Moody's or Standard and Poor's.

In its ''Statement of Reasons,'' the LQD notes that the proposed rule change incorporates the provision that any alternate firm must be acceptable to the regulatory authority to qualify, which allows for case-by-case evaluations. Further, the alternative organization's rating designation must be evaluated against Moody's or Standard and Poor's designations to ensure consistency and, since various rating organizations with strong credentials are available, the options for rating should not be limited to only two firms.

The counterpart Federal self-bonding regulations at 30 CFR 800.23(b)(3) also specify informational requirements for self-bond applications and require that applicants submit information establishing that they meet one of three criteria related to financial strength in their application. The Federal financial criterion in subparagraph (i), dealing with ratings by certain statistical ratings organizations, requires that an applicant for a self-bond (or its parent corporation guarantor or other corporate guarantor) have ''a current rating for its most recent bond issuance of 'A' or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation.''

The rationale for that regulation is set forth in the preamble at 48 FR 36422 (August 10, 1983):

> A rating by Standard and Poor's or Moody's of ''A'' or higher under Section 800.23(b)(3)(i) and a tangible net worth of at least four times the bond amount under Section 800.23(d) together will assure a low risk of company bankruptcy for those companies choosing to qualify under Section 800.23(b)(3)(i), rather than under Section 800.23(b)(3)(ii) or (iii). In order to rate the bond issuance of a company, these ratings services do thorough studies of the financial records of the issuing firms to determine ability to repay the bonds. The services are relied upon heavily by creditors and maintain a high rate of predictive success.

On September 29, 2006, the President signed the Credit Rating Agency Reform Act of 2006 into law (Pub. L. 109–291, 16 Stat. 1327). The law was enacted to, among other things, ''improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry.'' *Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 3850,* Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong. 2d Sess. (Sept. 6, 2006), p. 1. On June 18, 2007 (72 FR 33564), the SEC adopted final regulations implementing the new law.

On June 28, 2007, the SEC announced that seven (7) credit rating agencies previously identified as NRSRO's (Moody's Investors Service; Standard & Poor's Rating Services; Fitch, Inc.; A.M. Best Co., Inc.; DBRS (Dominion Bond Rating Service Limited); Japan Credit Rating Agency, Ltd.; and Rating and Investment Information, Inc.) could

continue to represent themselves or act as NRSROs while the SEC processed their registration applications. *SEC Allows Existing Credit Rating Agencies to Act as NRSROs,* Dechert on Point (July 2007).

Moody's and Standard and Poor's have over 80% of the credit rating industry market share as measured by revenues according to the *Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 3850,* Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong. 2d Sess. (Sept. 6, 2006). One of the purposes of the Credit Rating Agency Reform Act of 2006 was to open up the credit rating industry to competition. Wyoming's proposed amendment allows an operator to use bond ratings from an NRSRO only if it is both approved by the SEC and acceptable to the regulatory authority, and thereby ensures that only ratings by reliable NRSRO's are used as a measure of a company's financial strength. We find that Wyoming's proposed rule change is consistent with the Credit Rating Agency Reform Act of 2006 and its implementing regulations and that its adoption will not make Wyoming's rules less effective than the corresponding Federal regulations at 30 CFR 800.23(b)(3)(i) and (c). We approve Wyoming's proposed rule change.

3. Chapter 11, Section 2(a)(xii)(A) & (B), Tangible Net Worth Limits

At its own initiative, Wyoming proposes to revise its rules at Chapter 11, Section 2(a)(xii)(A) and (B). Wyoming's existing language at Chapter 11, Section 2(a)(xii)(A) and (B) is substantively identical to Federal counterpart provisions at 30 CFR 800.23(d). Chapter 11, Section 2(a)(xii)(A) and (B) set forth certain restrictions on the regulatory authority's authority to accept self-bonds from operators and parent guarantors as follows:

(A) For the Administrator to accept an operator's self-bond, the total amount of the outstanding and proposed self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States, or

(B) For the Administrator to accept a parent corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the parent corporate guarantor's tangible net worth in the United States. * * *

Wyoming proposed to amend these provisions so as to provide operators and parent guarantors greater self-bonding capability if the operator or parent guarantor meets more stringent financial standards. Wyoming proposed to amend its regulations at Chapter 11, Section 2(a) (xii) (A) and (B) by adding language as follows:

(A) For the Administrator to accept an operator's self-bond, the total amount of the outstanding and proposed self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States, however the Administrator may allow for an increase in the self-bond amount to 35 percent of tangible net worth for operators that have a ratio of total liabilities to net worth of 1.5 or less and a ratio of current assets to current liabilities of 1.7 or greater, or

(B) For the Administrator to accept a parent corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the parent corporate guarantor's tangible net worth in the United States, however the Administrator may allow for an increase in the self-bond amount to 30 percent of tangible net worth for operators that have a ratio of total liabilities to net worth of 1.5 or less and a ratio of current assets to current liabilities of 1.7 or greater, or

Thus, under Wyoming's proposed amendment, operators and parent guarantors would be allowed to self-bond up to 35% and 30%, respectively, of their tangible net worth if they have both a ratio of total liabilities to net worth of 1.5 or less and a ratio of current assets to current liabilities of 1.7 or greater. The proposed ratios are intended to represent an increase in financial stability over the current ratios.

To approve Wyoming's proposal, OSM must base its decision on the information contained in the State submission of the amendment. The record needs to contain sufficient information and data to support the conclusion that the State's proposal is as effective in meeting the requirements of the Act as are the Federal regulations. OSM can assist the States with compilation of information and data, but it remains the responsibility of the State seeking approval of an alternative to establish the necessary record.

In its ''Statement of Reasons,'' the LQD indicates that the proposed rule changes would strengthen the existing regulatory framework and permit a company that can demonstrate greater financial strength than is required by the existing rules to be granted additional self-bonding capacity. In order to measure the additional financial strength of a company with the proposed alternative credit ratios, the LQD relies on recent studies completed by Standard and Poor's and Moody's that analyzed credit ratios and credit default probabilities by rating categories. The LQD maintains the studies indicate that tightening the Liability to Net Worth Ratio (ratio of liabilities to net worth) from 2.5 to 1.5 is equivalent to a company moving from a non-investment grade rating to an investment grade rating, and that the probability of a credit default is reduced by more than half. Although the studies do not address the additional liquidity demonstrated by a Current Ratio (ratio of current assets to current liabilities) of 1.7 or better, the LQD states that the proposed current ratio would add to a company's financial ability to honor its immediate commitments. The LQD used the rating organization studies to compare default rates for companies with the existing and proposed Liabilities to Net Worth ratios. The LQD states that the stronger ratios provide more than enough protection to assure that the State is taking no more risk than it would under the existing rules, and that the approximate 40% strengthening of the financial ratios (from 2.5 to 1.5 for the Liability to Net Worth Ratio and 1.2 to 1.7 for the Current Ratio) should allow for at least a 40% increase in self-bonding capacity (25% to 30% or 35% of Net Worth).

In letters dated March 24 and July 1, 2008, Wyoming responded to OSM's requests by providing additional analysis and including specific references to the Standard and Poor's and Moody's studies as the basis for some of the statements in the ''Statement of Reasons.''

Wyoming states that a 40% reduction in the ratio of liabilities to net worth equates to a 40% increase in financial strength. Under the proposal Wyoming states this justifies a 40% increase in self bond measured against net worth.

The Federal self-bonding rules establish minimum criteria for allowing an applicant for a surface coal mining and reclamation operation permit to self-bond.

States are not required to adopt self-bond rules, but if States choose to allow self-bonding, these rules establish minimum criteria. States choosing to allow self-bonding may adopt more detailed rules that reflect the financial structures of the local industry, if necessary to provide the regulatory authority additional protection from risk of forfeiture. * * * The self-bonding rules in this rulemaking form the benchmark by which the States can build their own programs if they wish to allow self-bonding of surface coal mining operations. If they choose to allow self-bonding, States can add their own additional relevant criteria.

See the August 10, 1983 **Federal Register** (48 FR 36418).

The Federal regulation at 30 CFR 800.23(d) prohibits the regulatory

authority from accepting operator self-bonds or parent corporate guarantees for self-bonds unless the total amount of the operator's or parent corporate guarantor's outstanding and proposed self-bonds and self-bond guarantees for surface coal mining and reclamation operations does not exceed 25 percent of the applicant's tangible net worth in the United States. Similarly, where a non-parent corporation proposes to guarantee an operator's self-bond, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

In establishing the self-bonding rules OSM reasoned that—

> Although the requirements of these rules are such that only well-established, financially solvent business entities will qualify for self-bonding, there is always an element of risk involved in underwriting the obligations of such companies. The 25 percent restriction provides a financial cushion, in the event that a self-bonded entity should fail, to allow the regulatory authority to attempt to recoup self-bonded amounts from assets of the bankrupt entity.

See the August 10, 1983 **Federal Register** (48 FR 36425).

Wyoming's proposal combines and links two distinct self-bonding requirements: Financial strength defined by eligibility criteria and limits on allowable self-bond amounts relative to a company's tangible net worth. Wyoming attempts to directly equate an increase in financial strength (eligibility requirements) to an increase in financial risk (self-bond limits). As noted above, Wyoming states that the approximate 40% strengthening of the eligibility financial ratios (from 2.5 to 1.5 for the Liability to Net Worth Ratio and 1.2 to 1.7 for the Current Ratio) should allow for at least a 40% increase in self-bonding capacity (25% to 30% or 35% of Net Worth).

Preamble language cited above makes clear that the Federal limit for self-bonds relative to a company's tangible net worth in the United States provides a financial cushion, in the event that a self-bonded entity should fail, to allow the regulatory authority to attempt to recoup self-bonded amounts from assets of the bankrupt entity. The limits of self-bonding amounts relative to a company's tangible net worth and financial strength defined by eligibility requirements are independent requirements under OSM's regulations. The Federal eligibility requirements at 30 CFR 800.23(b) are believed to ensure adequate financial stability. We agree that companies meeting more stringent financial standards should be less likely to go bankrupt. We do not agree with Wyoming's rationale to directly equate the percentage increase in financial strength required for eligibility to the percentage increase in allowable self-bond. There is insufficient basis to conclude that a 40% change in the ratio that represents financial strength means a 40% change in financial strength. Furthermore, the record does not support a conclusion that a one-to-one correlation exists between an increase in financial strength ratios for eligibility and an increase to self-bond limits.

Therefore, we cannot find the proposal to increase allowable self-bond to be no less effective than the Federal regulations and we disapprove it.

B. Revisions to Wyoming's Rules With No Corresponding Federal Statute or Regulation

1. Chapter 11, Section 2(a)(xii)(D) & (E), Acceptance of Foreign Corporate Guarantees and Informational Requirements for Self-Bond Operator and Guarantor Applicants That Include Foreign Assets in Tangible Net Worth Calculations.

At its own initiative, Wyoming proposes to add provisions allowing the Administrator to accept self-bond guarantees from foreign companies and describing informational requirements for self-bond operator and guarantor applicants that include assets outside the United States in their tangible net worth determinations. In its ''Statement of Reasons,'' the LQD notes that the proposed rules provide additional protection to the State if the parent or non-parent guarantor is a foreign company, and allow those companies to rely upon their non-domestic assets in measuring net worth.

Under Wyoming's proposal, in order to use foreign assets in its tangible net worth determination, the company must provide a legal opinion concerning the collectability of the self-bond in a foreign country and a separate bond to be used in the event the self-bond must be collected. The legal opinion and the requirement for a separate bond to cover the cost of collecting a self-bond for a foreign guarantee is deemed necessary because of the different legal systems that may have to be used to collect the bond. It also may be necessary to employ a foreign legal corporation to pursue the collection in foreign courts. The LQD further states that the Wyoming Attorney General's Office will review the opinion from the international law firm. The State is able to monitor the status and valuation of the assets used to support the self-bond because the operator is required to submit an audited financial statement that includes such information as set forth in Chapter 11, Section 4. In addition, the audited financial statement must be in accordance with generally accepted accounting principles adopted by the United States Financial Accounting Standards Board. Chapter 11, Section 4 also provides the LQD with the authority to require quarterly reporting if it determines that the financial condition of the company warrants closer scrutiny. Lastly, Chapter 11, Section 5(a) allows the Administrator to require the operator to replace the self-bond if for any reason the Administrator determines that the self-bond does not provide the protection required by the Wyoming Department of Environmental Quality Act. The rule allows the operator 90 days to replace the self-bond.

Our evaluation of Wyoming's proposal to allow tangible net worth determinations to include assets in foreign countries focused on whether the proposal is consistent with the Federal requirement at 30 CFR 800.23(d) that an applicant's tangible net worth be ''in the United States.'' In adopting the Federal self-bonding regulations, OSM clarified in the August 10, 1983 preamble for 30 CFR 800.23(d) that ''all self-bonds of the applicant for surface coal mining and reclamation operations shall be considered and that, to facilitate recovery of self-bonded amounts in the event of bankruptcy, net worth must be net worth in the United States.'' See 48 FR 36422, 36425. Our evaluation focused on the risks associated with the ability to recover foreign self-bonded amounts in the event of bankruptcy.

We notified Wyoming of our concerns with their proposal by letter dated May 26, 2006 (Administrative Record No. WY–40–08). Among other things, we recommended that Wyoming revise its proposed rule language in (I) to require that a legal opinion assure that the bond is in fact collectable and explain how it is to be collected.

Wyoming responded by letter dated June 23, 2006 (Administrative Record No. WY–40–09) and submitted additional explanatory information about its self-bonding rules with respect to the inclusion of foreign assets as part of a company's tangible net worth and the eligibility of foreign companies to self-bond or guarantee a self-bond.

Wyoming stated that Sections 2(a)(xii)(D) and (E) are a subset of a larger set of financial information required as part of the self-bond application process, and that the Administrator's approval is conditioned on the applicant's submission of additional financial data set forth in Sections 2(a)(xii)(A)–(E). Wyoming also

maintained that the requirement in Section 2(a)(xii)(E)(I) that the legal opinion be ''from a firm recognized to do business in the country of the firm's international headquarters concerning the collectability of a self-bond in the foreign country,'' serves to verify that the self-bond can in fact be collected and will also explain how it is to be collected.

Wyoming went on to state that, in order to form an opinion on either of these issues, one must first conclude that the bond is collectable and that an explanation of the methods used to collect the bond would be implicit in any legal opinion estimating the cost of recovering the self-bond. Wyoming stated that the legal opinion is a tool that allows the Administrator to make an informed decision on whether to accept or reject the self-bond and indicated that the Administrator would be likely to reject a self-bond application if the legal opinion stated that it would be difficult and costly to collect the self-bond. Wyoming explained that, in that event, the Administrator could require additional financial assurances to limit the risk of collecting the bond amount or recovering foreign assets.

As a result, Wyoming asserted, the rules as submitted already require that the legal opinion discuss whether a self-bond is in fact collectable, as well as the methods of collection. Next, Wyoming explained that the availability of methods for collecting assets of non-parent foreign guarantors will be discussed as part of the legal opinion required by Section 2(a)(xii)(E)(I). After the legal opinion and all other relevant materials are reviewed, the Administrator can make an informed decision whether to accept or reject a self-bond application. Wyoming also stated that, because of the flexibility built into the self-bond regulatory framework, the Administrator may request additional guarantees that the self-bond or foreign assets are in fact collectible.

Insofar as collecting assets of non-parent foreign guarantors who may not have any assets in the U.S., Wyoming states that this situation will be avoided because financial data is required of all guarantors and Section 3(b)(ii) requires non-parent guarantors to submit an indemnity agreement along with an affidavit that certifies that such an agreement is valid under all applicable Federal and State laws. Lastly, Wyoming refers to Section 2(a)(xii)(C) which requires that ''the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the non-parent corporate guarantor's tangible net worth in the United States.''

For several reasons, we find that Wyoming's proposal does not satisfactorily address concerns relating to the inherent risks associated with collecting non-domestic assets and recovering self-bonded amounts in the event of bankruptcy of a company without assets in the United States sufficient to cover reclamation costs. A sample legal opinion supplied by industry in support of Wyoming's proposal demonstrates that, in the event of an operator or parent guarantor bankruptcy, the collection of non-domestic assets could be prohibitively difficult and costly. The opinion's identification of an extremely broad range of potential bond recovery costs, based upon numerous assumptions and subject to many qualifications, resulted in the opinion not providing any solid assurance of recoverability of foreign assets.

Proposed subsection (E)(I) does not expressly require that the legal opinion confirm that the bond would be collectible, nor does it require a detailed explanation of the requirements and procedures to file and enforce a self-bond guarantee based on foreign assets. There is no requirement that the legal opinion verify the foreign company's and/or its signatory's authorities to guarantee reclamation obligations or indemnify United States governmental entities. Nor is the legal opinion required to explain applicable principles of corporate and bankruptcy law in the relevant country and its likely effects on the recoverability of reclamation bonds and guarantees. It is unclear how the requirement that the legal opinion be from ''a firm recognized to do business in the country of the firm's international headquarters'' provides any additional assurance of recoverability of foreign assets which could potentially be located anywhere in the world.

Many Wyoming mines include Federal land and the United States must be named as a beneficiary, co-payee, co-obligee, etc., on bonds for such mines. It is therefore likely that OSM would incur substantial costs in the event of a forfeiture of a self-bond of a company lacking assets in the United States sufficient to cover reclamation costs. OSM finds that the Wyoming proposal does not provide sufficient assurance of performance of reclamation responsibilities for Federal lands and is inconsistent with the Federal regulations at 30 CFR 800.23(d).

Wyoming referred OSM to the Administrator's discretion to deny applications for self-bond guarantees from foreign corporations. Wyoming notes that if an application to self-bond is rejected on the basis of the legal opinion, the Administrator can request additional financial assurances which limit the risk of collecting the bond amount or recovering foreign assets. Chapter 11, Section 3(a)(i) provides that the Administrator's decisions to approve or reject a self-bond application must meet the demonstrations required by W.S. 35–11–417(d). The referenced statutory provision allows the Administrator to accept the bond of the operator without separate surety when the operator ''demonstrates to the satisfaction of the director the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond this amount.'' Based on this general language, we remain unclear as to the specific circumstances under which the Administrator may exercise his or her discretion to reject a self-bond application. Similarly, we do not fully understand what Wyoming means when it refers to requesting ''additional financial assurances'' from foreign corporations in the event that a self-bonding application is rejected by the Administrator.

Moreover, according to Wyoming's June 23, 2006 response letter, self-bond guarantees by non-parent foreign corporations are subject to the limitations of subsection (C) of Section 2(a)(xii). That subsection currently restricts self-bonds to 25% of the non-parent corporate guarantor's tangible net worth ''in the United States.'' While retaining the applicability of that subsection to non-parent foreign corporations would not cause the State program to be less effective than the Federal rules, applying that provision would appear to effectively negate Wyoming's purpose in elsewhere proposing to amend its rules to allow the use of a non-parent guarantor's foreign assets in computing tangible net worth.

We also note that the meaning and applicability of proposed Chapter 11, Section 2(a)(xii)(D) are unclear. Subsection (D) states that ''If the *operator* chooses to include assets outside the United States in their tangible net worth, the Administrator shall require the information required under subsection (E).'' (Emphasis added). Given that subsection (E) identifies information required of a foreign corporate guarantor, not the operator, the requirements of subsection (D) are unclear.

Based on the discussion above, we find that Wyoming's proposed regulations at Chapter 11, Section 2(a)(xii)(D) and (E) are less effective than the Federal regulations at 30 CFR 800.23(d) the Secretary's regulations in meeting the requirements of SMCRA. The uncertainties and risks associated with cost recovery and enforcement of self-bonds of companies without sufficient assets in the United States to cover costs of reclamation are too great for us to approve their use in the absence of a Federal rule change. Accordingly, we are not approving Wyoming's newly-created rules at Chapter 11, Section 2(a)(xii)(D) and (E), concerning foreign corporation guarantors.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Nos. WY–40–3 and WY–40–10). Four comments were received; three from industry groups and one from a Federal Agency, all in support of Wyoming's proposed rule changes.

Industry Group Comments

On April 21, 2006, the Wyoming Mining Association (WMA) commented on the proposed amendment (Administrative Record No. WY–40–4). The WMA provided comments in response to concerns that OSM had previously raised in connection with Wyoming's proposed rule changes on self-bonding. Specifically, with respect to raising the tangible net worth limits, the WMA provided an analysis in support of the increase and commented that the proposed rule change addresses the severe shortage of surety bonds and the ''one size fits all'' 25 percent limit by allowing more of the exposure to be shifted to Wyoming without increasing the risk undertaken by the State. The WMA further noted that, by providing the higher bonding amount, Wyoming is creating an incentive for companies to strengthen their balance sheets. Regarding the issue of monitoring the status and valuation of foreign company assets as the base for self-bonds, the WMA commented that the current policy for foreign parent guarantors would apply to foreign company assets used directly for self-bonds. Specifically, as a stipulation to approved use of foreign assets for self-bonding purposes, Wyoming requires interim reporting on the continued qualification for self-bonding based on the extent of financial strength and bonding levels. The WMA goes on to state that the reporting information includes data regarding the status and categorization of foreign assets. With respect to the reporting requirements and standards that would apply to foreign companies, the WMA noted that Wyoming's rules already provide the Administrator with the authority to require frequent status reporting if the financial condition of the [foreign] company warrants closer scrutiny, and that reporting standards and requirements are case-dependent, corresponding to the demonstrated financial strength of a company. The WMA further commented that the valuation of foreign assets will be determined through audited financial statements which shall be in English and shall be prepared with generally accepted accounting principles, as adopted by the United States Financial Accounting Standards Board. Those methods will provide the valuation of assets equivalent to evaluation of U.S. based assets. The WMA responded to OSM's concerns related to monitoring or requiring reports of legal changes affecting the status and liquidity of foreign assets by stating that Wyoming will require interim status reporting on the continued qualification for self-bonding, which will include information regarding the status and form of foreign assets. In response to OSM's concerns related to conducting an independent legal review prior to acceptance of a foreign parent or non-parent guarantee to verify that the legal opinion provided by the international firm concerning the enforceability of an indemnity agreement is accurate, the WMA commented that Wyoming utilizes the services of the State Attorney General's Office to review the legal opinion, which serves as a second independent legal review. The WMA stated that Wyoming's current regulations at Chapter 11, Section 5(a), allowing for the substitution of an alternate bond within 90 days if an operator no longer qualifies under the self-bonding program, provides a time frame within which a company must replace self-bonds. Lastly, the WMA stated that Wyoming's current policy that conditions approval of self-bonding using foreign assets on interim status reporting of those assets provides a mechanism for identifying the potential for such assets being nationalized or becoming illiquid as a result of a legal change in the country where they are located. The WMA urged OSM to approve the changes as consistent with and no less effective than SMCRA and the Federal regulations.

The National Mining Association (NMA) commented in a May 17, 2006, e-mail (Administrative Record No. WY–40–6). The NMA stated that it adopts the April 21, 2006, comments filed by the Wyoming Mining Association. The NMA further noted that it also believes it is important for OSM to consider that, due to factors unrelated to any loss experience for reclamation bonds, surety capacity for reclamation obligations has diminished substantially as compared to five or six years ago. As a result, the NMA asserted that carefully crafted revisions to State programs which make alternatives to surety more readily available are both a necessary and responsible response to this fundamental change in the surety market. Lastly, the NMA commented that Wyoming coal mines are owned and operated by well-capitalized companies which take their stewardship responsibilities seriously, and that the revisions to the Wyoming State program ensure that the objectives of the performance bonding requirements in Section 509 of SMCRA will be met. The NMA also urged OSM to approve the revisions as being no less effective than SMCRA and its implementing rules.

On August 14, 2006, Rio Tinto Energy America (RTEA) provided comments in support of Wyoming's June 23, 2006, response to our May 26, 2006, issue letter on the proposed amendment (Administrative Record No. WY–40–11). RTEA owns and operates three mining operations in the Powder River Basin in Wyoming. RTEA commented that Wyoming's June 23, 2006, letter notes that the proposed rule holds additional qualifying requirements when foreign assets are utilized for self bond guarantees. RTEA further commented that the additional requirements, which provide a strong base to assess risk acceptability for foreign assets, include: A legal opinion providing detailed information on the self-bond collectability; a legal opinion on projected costs to collect upon a self-bond in the foreign venue; a separate surety bond to address the projected costs to collect upon the self-bond; additional demonstrations of financial strength; and any other information determined necessary by the Administrator for evaluation. RTEA also noted that the required legal opinions are to be reviewed by both the Wyoming Attorney General's Office and the Administrator. RTEA goes on to state that these measures are more stringent and require greater information and demonstrations than do those applying to domestic company self-bonds or guarantees to self-bond. Next, RTEA

commented that the final determination to accept or deny such applications remains at the discretion of the Administrator, providing measures for additional assurances of financial strength and low risk if necessary. Lastly, RTEA stated its agreement with Wyoming's determinations that the amendment, as submitted, contains the flexibility to require any necessary assurances from the applicant in order to ensure that the State is not taking an undue risk when accepting a self-bond or guarantee. RTEA commented that Wyoming's explanation provides a strong basis for OSM to approve the proposed amendment, and it urged OSM to approve the proposed amendment without further revision.

With respect to Wyoming's proposal to raise the tangible net worth limits and provide operators and parent guarantors greater self-bonding capability if they meet the more stringent ratios of total liabilities to net worth and current assets to current liabilities, we refer the commenters to Finding No. III.A.3. for a detailed explanation as to why the proposed revisions to Chapter 11, Section 2(a)(xii)(A) & (B) are not being approved.

In response to comments regarding Wyoming's proposal concerning acceptance of foreign corporate guarantees and informational requirements for self-bond operator and guarantor applicants that include foreign assets in tangible net worth calculations, we refer the commenters to Finding III.B.1. for a detailed explanation as to why we are not approving Wyoming's newly-created rules at Chapter 11, Section 2(a)(xii)(D) and (E), respectively.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Wyoming program (Administrative Record No. WY–40–3). We received comments from one Federal Agency.

The Bureau of Land Management (BLM) commented in an April 28, 2006, e-mail (Administrative Record No. WY–40–5). The BLM stated that the revised Wyoming proposal addresses its programs, and it agrees with the changes.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Wyoming proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 24, 2006, we requested comments on Wyoming's amendment (Administrative Record No. WY–40–3), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve, with the following exceptions, Wyoming's March 7, 2006 amendment.

As discussed in Finding No. III.A.1, we are deferring our decision on Wyoming's proposed rule change at Chapter 1, Section 2(k) that expands the definition of ''bond'' to allow for acceptance of alternative financial assurances which provide comparable levels of assurance for reclamation performance, and also requires OSM approval of those assurances.

We do not approve the following provisions.

As discussed in Finding No. III.A.3, we are not approving Wyoming's proposed rule changes at Chapter 11, Section 2(a)(xii)(A) and (B), respectively, concerning acceptance of a larger percentage of self-bonds relative to tangible net worth for operators and parent corporate guarantors above those currently permitted by the Federal rules.

As discussed in Finding No. III.B.1, we are not approving Wyoming's newly-created rules at Chapter 11, Section 2(a)(xii)(D) and (E), concerning acceptance of foreign corporate guarantees and informational requirements for self-bond operator and guarantor applicants that include foreign assets in tangible net worth calculations.

We approve the rules as proposed by Wyoming with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 950, which codify decisions concerning the Wyoming program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Wyoming program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Wyoming to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of

30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects 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. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

a. Does not have an annual effect on the economy of $100 million.

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

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

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2009.

Allen D. Klein,

Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950—WYOMING

■ 1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 950.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
March 7, 2006	October 14, 2009	Chapter 11, Section 2(a)(vii)(A).

[FR Doc. E9–24682 Filed 10–13–09; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0842]

RIN 1625–AA00

Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor from October 2, 2009, through October 31, 2009. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. This rule will establish restrictions upon and control movement of vessels in the specified area immediately prior to, during, and immediately after the fireworks events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced during the times listed in the **SUPPLEMENTARY INFORMATION** from October 2, 2009, to October 31, 2009.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone 414–747–7154, e-mail *Adam.D.Kraft@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL, as listed in 33 CFR 165.931, for the following events, dates, and times:

(1) *Navy Pier Friday Fireworks:* on October 2, 2009, from 8:45 p.m. through 9:30 p.m.; on October 9, 2009, from 8:45 p.m. through 9:30 p.m.; on October 16, 2009, from 8:45 p.m. through 9:30 p.m.; on October 23, 2009, from 8:45 p.m. through 9:30 p.m.; on October 30, 2009, from 8:45 p.m. through 9:30 p.m.;

(2) *Navy Pier Saturday Fireworks:* on October 3, 2009, from 8:45 p.m. through 9:30 p.m.; on October 10, 2009, from 8:45 p.m. through 9:30 p.m.; on October 17, 2009, from 8:45 p.m. through 9:30 p.m.; on October 24, 2009, from 8:45 p.m. through 9:30 p.m.; on October 31, 2009, from 8:45 p.m. through 9:30 p.m.

All vessels must obtain permission from the Captain of the Port or a designated representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or the designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port or the designated representative may be contacted via VHF–FM Channel 16.

Dated: September 29, 2009.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E9–24657 Filed 10–13–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2009–0049]

RIN 0651–AC36

Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) published a final rule in the **Federal Register** in August of 2007 to revise the rules of practice for patent cases pertaining to continuing applications and requests for continued examination practices, and for the examination of claims in patent applications (Claims and Continuations Final Rule). The Office is revising the rules of practice in this final rule to remove the changes in the Claims and Continuations Final Rule from the Code of Federal Regulations.

DATES: *Effective Date:* October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr, Senior Patent Counsel, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–8800; or by mail addressed to: Mail Stop Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The Office published the Claims and Continuations Final Rule in the **Federal Register** in August of 2007, which revised the rules of practice in title 37 of the Code of Federal Regulations for patent cases pertaining to continuing applications and requests for continued examination practices, and for the examination of claims in patent applications. *See Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications,* 72 FR 46716 (Aug. 21, 2007), 1322 *Off. Gaz. Pat. Office* 76 (Sept. 11, 2007). The United States District Court for the Eastern District of Virginia (District Court) issued an injunction, enjoining the Office from implementing the changes in the Claims and Continuations Final Rule. *See Tafas* v. *Dudas,* 541 F. Supp. 2d 805, 86 U.S.P.Q.2d 1623 (E.D. Va. 2008) (permanent injunction), and *Tafas* v. *Dudas,* 511 F. Supp. 2d 652, 86 U.S.P.Q.2d 1548 (E.D. Va. 2007) (preliminary injunction). The Office appealed this decision to the United States Court of Appeals for the Federal Circuit (Federal Circuit). The Federal Circuit issued a panel decision holding that all of the changes in the Claims and Continuations Final Rule fall within the Office's rule making authority to govern the conduct of proceedings before the Office, but that the provisions pertaining to continuing applications were inconsistent with 35 U.S.C. 120. *See Tafas* v. *Doll,* 559 F.3d 1345, 90 U.S.P.Q.2d 1129 (Fed. Cir. 2009). The Federal Circuit *en banc* then issued an order granting a petition for rehearing *en banc* and vacating the panel decision. *See Tafas* v. *Doll,* 2009 U.S. App. LEXIS 14611, 91 U.S.P.Q. 2d 1153 (Fed. Cir., July 6, 2009).

The changes in the Claims and Continuations Final Rule were added to the Code of Federal Regulations, but have been the subject of litigation since August of 2007 and have never taken effect. *See Clarification of Patent*

Regulations Currently in Effect, and Revision in Applicability Date of Provisions Relating to Patent Applications Containing Patentably Indistinct Claims, 73 FR 45999 (Aug. 7, 2008) (notice). The changes in the Claims and Continuations Final Rule addressed the Office's patent application pendency and quality issues, but did so with provisions that were objectionable to a large segment of the patent user community. In addition, the circumstances have changed since the Office published the Claims and Continuations Final Rule in August of 2007, and the Office is now considering other initiatives that would garner more of a consensus with the patent user community to address the challenges it currently faces. Thus, the Office has decided that it is no longer interested in pursuing the changes in the Claims and Continuations Final Rule that were the subject of the District Court's decision in *Tafas.* Therefore, the Office is revising the rules of practice in title 37 of the Code of Federal Regulations for patent cases to remove the changes in the Claims and Continuations Final Rule from the Code of Federal Regulations.

Discussion of Specific Rules

This final rule amends title 37, part 1, of the Code of Federal Regulations, as follows:

Sections 1.17(f), 1.26(a) and (b), 1.52(d)(2), 1.53(b) and (c)(4), 1.75(b) and (c), 1.76(b)(5), 1.78, 1.104(a)(1) and (b), 1.110, 1.114(a) and (d), 1.136(a)(1), 1.142(a), 1.145, and 1.495(g) are amended to remove the changes in these provisions in the Claims and Continuations Final Rule.

Sections 1.105(a)(1)(ix), 1.114(f), (g), and (h), 1.117, 1.142(c), and 1.265, and 1.704(c)(11) are removed. These provisions were added in the Claims and Continuations Final Rule.

Section 1.704(c)(12) is redesignated as § 1.704(c)(11).

Rule Making Considerations

A. *Administrative Procedure Act:* The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office finds good cause under 5 U.S.C. 553(b)(B) to waive any requirement to provide prior notice and opportunity for public comment as such procedures are unnecessary. The changes in this final rule revise the rules of practice as published in title 37 of the Code of Federal Regulations to reflect the rules of practice that are currently in effect. The changes in this final rule will not result in any changes in the requirements with which applicants, patentees, or other members of the public must comply during proceedings before the Office. Therefore, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) or (B) or any other law. In addition, thirty-day advance publication is not required under 5 U.S.C. 553(d) for this final rule as it merely relieves restrictions contained in the rules of practice as published in title 37 of the Code of Federal Regulations.

B. *Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

C. *Executive Order 12866 (Regulatory Planning and Review):* This rule making has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. *Executive Order 13132 (Federalism):* This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

E. *Executive Order 13175 (Tribal Consultation):* This rule making will not: (1) Have substantial direct effects on one or more Indian Tribes; (2) impose substantial direct compliance costs on Indian Tribal governments; or (3) preempt Tribal law. Therefore, a Tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

F. *Executive Order 13211 (Energy Effects):* This rule making is not a significant energy action under Executive Order 13211 because this rule making is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

G. *Executive Order 12988 (Civil Justice Reform):* This rule making meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

H. *Executive Order 13045 (Protection of Children):* This rule making does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr, 21, 1997).

I. *Executive Order 12630 (Taking of Private Property):* This rule making will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

J. *Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the United States Patent and Trademark Office will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the Government Accountability Office. The changes in this final rule will not result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this final rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

K. *Unfunded Mandates Reform Act of 1995:* The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

L. *National Environmental Policy Act:* This rule making will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

M. *National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are inapplicable because this rule making does not contain provisions which involve the use of technical standards.

N. *Paperwork Reduction Act:* This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this final rule has been reviewed and approved by OMB under OMB control number 0651–

0031. The United States Patent and Trademark Office is not submitting an information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under OMB control number 0651–0031.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.17 is amended by revising paragraph (f) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(f) For filing a petition under one of the following sections which refers to this paragraph: $400.00.

§ 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.

§ 1.53(e)—to accord a filing date.

§ 1.57(a)—to accord a filing date.

§ 1.182—for decision on a question not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

* * * * *

■ 3. Section 1.26 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.26 Refunds.

(a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Director may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged.

(b) Any request for refund must be filed within two years from the date the fee was paid, except as otherwise provided in this paragraph or in § 1.28(a). If the Office charges a deposit account by an amount other than an amount specifically indicated in an authorization (§ 1.25(b)), any request for refund based upon such charge must be filed within two years from the date of the deposit account statement indicating such charge, and include a copy of that deposit account statement. The time periods set forth in this paragraph are not extendable.

* * * * *

■ 4. Section 1.52 is amended by revising paragraph (d)(2) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specifications.

* * * * *

(d) * * *

(2) *Provisional application.* If a provisional application is filed in a language other than English, an English language translation of the non-English language provisional application will not be required in the provisional application. *See* § 1.78(a) for the requirements for claiming the benefit of such provisional application in a nonprovisional application.

* * * * *

■ 5. Section 1.53 is amended by revising paragraphs (b) and (c)(4) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(b) *Application filing requirements—Nonprovisional application.* The filing date of an application for patent filed under this section, except for a provisional application under paragraph (c) of this section or a continued prosecution application under paragraph (d) of this section, is the date on which a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75, and any drawing required by § 1.81(a) are filed in the Patent and Trademark Office. No new matter may be introduced into an application after its filing date. A continuing application, which may be a continuation, divisional, or continuation-in-part application, may be filed under the conditions specified in 35 U.S.C. 120, 121 or 365(c) and § 1.78(a).

(1) A continuation or divisional application that names as inventors the same or fewer than all of the inventors named in the prior application may be filed under this paragraph or paragraph (d) of this section.

(2) A continuation-in-part application (which may disclose and claim subject matter not disclosed in the prior application) or a continuation or divisional application naming an inventor not named in the prior application must be filed under this paragraph.

(c) * * *

(4) A provisional application is not entitled to the right of priority under 35 U.S.C. 119 or 365(a) or § 1.55, or to the benefit of an earlier filing date under 35 U.S.C. 120, 121 or 365(c) or § 1.78 of any other application. No claim for priority under 35 U.S.C. 119(e) or § 1.78(a)(4) may be made in a design application based on a provisional application. No request under § 1.293 for a statutory invention registration may be filed in a provisional application. The requirements of §§ 1.821 through 1.825 regarding application disclosures containing nucleotide and/or amino acid sequences are not mandatory for provisional applications.

* * * * *

■ 6. Section 1.75 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.75 Claim(s).

* * * * *

(b) More than one claim may be presented provided they differ substantially from each other and are not unduly multiplied.

(c) One or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application. Any dependent claim which refers to more than one other claim (''multiple dependent claim'') shall refer to such other claims in the alternative only. A multiple dependent claim shall not

serve as a basis for any other multiple dependent claim. For fee calculation purposes under § 1.16, a multiple dependent claim will be considered to be that number of claims to which direct reference is made therein. For fee calculation purposes also, any claim depending from a multiple dependent claim will be considered to be that number of claims to which direct reference is made in that multiple dependent claim. In addition to the other filing fees, any original application which is filed with, or is amended to include, multiple dependent claims must have paid therein the fee set forth in § 1.16(j). Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of each of the particular claims in relation to which it is being considered.

* * * * *

■ 7. Section 1.76 is amended by revising paragraph (b)(5) to read as follows:

§ 1.76 Application data sheet.

* * * * *

(b) * * *

(5) *Domestic priority information.* This information includes the application number, the filing date, the status (including patent number if available), and relationship of each application for which a benefit is claimed under 35 U.S.C. 119(e), 120, 121, or 365(c). Providing this information in the application data sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and § 1.78(a)(2) or § 1.78(a)(5), and need not otherwise be made part of the specification.

* * * * *

■ 8. Section 1.78 is revised to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a)(1) A nonprovisional application or international application designating the United States of America may claim an invention disclosed in one or more prior-filed copending nonprovisional applications or international applications designating the United States of America. In order for an application to claim the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America, each prior-filed application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior-filed application must be:

(i) An international application entitled to a filing date in accordance with PCT Article 11 and designating the United States of America; or

(ii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and have paid therein the basic filing fee set forth in § 1.16 within the pendency of the application.

(2)(i) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application. These time periods are not extendable. Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (a)(2)(i) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior-filed application. The time periods in this paragraph do not apply if the later-filed application is:

(A) An application for a design patent;

(B) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or

(C) A nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000.

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence(s) following the title.

(iv) The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior-filed application. The identification of an application by application number under this section is the identification of every application assigned that application number necessary for a specific reference required by 35 U.S.C. 120 to every such application assigned that application number.

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;

(ii) The surcharge set forth in § 1.17(t); and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(4) A nonprovisional application, other than for a design patent, or an international application designating the United States of America may claim an invention disclosed in one or more prior-filed provisional applications. In order for an application to claim the benefit of one or more prior-filed

provisional applications, each prior-filed provisional application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior-filed provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(d) must be paid within the time period set forth in § 1.53(g).

(5)(i) Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed provisional applications must contain or be amended to contain a reference to each such prior-filed provisional application, identifying it by the provisional application number (consisting of series code and serial number).

(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed provisional application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed provisional application. These time periods are not extendable. Except as provided in paragraph (a)(6) of this section, the failure to timely submit the reference is considered a waiver of any benefit under 35 U.S.C. 119(e) to such prior-filed provisional application. The time periods in this paragraph do not apply if the later-filed application is:

(A) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or

(B) A nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000.

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence(s) following the title.

(iv) If the prior-filed provisional application was filed in a language other than English and both an English-language translation of the prior-filed provisional application and a statement that the translation is accurate were not previously filed in the prior-filed provisional application, applicant will be notified and given a period of time within which to file, in the prior-filed provisional application, the translation and the statement. If the notice is mailed in a pending nonprovisional application, a timely reply to such a notice must include the filing in the nonprovisional application of either a confirmation that the translation and statement were filed in the provisional application, or an amendment or Supplemental Application Data Sheet withdrawing the benefit claim, or the nonprovisional application will be abandoned. The translation and statement may be filed in the provisional application, even if the provisional application has become abandoned.

(6) If the reference required by 35 U.S.C. 119(e) and paragraph (a)(5) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(5)(ii) of this section, the claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application may be accepted during the pendency of the later-filed application if the reference identifying the prior-filed application by provisional application number was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application must be accompanied by:

(i) The reference required by 35 U.S.C. 119(e) and paragraph (a)(5) of this section to the prior-filed provisional application, unless previously submitted;

(ii) The surcharge set forth in § 1.17(t); and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(5)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(b) Where two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

(c) If an application or a patent under reexamination and at least one other application naming different inventors are owned by the same person and contain conflicting claims, and there is no statement of record indicating that the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, the Office may require the assignee to state whether the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, and if not, indicate which named inventor is the prior inventor. Even if the claimed inventions were commonly owned, or subject to an obligation of assignment to the same person, at the time the later invention was made, the conflicting claims may be rejected under the doctrine of double patenting in view of such commonly owned or assigned applications or patents under reexamination.

■ 9. Section 1.104 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 1.104 Nature of examination.

(a) *Examiner's action.* (1) On taking up an application for examination or a patent in a reexamination proceeding, the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention. The examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.

* * * * *

(b) *Completeness of examiner's action.* The examiner's action will be complete as to all matters, except that in appropriate circumstances, such as misjoinder of invention, fundamental defects in the application, and the like, the action of the examiner may be limited to such matters before further action is made. However, matters of form need not be raised by the examiner until a claim is found allowable.

* * * * *

§ 1.105 [Amended]

■ 10. Section 1.105 is amended by removing paragraph (a)(1)(ix).

■ 11. Section 1.110 is revised to read as follows:

§ 1.110 Inventorship and date of invention of the subject matter of individual claims.

When more than one inventor is named in an application or patent, the Patent and Trademark Office, when necessary for purposes of an Office proceeding, may require an applicant, patentee, or owner to identify the inventive entity of the subject matter of each claim in the application or patent. Where appropriate, the invention dates of the subject matter of each claim and the ownership of the subject matter on the date of invention may be required of the applicant, patentee or owner. *See also* §§ 1.78(c) and 1.130.

■ 12. Section 1.114 is amended by removing paragraphs (f), (g), and (h) and by revising paragraphs (a) and (d) to read as follows:

§ 1.114 Request for continued examination.

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

* * * * *

(d) If an applicant timely files a submission and fee set forth in § 1.17(e), the Office will withdraw the finality of any Office action and the submission will be entered and considered. If an applicant files a request for continued examination under this section after appeal, but prior to a decision on the appeal, it will be treated as a request to withdraw the appeal and to reopen prosecution of the application before the examiner. An appeal brief (§ 41.37 of this title) or a reply brief (§ 41.41 of this title), or related papers, will not be considered a submission under this section.

* * * * *

§ 1.117 [Removed and Reserved]

■ 13. Section 1.117 is removed and reserved.

■ 14. Section 1.136 is amended by revising paragraph (a)(1) to read as follows:

§ 1.136 Extensions of time.

(a)(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

(i) Applicant is notified otherwise in an Office action;

(ii) The reply is a reply brief submitted pursuant to § 41.41 of this title;

(iii) The reply is a request for an oral hearing submitted pursuant to § 41.47(a) of this title;

(iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or

(v) The application is involved in a contested case (§ 41.101(a) of this title).

* * * * *

■ 15. Section 1.142 is amended by removing paragraph (c) and by revising paragraph (a) to read as follows:

§ 1.142 Requirement for restriction.

(a) If two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction (also known as a requirement for division). Such requirement will normally be made before any action on the merits; however, it may be made at any time before final action.

* * * * *

■ 16. Section 1.145 is revised to read as follows:

§ 1.145 Subsequent presentation of claims for different invention.

If, after an Office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143 and 1.144.

§ 1.265 [Removed]

■ 17. Section 1.265 is removed.

■ 18. Section 1.495 is amended by revising paragraph (g) to read as follows:

§ 1.495 Entering the national stage in the United States of America.

* * * * *

(g) The documents and fees submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise, the submission will be considered as being made under 35 U.S.C. 111(a).

* * * * *

§ 1.704 [Amended]

■ 19. Section 1.704 is amended by removing existing paragraph (c)(11) and redesignating paragraph (c)(12) as paragraph (c)(11).

Dated: October 7, 2009.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E9–24667 Filed 10–13–09; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0908; FRL–8958–1]

Approval and Promulgation of Air Quality Implementation Plans; Ohio Administrative Code Rule 3745–21–17 Portable Fuel Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Ohio Environmental Protection Agency (Ohio EPA) submitted a revision to its State Implementation Plan (SIP) under the Clean Air Act (CAA) in order to reduce air pollution in Ohio. The SIP revision consists of a new regulation entitled Ohio's Administrative Code Rule 3745–21–17 ''Control of VOC Emissions from Portable Fuel Containers.'' This rule impacts sale, use, and manufacture of Portable Fuel Containers (PFC) in the State of Ohio. Ohio EPA submitted this request for approval of this rule on August 7, 2007. EPA is approving this rule.

DATES: This direct final rule will be effective December 14, 2009, unless EPA receives adverse comments by November 13, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0908, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–0908. 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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michael G. Leslie, Environmental Engineer, at (312) 353–6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
II. Summary of SIP Revision
III. What Action Is EPA Taking?
IV. Statutory and Executive Order Reviews

I. Background

The State of Ohio currently has eleven 8-hour ozone nonattainment and maintenance areas. Ohio's Administrative Code Rule 3745–21–17 impacts sale, use, and manufacture of PFCs in the State of Ohio. This rule is intended to help Ohio attain and maintain the 8-hour ozone standard through reductions of emissions of Volatile Organic Compounds (VOC) from these containers. VOCs are precursors to the formation of ozone.

II. Summary of SIP Revision

The PFC regulations are useful in Ohio's and EPA's efforts to improve Ohio's air quality. PFCs, also known as gas cans, are used to fill a variety of equipment including lawnmowers, vehicles, and personal watercraft. The goal of this program is to ensure that spillage and evaporative emissions from such containers are minimized or eliminated. Because of their large numbers, PFCs have the cumulative potential to create substantial hydrocarbon emissions resulting in ozone-forming smog and health related problems. On September 11, 2006, California's Air Resources Board (CARB) finalized regulations that set specific limitations on the maximum allowable diurnal emission standard for PFCs and operation of the automatic shut-off feature of spill-proof systems and spill-proof spouts on PFCs. EPA modeled its own PFC rules on the CARB rules. The State of Ohio finds that these regulations are an effective tool to attain and maintain the 8-hour ozone standard throughout Ohio.

On August 7, 2007, Ohio EPA submitted a formal request to EPA to revise the Ohio SIP by adding the new regulation entitled ''Control of VOC Emissions from Portable Fuel Containers.'' This regulation applies statewide to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers and/or spouts for use in Ohio on or after July 1, 2007.

This regulation requires that each PFC and/or spout for sale or use in the State of Ohio: (1) Be certified by the CARB, or (2) be certified or otherwise approved under requirements and in a manner that Ohio EPA determines are as stringent as the California requirements. EPA is approving this rule because it meets CAA and EPA requirements and helps reduce ozone concentrations.

This rule does not apply to: (1) Any PFC or spout or combination portable fuel container and spout manufactured in Ohio for shipment, sale, and use outside of Ohio, (2) safety cans meeting the requirements of 29 CFR part 1926, subpart F: ''Fire Protection and Prevention;'' as published in the July 1, 2006, edition of the Code of Federal Regulations, (3) PFC with a nominal capacity less than or equal to one quart, (4) rapid refueling devices with nominal capacities greater than, or equal to four gallons, provided such devices are designed for use in officially sanctioned off-highway motor sports, (5) portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine, (6) closed-system PFC that are used exclusively for fueling remote control model airplanes, and (7) PFC or PFC spouts manufactured prior to July 1, 2007.

III. What Action Is EPA Taking?

EPA is approving Ohio's Administrative Code Rule 3745–21–17 which governs sale, use, and manufacture of PFCs in the State of Ohio.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written

comments are filed. This rule will be effective December 14, 2009 without further notice unless we receive relevant adverse written comments by November 13, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective *December 14, 2009*.

IV. Statutory and Executive Order Reviews

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

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

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: September 9, 2009.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(144) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(144) The Ohio Environmental Protection Agency formally submitted revisions to Ohio's Administrative Code on August 7, 2007. These revisions consists of Rule 3745–21–17 which impacts sale, use, and manufacture of Portable Fuel Containers in the State of Ohio.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–21–17 ''Portable fuel containers'', adopted on June 11, 2007, effective on June 21, 2007.

(B) June 11, 2007, ''Director's Final Findings and Orders'', signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

* * * * *

[FR Doc. E9–24610 Filed 10–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0339; FRL–8947–2]

Revisions to the Arizona State Implementation Plan, Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions and precursors from steam generating units, cogeneration units, stationary gas turbines, process heaters and internal combustion engines. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 14, 2009 without further

notice, unless EPA receives adverse comments by November 13, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2009–0339], by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
MCAQD	322	Power Plant Operations	10/17/07	01/09/08
MCAQD	323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources.	10/17/07	01/09/08
MCAQD	324	Stationary Internal Combustion (IC) Engines	10/17/07	01/09/08

On July 9, 2008, these rule submittals were found to meet the completeness criteria in 40 CFR Part 51, Appendix V by operation of law, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of Rule 322, 323 and 324 in the SIP.

C. What is the purpose of the submitted rules?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control NO_X and PM emissions. Rule 322 regulates emissions of NO_X, PM, oxides of sulfur (SO_X) and carbon monoxide (CO) from fossil-fuel-fired equipment and cooling towers at power plants and cogeneration plants for which construction started before May 10, 1996. This rule applies to steam generating units with heat input greater or equal than 100 MM Btu/hour (29 MW), stationary gas turbines with a peak heat input equal to or greater than 10 MM Btu/hour (2.9 MW) and cooling towers associated with these units. Rule 323 regulates emissions of NO_X, PM, SO_X and CO from fuel burning combustion equipment at industrial, commercial and/or institutional sources. Rule 323 applies to steam generating units with heat input greater than 10 MM Btu/hour, stationary gas turbines with a peak heat input equal to or greater than 2.9 MW and indirect-fired process heaters with a heat input greater than 10 MM Btu/hour. Rule 324 regulates emissions of NO_X, PM, SO_X, CO and volatile organic compounds (VOCs) from stationary IC engines. This Rule applies to new or existing stationary spark or compression-ignited IC engines with a rating greater than 250 brake horsepower (bhp). This rule also applies to a combination of engines rated more than 50 bhp used at a single source whose maximum aggregated rating is more than 250 bhp. All three rules limit PM emissions by ensuring good combustion practices, limiting sulfur in the fuel and controlling NO_X, a PM–10 precursor. EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM nonattainment areas, and Best Available Control Measures (BACM), including

Best Available Control Technology (BACT), in serious PM nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)). The MCAQD regulates a PM nonattainment area classified as serious (see 40 CFR part 81), so Rules 322, 323 and 324 must implement BACM/BACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACM/RACT or BACM/BACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register.**

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

5. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).

6. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.

7. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters'' California Air Resources Board (July 18, 1991).

8. ''Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers'' EPA 453/R–94–022 (March 1994)

9. ''Alternative Control Techniques Document—NO_X Emissions from Utility Boilers'' EPA 452/R–93–008 (March 1994).

10. ''Alternative Control Techniques Document—NO_X Emissions from Stationary Gas Turbines'' EPA 453/R–94–023 (January 1993).

11. ''Alternative Control Techniques Document—NO_X Emissions from Stationary Reciprocating Internal Combustion Engines'' EPA 453/R–93–032 (July 1993).

12. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines'' California Air Resources Board (November 2001).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, BACM, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by November 13, 2009, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 14, 2009. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 14, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 10, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding and reserving paragraph (c)(141) and by adding paragraph (c)(142) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(141) [Reserved]

(142) New and amended regulations were submitted on January 9, 2008, by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Air Quality Department.

(*1*) Rule 322, ''Power Plant Operations,'' adopted October 17, 2007.

(*2*) Rule 323, ''Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources,'' adopted October 17, 2007.

(*3*) Rule 324, ''Stationary Internal Combustion (IC) Engines,'' adopted October 17, 2007.

* * * * *

[FR Doc. E9–24549 Filed 10–13–09; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 74, No. 197
Wednesday, October 14, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD09

Assessments: Paperwork Reduction Act Notice

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking; supplemental notice.

SUMMARY: On October 2, 2009, the Federal Deposit Insurance Corporation (FDIC) issued a notice of proposed rulemaking with request for comments to amend its assessment regulations to require insured institutions to prepay, on December 30, 2009, their estimated quarterly risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012. The FDIC would begin to offset prepaid assessments on March 30, 2010, representing payment for the fourth quarter of 2009 (*see* 74 FR 51063 (Oct. 2, 2009)). The FDIC is supplementing that notice of proposed rulemaking with a Paperwork Reduction Act analysis and seeking comment on the Paperwork Reduction Act implications of the proposed rule.

DATES: Comments on the Paperwork Reduction Act implications of the FDIC's Prepaid Assessments proposal must be received on or before October 28, 2009.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC concerning the Paperwork Reduction Act implications of this proposal. Such comments should refer to ''Exemption Request and Transfer Notification, 3064–AD49''. Comments may be submitted by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- E-mail: *Comments@FDIC.gov.* Include ''Exemption Request and Transfer Notification, 3064–AD49'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: PRA Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information contained in this proposed rule is being submitted to OMB for review.

Comment is solicited on:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) The quality, utility, and clarity of the information to be collected;

(4) 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; *e.g.,* permitting electronic submission of responses; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Summary of the collections: (1) An information collection would occur when an insured depository institution applies to the FDIC for an exemption from all or part of its assessment prepayment; the application would explain why the prepayment would significantly impair the institution's liquidity, or would otherwise create significant hardship, would contain a full explanation of the need for the exemption and include supporting documentation, such as current financial statements and cash flow projections, a description of management's plans to correct the circumstances that caused the inability to pay the assessment, and any other relevant information, including any information the FDIC may request. (2) An information collection would occur when an insured depository institution enters into an agreement to transfer any portion of its prepaid assessment to another insured depository institution, and notifies the FDIC's Division of Finance of that transaction by submitting a written agreement signed by the legal representatives of both institutions, including documentation that each representative has the legal authority to bind the institution.

1. Application for Exemption

Need and Use of the Information: Exemption requests would supplement the FDIC's exercise of its discretion as supervisor and insurer to exempt an institution from the prepayment requirement if the FDIC determines that the prepayment would adversely affect the safety and soundness of that institution.

Respondents: Insured depository institutions.

Number of responses: 30–200 by the December 1, 2009 deadline.

Frequency of response: Once.

Average number of hours to prepare a response: 8 hours.

Total annual burden: 240–1,600 hours for one-time exemption request.

2. Transfer of Prepaid Assessments

Need and use of the information: Institutions would be required to notify the FDIC of the transfer of prepaid assessments so that the FDIC can accurately track these transfers, and apply available prepaid assessments appropriately against institutions' deposit insurance assessments. The need for credit transfer information

would expire when the prepaid assessments have been exhausted or when remaining prepaid assessments are returned to the institution after December 30, 2014.

Respondents: Insured depository institutions.

Number of responses: 75 during the first year; 25 the second year and 10 in the final year.

Frequency of response: Occasional.

Average number of hours to prepare a response: 2 hours.

Total annual burden: 150 hours the first year; 50 hours the second year; and 20 hours in the third year.

By order of the Board of Directors.

Dated at Washington, DC, this 9th day of October 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–24822 Filed 10–9–09; 4:15 pm]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM415; Notice No. 25–09–11–SC]

Special Conditions: Boeing Model 787–8 Airplane; Lightning Protection of Fuel Tank Structure To Prevent Fuel Tank Vapor Ignition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The Boeing Model 787–8 airplane will incorporate a fuel tank nitrogen generation system (NGS) that actively reduces flammability exposure within the main fuel tanks significantly below that required by the fuel tank flammability regulations. Among other benefits, this significantly reduces the potential for fuel vapor ignition caused by lightning strikes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by November 30, 2009.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM415, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM415. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Dostert, FAA, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2132; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested persons to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions based on comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 28, 2003, The Boeing Company applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The Boeing Model 787–8 airplane will be a new design, two-engine turbo-jet transport category airplane with a two-aisle cabin configuration. The maximum takeoff weight will be 484,000 pounds, and it will carry a maximum of 381 passengers.

Type Certification Basis

Under provisions of 14 CFR 21.17, Boeing must show that Boeing Model 787–8 airplanes (hereafter referred to as ''the 787'') meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, with three exceptions. Sections 25.809(a) and 25.812 will remain as amended by Amendment 25–115, and § 25.981, which will be as amended by Amendment 25–125 in accordance with 14 CFR 26.37.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25) do not contain adequate or appropriate safety standards for the 787 because of novel or unusual design features, special conditions are prescribed under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. Finally, the FAA must also issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design features, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The proposed 787 will have a fuel tank NGS that is intended to control fuel tank flammability. This NGS is designed to provide a level of performance that will reduce the warm day fleet average wing fuel tank flammability significantly below the maximum wing fuel tank flammability limits set in § 25.981(b), as amended by Amendment 25–125. This high level of wing fuel tank NGS performance is an unusual design feature not envisioned at the

time the regulations in the proposed 787 certification basis were promulgated.

Existing Regulations

The certification basis of the 787 includes § 25.981, as amended by Amendment 25–125, as required by § 26.37. This amendment includes the ignition prevention requirements in § 25.981(a), as amended by Amendment 25–102, and it includes specific limitations on fuel tank flammability in § 25.981(b) as amended by Amendment 25–125. (Section 25.981(c) contains an alternative to meeting paragraph (b)—vapor ignition mitigation—that is not applicable to the proposed 787 design.)

Ignition Source Prevention

Section 25.981(a)(3) requires applicants to show that an ignition source in the fuel tank system could not result from any single failure, from any single failure in combination with any latent failure condition not shown to be extremely remote, or from any combination of failures not shown to be extremely improbable. This requirement was originally adopted in Amendment 25–102 and was based on the assumption that fuel tanks are always flammable. This requirement defines three types of scenarios that must be addressed in order to show compliance with § 25.981(a)(3). The first scenario is that any single failure, regardless of the probability of occurrence of the failure, must not cause an ignition source. The second scenario is that any single failure, regardless of the probability of occurrence, in combination with any latent failure condition not shown to be at least extremely remote, must not cause an ignition source. The third scenario is that any combination of failures not shown to be extremely improbable must not cause an ignition source. Demonstration of compliance with this requirement would typically require a structured, quantitative safety analysis. Design areas that have any latent failure conditions typically would be driven by these requirements to have multiple fault tolerance, or ''triple redundancy.'' This means that ignition sources are still prevented even after two independent failures.

Flammability Limits

Section 25.981(b) states that no fuel tank fleet average flammability exposure may exceed 3 percent of the flammability exposure evaluation time calculated using the method in part 25, Appendix N, or the fleet average flammability of a fuel tank within the wing of the airplane being evaluated, whichever is greater. If the wing is not a conventional unheated aluminum wing, the analysis must be based on an assumed equivalent construction conventional unheated aluminum wing. In addition, for fuel tanks that are normally emptied during operation and that have any part of the tank located within the fuselage contour, the fleet average flammability for warm days (above 80°F) must be limited to 3 percent as calculated using the method in part 25, Appendix M.

Application of Existing Regulations Inappropriate Due to Impracticality

Since the promulgation of § 25.981(a)(3), as amended by Amendment 25–102, the FAA has conducted certification projects in which applicants found it impractical to meet the requirements of that regulation for some areas of lightning protection for fuel tank structure. Partial exemptions were issued for these projects. These same difficulties exist for the 787 project.

The difficulty of designing multiple-fault-tolerant structure, and the difficulty of detecting failures of hidden structural design features in general, makes compliance with § 25.981(a)(3) uniquely challenging and impractical for certain aspects of the electrical bonding of structural elements. Such bonding is needed to prevent occurrence of fuel tank ignition sources from lightning strikes. The effectiveness and fault tolerance of electrical bonding features for structural joints and fasteners is partially dependent on design features that cannot be effectively inspected or tested after assembly without damaging the structure, joint, or fastener. Examples of such features include a required interference fit between the shank of a fastener and the hole in which the fastener is installed, metal foil or mesh imbedded in composite material, a required clamping force provided by a fastener to pull two structural parts together, and a required faying surface bond between the flush surfaces of adjacent pieces of structural material such as in a wing skin joint or a mounting bracket installation. In addition, other features that can be physically inspected or tested may be located within the fuel tanks, therefore, it is not practical to inspect for failures of those features at short intervals. Examples of such failures include separation or loosening of cap seals over fastener ends and actual structural failures of internal fasteners. This inability to practically detect failures of structural design features critical to lightning protection results in any such failures that occur remaining in place for a very long time, and possibly for the remaining life of the airplane, prior to detection.

Accounting for such long failure latency periods in the system safety analysis required by § 25.981(a)(3) would require multiple fault tolerance in the structural lightning protection design. As part of the design development activity for the 787, Boeing has examined possible design provisions to provide multiple fault tolerance in the structural design to prevent ignition sources from occurring in the event of lightning attachment to the airplane in critical locations. Boeing has concluded from this examination that providing multiple fault tolerance for some structural elements is not practical. Boeing has also identified some areas of the proposed 787 design where it is impractical to provide even single fault tolerance in the structural design to prevent ignition sources from occurring in the event of lightning attachment after a single failure. The FAA has reviewed this examination with Boeing in detail and has agreed that providing fault tolerance beyond that in the proposed 787 design for these areas would be impractical.

As a result of the 787 and other certifications projects, the FAA has now determined that compliance with § 25.981(a)(3) is impractical for some areas of lightning protection for fuel tank structure, and that application of § 25.981(a)(3) to those design areas is therefore inappropriate. The FAA plans further rulemaking to revise § 25.981(a)(3). The FAA plans to issue special conditions or exemptions, when appropriate, for certification projects in the interim. This is discussed in FAA Memorandum ANM–112–08–002, Policy on Issuance of Special Conditions and Exemptions Related to Lightning Protection of Fuel Tank Structure, dated May 26, 2009.[1]

Application of Existing Regulations Inappropriate Due to Compensating Feature That Provides Equivalent Level of Safety

Section 25.981(b) sets specific standards for fuel tank flammability as discussed above under ''Flammability Limits.'' Under that regulation, the fleet average flammability exposure of wing main tanks on the 787 may not exceed 3 percent of the flammability exposure evaluation time calculated using the method in part 25, Appendix N, or the fleet average flammability of a wing main tank within an equivalent

[1] The memorandum may be viewed at: *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/12350AE62D393B7A862575C300709CA3?OpenDocument&Highlight=anm-112-08-002.*

construction conventional unheated aluminum wing fuel tank, whichever is greater. If it is assumed that a 787 equivalent conventional unheated aluminum wing fuel tank would not exceed a fleet average flammability time of 3 percent, the actual composite airplane wing fuel tank design would be required to comply with the 3 percent fleet average flammability standard. However, the proposed 787 design includes a wing tank NGS that will also be shown to meet the additional, more stringent warm day average flammability standard in part 25, Appendix M, which is only required for normally emptied fuel tanks with some part of the tank within the fuselage contour.

Since the proposed wing tank NGS on the 787 provides performance that meets part 25, Appendix M, the FAA has determined that the risk reduction provided by this additional performance will provide compensation for some relief from the ignition prevention requirements of § 25.981(a)(3).

In determining the appropriate amount of relief from the ignition prevention requirements of § 25.981(a), the FAA considered the original overall intent of Amendment 25–102, which was to ensure the prevention of catastrophic events due to fuel tank vapor explosion. The proposed special conditions are intended to achieve that objective through a prescriptive requirement that fault tolerance (with respect to the creation of an ignition source) be provided for all structural lightning protection design features where providing such fault tolerance is practical, and through a performance-based standard for the risk due to any single failure vulnerability that exists in the design. In addition, for any structural lightning protection design features for which Boeing shows that providing fault tolerance is impractical, the proposed special conditions would require Boeing to show that a fuel tank vapor ignition event due to the summed risk of all non-fault-tolerant design features is extremely improbable. Boeing would be required to show that this safety objective is met by the proposed design using a structured system safety assessment similar to that currently used for demonstrating compliance with §§ 25.901 and 25.1309.

Discussion of the Proposed Requirements

Given these novel design features, and the compliance challenges noted earlier in this document, the FAA has determined that application of § 25.981(a)(3) is inappropriate in that it is neither practical nor necessary to apply the ignition source prevention provisions of § 25.981(a)(3) to the specific fuel tank structural lightning protection features of the 787. However, without the § 25.981(a)(3) provisions, the remaining applicable regulations in the 787 certification basis would be inadequate to set an appropriate standard for fuel tank ignition prevention. Therefore, in accordance with provisions of § 21.16, the FAA is proposing that, instead of § 25.981(a)(3), alternative fuel tank structural lighting protection requirements be applied to fuel tank lightning protection features that are integral to the airframe structure of the 787. These alternative requirements are intended to provide the level of safety intended by § 25.981(a)(3), based on our recognition, as discussed above, that a highly effective NGS for the fuel tanks makes it unnecessary to assume that the fuel tank is always flammable. As discussed previously, the assumption that the fuel tank is always flammable was part of the basis for the ignition prevention requirements of § 25.981(a)(3).

One resulting difference between these proposed special conditions and the § 25.981(a)(3) provisions they are meant to replace is the outcome being prevented—fuel vapor ignition versus an ignition source. These proposed special conditions acknowledge that the application of fuel tank flammability performance standards will reduce fuel tank flammability to an extent that it is appropriate to consider the beneficial effects of flammability reduction when considering design areas where it is impractical to comply with § 25.981(a)(3).

One of the core requirements of the proposed special conditions is a prescriptive requirement that structural lightning protection design features must be fault tolerant. (An exception wherein Boeing can show that providing fault tolerance is impractical, and associated requirements, is discussed below.) The other core requirement is that Boeing must show that the design, manufacturing processes, and airworthiness limitations section of the instructions for continued airworthiness include all practical measures to prevent, and detect and correct, failures of structural lightning protection features due to manufacturing variability, aging, wear, corrosion, and likely damage. The FAA has determined that, if these core requirements are met, a fuel tank vapor ignition event due to lightning is not anticipated to occur in the life of the airplane fleet. This conclusion is based on the fact that a critical lightning strike to any given airplane is itself a remote event, and on the fact that fuel tanks must be shown to be flammable for only a relatively small portion of the fleet operational life.

For any non-fault-tolerant features proposed in the design, Boeing must show that eliminating these features or making them fault tolerant is impractical. The requirements and considerations for showing it is impractical to provide fault tolerance are described in FAA Memorandum ANM–112–08–002. This requirement is intended to minimize the number of non-fault tolerant features in the design.

For areas of the design where Boeing shows that providing fault tolerant structural lighting protection features is impractical, non-fault-tolerant features will be allowed provided Boeing can show that a fuel tank vapor ignition event due to the non-fault-tolerant features is extremely improbable when the sum of probabilities of those events due to all non-fault-tolerant features is considered. Boeing will be required to submit a structured, quantitative assessment of fleet average risk for a fuel tank vapor ignition event due to all non-fault-tolerant design features included in the design. This will require determination of the number of non-fault tolerant design features, estimates of the probability of the failure of each non-fault-tolerant design feature, and estimates of the exposure time for those failures. This analysis must include failures due to manufacturing variability, aging, wear, corrosion, and likely damage.

It is acceptable to consider the probability of fuel tank flammability, the probability of a lightning strike to the airplane, the probability of a lightning strike to specific zones of the airplane (for example, Zone 2 behind the nacelle, but not a specific location or feature), and a distribution of lightning strike amplitude in performing the assessment provided the associated assumptions are acceptable to the FAA. The analysis must account for any dependencies among these factors, if they are used. The assessment must also account for operation with inoperative features and systems, including any proposed or anticipated dispatch relief. This risk assessment requirement is intended to ensure that an acceptable level of safety is provided given the non-fault-tolerant features in the proposed design.

Part 25, Appendix N, as adopted in Amendment 25–125, in conjunction with these proposed special conditions, constitutes the standard for how to determine flammability probability. In performing the safety analysis required by these proposed special conditions,

relevant § 25.981(a)(3) compliance guidance is still applicable. Appropriate credit for the conditional probability of environmental or operational conditions occurring is normally limited to those provisions involving multiple failures, and this type of credit is not normally allowed in evaluation of single failures. However, these proposed special conditions would allow consideration of the probability of occurrence of lightning attachment and flammable conditions when assessing the probability of structural failures resulting in a fuel tank vapor ignition event.

The FAA understands that lightning protection safety for airplane structure is inherently different from lightning protection for systems. We intend to apply these special conditions only to structural lightning protection features of fuel systems. We do not intend to apply the alternative standards used under these special conditions to other areas of the airplane design evaluation.

Proposed Requirements Provide Equivalent Level of Safety

In recognition of the unusual design feature discussed above, and the impracticality of requiring multiple fault tolerance for lightning protection of certain aspects of fuel tank structure, the FAA has determined that an equivalent level of safety to direct compliance with § 25.981(a)(3) will be achieved for the 787 by applying these proposed requirements. The FAA considers that, instead of only concentrating on fault tolerance for ignition source prevention, significantly reducing fuel tank flammability exposure in addition to preventing ignition sources is a better approach to lightning protection for the fuel tank. In addition, the level of average fuel tank flammability achieved by compliance with these special conditions is low enough that it is not appropriate or accurate to assume in a safety analysis that the fuel tanks may always be flammable.

Section 25.981(b), as amended by Amendment 25–125, sets limits on the allowable fuel tank flammability for the 787. Paragraph 2(a) of these proposed special conditions applies the more stringent standard for warm day flammability performance applicable to normally emptied tanks within the fuselage contour from § 25.981(b) and part 25, Appendix M, to the wing tanks of the 787.

Because of the more stringent fuel tank flammability requirements in these special conditions, and because the flammability state of a fuel tank is independent of the various failures of structural elements that could lead to an ignition source in the event of lightning attachment, the FAA has agreed that it is appropriate in this case to allow treatment of flammability as an independent factor in the safety analysis. The positive control of flammability and the lower flammability that is required by these special conditions exceeds the minimum requirements of § 25.981(b). This offsets a reduction of the stringent standard for ignition source prevention in § 25.981(a)(3), which assumes that the fuel tank is flammable at all times.

Given the stringent requirements for fuel tank flammability, the fuel vapor ignition prevention and the ignition source prevention requirements in these special conditions will prevent ''* * * catastrophic failure * * * due to ignition of fuel or vapors.'', as stated in § 25.981(a). Thus, the overall level of safety achieved by these special conditions is considered equivalent to that which would be required by compliance with § 25.981(a)(3) and (b).

Applicability

These proposed special conditions are applicable to the 787–8. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the 787. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for The Boeing Model 787–8 airplane.

1. Definitions

Most of the terms used in Special Condition No. 2, Alternative Fuel Tank Structural Lightning Protection Requirements, either have the common dictionary meaning or are defined in AC 25.1309–1A, System Design and Analysis, dated June 21, 1988.

The following definitions are the only terms intended to have a specialized meaning when used in Special Condition No. 2.:

(a) *Basic Airframe Structure.* Includes design elements such as structural members, structural joint features, and fastener systems including airplane skins, ribs, spars, stringers, etc., and associated fasteners, joints, coatings, and sealant. Basic airframe structure may also include those structural elements that are expected to be removed for maintenance, such as exterior fuel tank access panels and fairing attachment features, provided maintenance errors that could compromise associated lightning protection features would be evident upon an exterior preflight inspection of the airplane and would be corrected prior to flight.

(b) *Permanent Systems Supporting Structure.* Includes static, permanently attached structural parts (such as brackets) that are used to support system elements. It does not include any part intended to be removed, or any joint intended to be separated, to maintain or replace system elements or other parts, unless that part removal or joint separation is accepted by the FAA as being extremely remote.

(c) *Manufacturing Variability.* Includes tolerances and variability allowed by the design and production specifications as well as anticipated errors or escapes from the manufacturing and inspection processes.

(d) *Extremely Remote.* Conditions that are not anticipated to occur to each airplane during its total life, but which may occur a few times when considering the total operational life of all airplanes of one type. Extremely remote conditions are those having an average probability per flight hour on the order of 1×10^{-7} or less, but greater than on the order of 1×10^{-9}.

(e) *Extremely Improbable.* Conditions that are so unlikely that they are not anticipated to occur during the entire operational life of all airplanes of one type. Extremely improbable conditions are those having an average probability per flight hour of the order of 1×10^{-9} or less.

2. Alternative Fuel Tank Structural Lightning Protection Requirements

For lightning protection features that are integral to fuel tank basic airframe structure or permanent systems supporting structure, as defined in Special Condition No. 1, Definitions, for which the Boeing Company shows and the FAA finds compliance with § 25.981(a)(3) to be impractical, the following requirements may be applied

in lieu of the requirements of § 25.981(a)(3):

(a) The Boeing Company must show that the airplane design meets the requirements of part 25, Appendix M, as amended by Amendment 25–125, for all fuel tanks installed on the airplane.

(b) The Boeing Company must show that the design includes at least two independent, effective, and reliable lightning protection features (or sets of features) such that fault tolerance to prevent lightning-related ignition sources is provided for each area of the structural design proposed to be shown compliant with these special conditions in lieu of compliance with the requirements of § 25.981(a)(3). Fault tolerance is not required for any specific design feature if:

(1) for that feature, providing fault tolerance is shown to be impractical, and

(2) fuel tank vapor ignition due to that feature and all other non-fault-tolerant features, when their fuel tank vapor ignition event probabilities are summed, is shown to be extremely improbable.

(c) The applicant must perform an analysis to show that the design, manufacturing processes, and airworthiness limitations section of the instructions for continued airworthiness include all practical measures to prevent, and detect and correct, failures of structural lightning protection features due to manufacturing variability, aging, wear, corrosion, and likely damage.

Issued in Renton, Washington, on September 24, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–24652 Filed 10–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0858; Airspace Docket No. 09–ASW–22]

Proposed Amendment of Class E Airspace; Llano, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Llano, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Llano Municipal Airport, Llano, TX. This action would also update the geographic coordinates of Llano Municipal Airport to coincide with the FAAs National Aeronautical Charting Office. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Llano Municipal Airport.

DATES: 0901 UTC. Comments must be received on or before November 30, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0858/Airspace Docket No. 09–ASW–22, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0858/Airspace Docket No. 09–ASW–22.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Llano Municipal Airport, Llano, TX. This action would also update the geographic coordinates of Llano Municipal Airport. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Llano Municipal Airport, Llano, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Llano, TX [Amended]

Llano Municipal Airport, TX
(Lat. 30°47′01″ N., long. 98°39′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Llano Municipal Airport and within 4 miles each side of the 359° bearing from the airport extending from the 6.5-mile radius to 13.5 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on October 1, 2009.

Walter L. Tweedy,

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

[FR Doc. E9–24625 Filed 10–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0859; Airspace Docket No. 09–ASW–23]

Proposed Amendment of Class E Airspace; Burnet, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Burnet, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Burnet Municipal Airport-Kate Craddock Field, Burnet, TX. This action would also update the geographic coordinates of the Burnet NDB to coincide with the FAAs National Aeronautical Charting Office. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Burnet Municipal Airport-Kate Craddock Field.

DATES: Comments must be received on or before November 30, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0859/Airspace Docket No. 09–ASW–23, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0859/Airspace Docket No. 09–ASW–23.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Burnet Municipal Airport-Kate Craddock Field, Burnet, TX. This action would also update the geographic

coordinates of the Burnet NDB. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Burnet Municipal Airport-Kate Craddock Field, Burnet, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Burnet, TX [Amended]

Burnet Municipal Airport—Kate Craddock Field, TX
(Lat. 30°44′20″ N., long. 98°14′19″ W.)
Burnet NDB
(Lat. 30°44′25″ N., long. 98°14′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Burnet Municipal Airport—Kate Craddock Field and within 2 miles each side of the 016° bearing from the airport extending from the 6.7-mile radius to 10.2 miles north of the airport, and within 2 miles each side of the 196° bearing from the airport extending from the 6.7-mile radius to 10.3 miles south of the airport, and within 2.5 miles each side of the 202° bearing from the Burnet NDB extending from the 6.7-mile radius to 7.4 miles southwest of the airport.

* * * * *

Issued in Fort Worth, TX, on October 1, 2009.

Walter L. Tweedy,

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

[FR Doc. E9–24645 Filed 10–13–09; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0690; Airspace Docket No. 09–AWP–6]

Proposed Establishment of Class E Airspace; Riverside/Rubidoux Flabob Airport, Riverside, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Riverside/Rubidoux Flabob Airport, Riverside, CA. Controlled airspace is necessary to accommodate aircraft using a new VHF Omni-Directional Radio Range (VOR) Standard Instrument Approach Procedure (SIAP) at Riverside/Rubidoux Flabob Airport, Riverside, CA. The FAA is proposing this action to enhance the safety and management of aircraft operations at Riverside/Rubidoux Flabob Airport, Riverside, CA.

DATES: Comments must be received on or before November 30, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826.

You must identify FAA Docket No. FAA–2009–0690; Airspace Docket No. 09–AWP–6, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2009–0690 and Airspace Docket No. 09–AWP–6) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–0690 and Airspace Docket No. 09–AWP–6''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Riverside/Rubidoux Flabob Airport, Riverside, CA. Controlled airspace extending upward from 700 feet above the surface is necessary to accommodate aircraft using the new VOR (SIAP) at Riverside/Rubidoux Flabob Airport, Riverside, CA. This action would enhance the safety and management of aircraft operations at Riverside/Rubidoux Flabob Airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103.

Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Riverside/Rubidoux Flabob Airport, Riverside, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Riverside/Rubidoux Flabob Airport, CA [New]

Flabob Airport, CA
(Lat. 38°59′20″ N., long. 117°24′36″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Flabob Airport.

* * * * *

Issued in Seattle, Washington, on October 5, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–24623 Filed 10–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0631; Airspace Docket No. 09–ASW–19]

Proposed Establishment of Class E Airspace; Albany, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: Comments must be received on or before November 30, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0631/Airspace Docket No. 09–ASW–19, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in

person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0631/Airspace Docket No. 09–ASW–19.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Albany Municipal Airport, Albany, TX. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, signed August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Albany Municipal Airport, Albany, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Albany, TX [New]

Albany Municipal Airport, TX
(Lat. 32°43′17″ N., long. 99°16′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Albany Municipal Airport, and within 4 miles each side of the 178° bearing from the airport extending from the 6.4-mile radius to 10.6 miles south of the airport, and within 4 miles each side of the 358° bearing from the airport extending from the 6.4-mile radius to 10.7 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on October 1, 2009.

Walter L. Tweedy,

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

[FR Doc. E9–24650 Filed 10–13–09; 8:45 am]

BILLING CODE 4901–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2009–0067]

RIN 0960–AH08

Transfer of Accumulated Benefit Payments

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to amend our regulations to allow a representative payee who will no longer be serving in that capacity to transfer accumulated

benefit payments and interest directly to a beneficiary if we determine that it would be in the best interest of the beneficiary. This change would give us more flexibility in deciding how conserved funds should be handled in these circumstances. The change would also reduce or eliminate delays in the delivery of conserved funds to some beneficiaries.

DATES: To be sure that we consider your comments, we must receive them by December 14, 2009.

ADDRESSES: You may submit comments by any one of four methods—Internet, fax, mail, or hand delivery. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2009–0067 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend this method for submitting your comments. Visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function of the webpage to find docket number SSA–2009–0067, then submit your comment. Once you submit your comment, the system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately as we must manually post each comment. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703.

4. *Hand delivery:* Deliver your comments to the Office of Regulations, Social Security Administration, 137 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m., Eastern Time, business days.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758. 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.*

Background

Our representative payment regulations are in Subpart U of part 404 and subpart F of part 416. In certain cases, we will appoint a representative payee to receive benefit payments on behalf of a beneficiary. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage his or her own benefits or direct the management of benefit payments in his or her interest. The payee must use the payments only for the beneficiary's use and benefit. The payee must conserve or invest for the beneficiary any funds remaining after paying for the beneficiary's current needs.

If a payee is no longer going to serve in that capacity, our regulations require the payee to return conserved funds to us or transfer them to a successor payee, as we will specify. The payee is not permitted to transfer these conserved funds to a beneficiary directly. 20 CFR 404.2060 and 416.660. The payee's inability to directly transfer funds to a beneficiary can cause difficulty for both the beneficiary and the representative payee. When we determine that a payee is no longer needed because the beneficiary has become capable of managing his or her own benefits, this two-step process delays our payment of the conserved funds to the beneficiary.

Our regulatory process is particularly problematic for those beneficiaries transitioning out of foster care and for their payees. These beneficiaries might need immediate access to the conserved funds to pay for rent or other necessities. Additionally, at least one State law requires State agency representative payees for beneficiaries in foster care to turn over all conserved funds directly to the beneficiary when he or she transitions out of foster care.

Explanation of Changes

We propose to revise §§ 404.2060 and 416.660 of our regulations to permit a payee to transfer conserved funds to a beneficiary if we so specify. The proposed change would give us the discretion to authorize a payee-to-beneficiary transfer of conserved funds and make the representative payment process more efficient. Allowing direct transfer would conserve our scarce administrative resources and provide faster access to beneficiaries who have become capable of managing their own benefits.

Clarity of These Proposed Rules

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists or diagrams?
- What else could we do to make the rules easier to understand?

When Will We Start To Use These Rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register.** If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the significant public comments. Until the effective date of any final rules, we will continue to use our current rules.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the requirements for a significant regulatory action under Executive Order 12866. Thus, they were not reviewed by OMB.

Regulatory Flexibility Act

We certify that these proposed rules, if published in final, would not have a significant economic impact on a substantial number of small entities because they would affect primarily individuals. Accordingly, 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 OMB 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; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: October 2, 2009.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart U of part 404 and subpart F of part 416 of chapter III of title 20 Code of Federal Regulations as set forth below:

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

Subpart U—[Amended]

1. The authority citation for subpart U of part 404 is revised to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

2. Amend § 404.2060 by revising the first sentence to read as follows:

§ 404.2060 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested benefit payments shall transfer these funds and the interest earned from the invested funds to either a successor payee, to the beneficiary, or to us, as we will specify. * * *

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

Subpart F—[Amended]

3. The authority citation for subpart F of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

4. Amend § 416.660 by revising the first sentence to read as follows:

§ 416.660 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested benefit payments shall transfer these funds, and the interest earned from the invested funds, to either a successor payee, to the beneficiary, or to us, as we will specify. * * *

[FR Doc. E9–24648 Filed 10–13–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–116614–08]

RIN 1545–BH90

Disregarded Entities and Excise Taxes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–116614–08) that was published in the **Federal Register** on Monday, September 14, 2009, clarifying that a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose, but regarded as a separate entity for certain excise tax purposes, is treated as a corporation for tax administration purposes related to those excise taxes.

FOR FURTHER INFORMATION CONTACT: Michael H. Beker, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 7701 of the Internal Revenue Code.

Need for Correction

As published on Monday, September 14, 2009 (74 FR 46957), the notice of proposed rulemaking by cross-reference to temporary regulations (REG–116614–08) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations (REG–116614–08), which was the subject of FR Doc. E9–21986, is corrected as follows:

1. On page 46958, column 2, instructional paragraph 2, item number 4, the language ''4. Revising paragraphs (e)(2), (e)(5) and (e)(6).'' is corrected to read ''4. Revising paragraph (e)(2).''.

2. On page 46958, column 2, new item number 5 is added to read ''5. Adding two sentences at the end of paragraph (e)(5).''.

3. On page 46958, column 2, instructional paragraph 2, new item number 6 is added to read ''6. Adding one sentence at the end of paragraph (e)(6).''.

§ 301.7701–2 [Corrected]

4. On page 46958, column 2, in § 301.7701–2, paragraph (e)(5), first line, the language ''[The text of this proposed'' is corrected to read ''* * * [The text of this proposed''.

5. On page 46958, column 2, in § 301.7701–2, paragraph (e)(6), first line, the language, ''[The text of this proposed'' is corrected to read ''* * * [The text of this proposed''.

Diane O. Williams,

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

[FR Doc. E9–24655 Filed 10–13–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 71 and 90

RIN 1219–AB48

Respirable Coal Mine Dust: Continuous Personal Dust Monitor (CPDM)

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Request for information.

SUMMARY: This document requests information related to the use of the

Continuous Personal Dust Monitor (CPDM) as a sampling device to measure a miner's exposure to respirable coal mine dust.

In September 2006, the National Institute for Occupational Safety and Health (NIOSH) published the results of a collaborative study designed to verify the performance of the pre-commercial CPDM in laboratory and underground coal mine environments. According to the NIOSH Report of Investigations 9669, ''Laboratory and Field Performance of a Continuously Measuring Personal Respirable Dust Monitor,'' the CPDM is a new monitoring device that is accurate, precise, and durable in providing continuous exposure information previously not available to coal miners and coal mine operators.

MSHA is requesting information regarding whether the use of the CPDM would lead to more effective monitoring and control miners' exposure to respirable coal mine dust during a working shift. Responses to this request for information will assist MSHA in determining: How to best use the monitoring capability of the CPDM to improve miner health protection from disabling occupational lung disease; the feasibility of more effective exposure monitoring given the availability of CPDM; and what regulatory and non-regulatory actions to consider regarding the use of the CPDM in coal mines.

DATES: All comments must be received by midnight Eastern Standard Time on December 14, 2009.

ADDRESSES: Comments must be clearly identified with ''RIN 1219–AB48'' and may be sent by any of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Electronic mail: zzMSHA-comments@dol.gov.* Include ''RIN 1219–AB48'' in the subject line of the message.

(3) *Facsimile:* 202–693–9441. Include ''RIN 1219–AB48'' in the subject line of the message.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

Comments can be accessed electronically at *http://www.msha.gov* under the *Rules and Regs* link. MSHA will post all comments on the Internet without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when rulemaking documents are published in the **Federal Register.** To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Ms. Silvey can be reached at *Silvey.Patricia@dol.gov* (Internet E-mail), (202) 693–9440 (voice), or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

A. Continuous Personal Dust Monitor (CPDM)

For over two decades, researchers and MSHA have attempted to identify technology that would provide real-time information on respirable coal mine dust (respirable dust) levels to which miners are exposed. Such information would enable a mine operator to be more proactive in determining when to take corrective measures to avoid miners' exposure to excessive levels of respirable dust. The CPDM provides a direct measurement of respirable dust in the mine atmosphere on a real-time basis, unlike the existing sampling system used since 1970. As such, MSHA believes that corrective action based on CPDM monitoring results can be part of a comprehensive health protection strategy that reduces miners' exposure to excessive levels of respirable dust; thereby reducing occupational lung disease among coal miners, including coal workers' pneumoconiosis (CWP) or ''black lung'' disease.

B. Description of the Continuous Personal Dust Monitor (CPDM)

The CPDM is a respirable dust sampler and gravimetric analysis device that is incorporated into the miner's cap lamp battery case as a single package located on the belt. The device represents the first major advance in dust sampling technology in more than 30 years. The new cap lamp battery case contains all the components, including two separate batteries, to enable the dust monitor and cap lamp to operate independently. Air from a miner's work environment enters the sampling device through an inlet located adjacent to the lens of the cap light on the miner's hard hat and flows via a flexible tube that runs parallel to the lamp cord to the belt-mounted device. Before entering the CPDM, the air stream is first coursed through a Higgins-Dewell (HD) cyclone to separate the coarse or non-respirable dust, so that only airborne particles that could penetrate to the lung will enter the device. From there, the air stream flows through: (1) A heater to remove excess moisture; (2) a 14-mm diameter glass fiber filter where respirable-size dust particles are collected; (3) a flow rate sensor; and, (4) a computer-controlled pump.

An exchangeable filter cartridge is mounted on an inertial mass sensor called the Tapered Element Oscillating Microbalance (TEOM® system). The TEOM system is made of a hollow tapered tube called the tapered element, which is clamped at the base and free to oscillate at its narrow or free end on which the collection filter is mounted. Electronics positioned around the sensor cause the tube to oscillate at its natural frequency. When dust particles are deposited on the collection filter, the mass of the collection filter increases, causing the natural oscillating frequency of the tapered element to decrease. Because of the direct relationship between mass and oscillating frequency, the amount of respirable dust deposited on the filter can be determined by measuring the frequency change. The concentration of respirable dust in the mine atmosphere is then determined by the on-board computer by dividing the mass of dust collected by the volume of mine air that passed through the system during the time period sampled.

To accommodate shifts greater than 8 hours in duration, the CPDM is designed to operate for 12 hours. The display on the device continuously shows: (1) The respirable dust concentration calculated at distinct 30-minute intervals; (2) the average respirable dust exposure from the beginning of the shift; and, (3) the percent of exposure limit. Through the display, both the mine operator and miners wearing the device have the ability for the first time to gauge respirable dust exposures, as well as the effectiveness of corrective actions taken by authorized personnel to reduce a miner's exposure. The CPDM is capable of being used in a shift mode, in which the device is programmed by authorized personnel to operate for specific shift lengths (*e.g.,* 8, 10, 12 hours) to monitor a miner's exposure, or in an engineering mode for shorter-term evaluations. If the monitor is operated in an engineering mode, authorized personnel would program sampling periods within the

shift to record respirable dust levels during specific mining cycles or at specific dust-generation sources in the mine. The display has various screens that show the: (1) Time of day; (2) elapsed time since beginning of the shift; (3) total amount of respirable dust accumulated on the filter since the start of sampling which is stored in an internal memory for analysis; (4) dust concentrations; (5) operational parameters including flow rate, filter pressure, temperature, *etc.*; and, (6) a bar graph of the average respirable dust concentration during the entire sampling period. Each bar represents the average concentration value for each previous 30-minute interval, with a new bar added to the graph every 30 minutes. This, along with other information, is stored in the CPDM and can be accessed with a personal computer at the end of the shift for analysis and recordkeeping.

The CPDM is neither capable of directly measuring the quartz content of the collected sample; nor is the exchangeable filter cartridge, as it is currently designed, suitable to permit the deposited dust to be analyzed for quartz. Therefore, regardless of the regulatory or non-regulatory actions considered regarding the use of the CPDM to monitor respirable coal mine dust, the sampling equipment approved under existing standards will continue to be used to collect separate respirable dust samples for quartz analysis.

C. Collaborative Study Results

All phases of the NIOSH collaborative study have been successfully completed. These included: (1) Planned 10 underground in-mine tests; (2) subsequent extended testing undertaken by and at the request of several mine operators at four additional underground coal mines; (3) special area sampling at 180 randomly selected mechanized mining units to determine the equivalency of the pre-commercial CPDM to the Mining Research Establishment (MRE) instrument and the International Standards Organization (ISO) definition of respirable dust; and, (4) laboratory pre- and post-accuracy testing.

On August 14, 2006, NIOSH posted the results of the collaborative study on its Web site, concluding that the new monitoring device was found to be accurate, precise, and durable under harsh mining conditions in providing real-time continuous information on respirable dust exposure. These findings and other observations are explained in more detail in the NIOSH Report of Investigations 9669, ''*Laboratory and Field Performance of a Continuously Measuring Personal Respirable Dust Monitor,''* DHHS (NIOSH) Publication No. 2006–145. The report, which was published in September 2006, is posted on NIOSH's Web site at *http://www.cdc.gov/niosh/mining/pubs/pdfs/ri9669.pdf.*

II. Rulemaking History

On July 7, 2000, the Secretary of Labor and the Secretary of Health and Human Services jointly published the proposed rule, ''Determination of Concentration of Respirable Coal Mine Dust,'' (Single Sample; 65 FR 42068), which would enable MSHA to more effectively identify and address overexposures to respirable coal mine dust. Under the proposal, MSHA would determine miners' exposure to coal mine dust based on the results of a single-shift sample, rather than on the average of multiple samples, as has been the Agency's longstanding practice.

On July 7, 2000, MSHA also published a proposed rule on ''Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust'' (Plan Verification; 65 FR 42122). Under the proposal, each operator of an underground coal mine would be required to verify and periodically monitor, through sampling, the effectiveness of dust controls for each mechanized mining unit specified in the mine's approved ventilation plan.

On March 6, 2003, in response to comments, MSHA reproposed both the Plan Verification rule (68 FR 10784), and Single Sample rule (68 FR 10940). The proposed rule on Plan Verification would integrate the use of CPDMs, with real-time monitoring, as part of an effective dust control program once the technology was verified as reliable under mining conditions and commercially available.

Public hearings on the Single Sample and Plan Verification proposed rules were held in May 2003, and the comment period, originally scheduled to close on June 4, 2003, was extended until July 3, 2003. On July 3, 2003, MSHA extended the comment period on the Plan Verification proposal until further notice (68 FR 39881). In addition, on August 12, 2003, MSHA and NIOSH reopened the rulemaking record and extended the comment period on the Single Sample proposal until further notice (68 FR 47886).

In August 2003, MSHA convened a meeting with representatives from NIOSH, the developer of the CPDM, and stakeholders representing the mining industry and labor. The purpose of the meeting was to solicit the parties' participation in a collaborative study on performance verification testing of 25 new pre-commercial CPDMs purchased by MSHA and NIOSH. The parties agreed to participate in this study to evaluate all aspects of the long-term performance of the CPDM in a variety of underground coal mine environments.

Existing 30 CFR part 74, specifies requirements for approval of coal mine dust personal sampler units designed to determine the concentrations of respirable dust in coal mine atmospheres; procedures for applying such approval; test procedures; and labeling. On January 16, 2009, MSHA published a proposed rule in the **Federal Register** on Coal Mine Dust Personal Monitors (74 FR 2915). The proposed rule would revise requirements that MSHA and NIOSH apply to approve sampling devices that monitor miner exposure to respirable dust. The proposal would establish criteria for approval of the CPDM, which would be worn by the miner and would report exposure to dust levels continuously during the shift. In addition, the proposal would update application requirements for the existing ''coal mine dust personal sampler unit'' to reflect improvements in this sampler over the past 15 years. This document requests information regarding potential CPDM use for more effective monitoring and control of respirable coal mine dust.

III. Key Issues on Which Comment Is Requested

A number of important issues must be addressed by MSHA to develop an effective and comprehensive monitoring strategy incorporating continuous direct-reading exposure measurement technology for use in the Nation's coal mines. As part of this strategy, the Agency is seeking comments from the mining community on how best to use the unique monitoring capabilities offered by the CPDM in its overall strategy to further improve miner health protection from disabling occupational lung disease.

MSHA is especially interested in comments addressing the issues below; however, comments on any relevant issues are welcome. Comments should be specific and include alternatives, rationale, health benefits to miners (*e.g.,* lives saved, illnesses averted), technological and economic feasibility, impact on small mines, and supporting data.

A. CPDM Application Strategies

The existing system of monitoring concentrations of respirable dust in the mine atmosphere where miners work or travel relies on periodic occupational

and area or environmental sampling. Corrective actions are required when sampling results indicate noncompliance with the applicable dust standard. Because all dust samples taken for compliance purposes must be transmitted to MSHA for processing, the results are not known for days after sampling. Consequently, if results require the operator to take corrective action to reduce airborne dust levels, those efforts would only affect exposures on subsequent work shifts; this may be some time period after sampling. Continuous exposure monitoring, on the other hand, would provide mine operators with information about the actual dust levels in the workplace on a real-time basis. This would permit mine management to be proactive in taking corrective action during the shift to prevent possible overexposures by optimizing mining practices and implementing appropriate measures to correct problems as they arise. However, successful use of CPDMs for exposure assessment and control will depend on the proper application of the device's capability to supply timely information on respirable dust concentrations during a working shift, the proper interpretation of the information provided, and timely intervention to prevent overexposing miners. In this context, MSHA requests comment on the following related to the application of the CPDM:

1. Please address conditions and circumstances under which CPDMs should be proposed for use in underground coal mines. In your response, include factors such as mine size, compliance history, type of mining, presence of quartz, and designated occupation. In addition, please address whether the CPDM could be integrated into the existing compliance strategy, and, if so, how. Please be specific in your response, and address any technological and economic feasibility issues associated with using CPDMs.

2. Please address the advantages and disadvantages of the existing compliance strategy, which relies on a combination of occupational and area sampling, versus a personal exposure monitoring strategy only. Please be specific in your response, noting the safety and health benefits of each strategy.

3. If CPDMs were to be required, how should a compliance strategy based on CPDMs be structured? Please be specific as to miners and occupations covered and include the rationale for your response. Include suggestions for the role of the mine operator, miner, miners' representatives, and MSHA under such a strategy.

4. How would the use of CPDMs impact the frequency of sampling? Please be specific and address how the concentration and exposure levels impact the frequency of sampling.

5. What examinations should be performed to assure the validity of exposure measurements, and how frequently should these examinations be made?

6. Since the current exposure limits were developed from 8-hour shift exposure measurements, how should the miner's end-of-shift exposure be reported when the work shift is longer than 8 hours?

7. Since the CPDM cannot be used to monitor for quartz, how should the applicable dust standard, including reduced standards established when the quartz content of the respirable dust exceeds 5 percent, be addressed when using a CPDM?

8. Please address the use of CPDMs for sampling in outby areas, including specific areas, occupations, and frequency of sampling.

9. Please address the use of engineering and administrative controls including how such controls should be applied to the CPDM's real-time exposure readings.

10. What action should be taken by the mine operator when a miner's exposure during a working shift reaches the dust standard limit?

11. Please address the use of CPDMs at surface mines, including sampling of areas, occupations and miners.

B. Dust Control Plan Requirements

Providing and maintaining a work environment free of excessive levels of respirable dust is essential for long-term health protection. Monitoring the work environment provides an indication of the effectiveness of existing dust controls; however, monitoring alone does not control concentrations of respirable dust in the mine atmosphere. Accordingly, consistent with MSHA's regulatory strategy, engineering or environmental controls are the principal methods that have been relied on over the past 35 years to prevent or minimize miners' exposures to both primary and secondary sources of respirable dust in the workplace. These controls are required in an operator's approved mine ventilation plan to provide assurance that miners are not being exposed to excessive dust levels. Since the CPDM provides real-time information on concentration levels, MSHA is exploring alternatives to limiting miners' exposures. MSHA is therefore requesting comments on the following dust control plan issues:

1. Please address the advantages and disadvantages of using engineering controls to maintain the mine atmosphere in the area where miners work or travel. Please be specific in your response and include the technological and economic feasibility of such controls. In addition, please address the advantages and disadvantages of using administrative controls as part of an effective exposure control program.

2. If CPDMs are used, please address the information that would need to be included in the dust control portion of the mine ventilation plan, including information related to addressing silica.

C. Recordkeeping

To promote miners' awareness of the air quality in the work environment and the integrity of the sampling process, existing regulations require mine operators to send all collected samples to MSHA for processing within 24 hours after the end of the sampling shift. Once processed, the operator is provided with a respirable dust sample data report, which contains the results of every sample submitted. With few exceptions, the operator must post this report on the mine bulletin board for a period of 31 days to provide miners access to current information on respirable dust conditions in the mine. The results of all samples taken by mine operators and MSHA inspectors are maintained by MSHA in a database and retained permanently. With exposure information available at the completion of the work shift when a CPDM is used, existing recordkeeping requirements and responsibilities would need to be addressed. MSHA requests comment on how recordkeeping requirements based on the use of CPDMs should be structured. Please be specific in your response.

1. Who should be responsible for maintaining the CPDM data files and why? How long should exposure records be maintained? How should information be used?

2. How should the data from operator monitoring using the CPDM be transmitted to MSHA? What data should be transmitted? How often should the data be transmitted (*e.g.,* daily, weekly, or some other frequency)? What steps should be taken to ensure the integrity of the data transmitted to MSHA?

3. Under current regulations, mine operators, with few exceptions, post the monitoring results on the mine bulletin board for a period of 31 days. How practicable would it be for operators to continue this practice if the monitoring is conducted with the CPDM, which

results in the collection of significantly more data than with the current MRE instrument? Would it be appropriate for operators to only provide miners with a portion of the data captured by the CPDM or to post the data for a period less than 31 days? Please be specific with your response, including your rationale.

D. Education and Training

It is vital that persons designated by the mine operator to perform dust sampling functions and miners be properly educated and trained to assure the integrity and credibility of the sampling process. To be effective, these persons must be fully cognizant of the nature of the health hazards in the working environment and possess a level of competence in the proper use, operation and maintenance of sampling equipment, and an awareness of the limitations of available protective measures. The required level of competence would be dictated by the complexity inherent in the operation of the particular CPDM and the degree to which oversight of sampling integrity is to be assumed by mine operators using the CPDMs. MSHA requests comments on suggested elements for a training program on using and maintaining a CPDM. Please be specific in your response, addressing the quality, quantity, and types of training, and the qualifications and certifications that should be required.

1. What training should miners receive if required to wear a CPDM? What type of training would be necessary to assure that the miner understands how the device works, what information it provides, and how that information should be used to reduce miners' exposure to respirable dust? How often should miners be required to receive this training?

2. What qualifications should be required before an individual is permitted to operate and maintain a CPDM? How should an individual be required to demonstrate proficiency before being permitted to operate and maintain a CPDM?

3. Which mine personnel should oversee CPDM usage, download exposure information, and interpret data? What type of qualifications/certifications should these personnel be required to have?

E. Benefits and Costs

Because of the changing mining environment, more timely feedback on current respirable dust conditions in the workplace should significantly enhance miner health protection. Benefits would include the ability to immediately identify hazardous dust conditions that cause debilitating and potentially fatal coal workers' pneumoconiosis or ''black lung'' disease, and to reduce or eliminate the risk of overexposure and the potential for illness and premature death, thereby avoiding the attendant costs to employers, miners and their families, and society.

MSHA requests comment on the following questions concerning the benefits and costs of the CPDM:

1. What would be the benefits of using CPDMs in a comprehensive and effective compliance strategy? Note that benefits might differ depending upon which compliance strategy is selected.

2. What costs would be associated with using CPDMs? Please be specific as to every component, such as, initial outlay, maintenance, and training.

3. What would be the advantages, disadvantages, and relative costs of different methods of using CPDMs?

4. Would the use of CPDMs affect small mines differently than large mines, and if so, how?

5. What incentives, if any, should MSHA consider to promote effective use of CPDMs in coal mines?

6. What actions, if any, should MSHA take to encourage coal mining industry acceptance of the CPDM technology, stimulate economic market forces for more competitive pricing of CPDM devices, and promote innovation in respirable dust monitoring technology?

Dated: October 7, 2009.

Gregory R. Wagner,

Deputy Assistant Secretary for Policy, Mine Safety and Health Administration.

[FR Doc. E9–24665 Filed 10–13–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2009–0052]
[70101–1261–0000L6]

RIN 1018–AW77

Subsistence Management Regulations for Public Lands in Alaska, Subpart B; Special Actions

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Forest Service and U.S. Fish and Wildlife Service, are proposing to amend the regulations that manage take of wildlife and fish in Alaska for subsistence purposes to clarify them. In particular, we want to clarify the Federal Subsistence Board's process of accepting and addressing special action requests, along with the role of the Regional Advisory Councils in the special action process. We would also update public notice requirements to bring them into line with the practices of the digital age and accommodate a new biennial regulatory cycle.

DATES: *Public meeting:* The Federal Subsistence Board will hold a public meeting on January 12, 2010, to receive comments on this proposed rule. See **SUPPLEMENTARY INFORMATION** for specific information on the public meeting.

Public comments: We must receive written comments on this proposed rule by January 12, 2010.

ADDRESSES: *Public meeting:* The Federal Subsistence Board public meeting will be held at the Coast International Inn in Anchorage, Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on the public meeting.

Public comments: You may submit comments by one of the following methods:

• Electronically: Go to the *Federal eRulemaking Portal*: *http://www.regulations.gov*. In the Search Documents box, enter FWS–R7–SM–2009–0052, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Send a Comment or Submission.''

• *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503–6199; or hand-delivery to the Designated Federal Official attending the Federal Subsistence Board public meeting in Anchorage.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: For questions specific to National Forest System lands, contact Calvin H. Casipit, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 586–7918. For questions regarding Department of the Interior lands, contact

Peter J. Probasco, Office of Subsistence Management, U.S. Fish and Wildlife Service; (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska to rural residents. The Secretaries first published regulations to carry out this program in the **Federal Register** on May 29, 1992 (57 FR 22940), but the regulations have been amended numerous times since then. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board is made up of:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- The Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which set forth the basic program, and the subpart D regulations, which, among other things, set forth specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a regional council. The regional councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The regional council members represent varied geographical, cultural, and user diversity within each region.

Proposed Regulatory Changes

Members of the regional councils, agency representatives, and the public have expressed concern to the Federal Subsistence Board that 36 CFR 242.19 and 50 CFR 100.19, respectively, need to be revised in a manner that provides more clarity to, and thereby increases understanding of, the Board's process of accepting and addressing special action requests. Special actions are actions that the Board takes to modify the hunting or fishing regulations on public lands to ensure the continued viability of a fish or wildlife population or for other reasons. These actions may include closing, opening, or adjusting the seasons; modifying the harvest limits; or modifying the methods and means of harvest for subsistence uses of fish and wildlife.

The problem with the lack of clarity in the regulations became particularly apparent during oral argument in the case of *Ninilchik Traditional Council* v. *Fleagle,* when the presiding judge struggled to interpret the procedural mechanisms described in the regulation and criticized it for being unclear. More recently, we have recognized the need to modify § __.19 to account for the programmatic shift to a biennial regulatory cycle.

The primary purposes of these proposed modifications are to:

(1) Improve clarity with respect to the Board's process of accepting and addressing special action requests;

(2) update public notice requirements to bring them into line with the practices of the digital age;

(3) bring clarity to the role of the regional councils with respect to special action requests; and

(4) accommodate the biennial regulatory cycle, which was implemented in 2008 (73 FR 35726; June 24, 2008). Additionally, we propose to revise § ___.10(d) and § ___.18(a) to correspond with the proposed changes in § ___.19.

While these proposed regulatory revisions will result in no direct change to subsistence uses, the changes should help all Alaska residents to better understand the process by which special action requests are accepted or rejected by the Board.

Public Review Process—Public Meeting and Comments

The Secretaries, through the Federal Subsistence Board, will receive comments on this proposed rule during a public meeting to be held at the Coast International Inn in Anchorage on January 12, 2010, starting at 8:30 a.m. You may provide oral testimony before the Board at that time. The council chairs, or their designated representatives, will present their respective councils' comments at the Board meeting. The Board will then review all comments received and forward its recommendations to the Secretaries for final action.

We will publish notice of the date, time, and meeting location in local and statewide newspapers prior to this meeting. The location and date may change based on weather or local circumstances. The amount of work on the Board's agenda will determine the length of the meeting.

Public Comment Procedures

To ensure that any final action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the bases for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in the **ADDRESSES** section. If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information, such as your address, telephone number, or e-mail address—will be posted on the Web site. Please note that comments submitted to this Web site are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee

that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on *http://www.regulations.gov*.

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on *http://www.regulations.gov*. In the Keyword box, enter FWS–R7–SM–2009–0052, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, select the type of documents you want to view under the Document Type heading.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the Office of Subsistence Management, 1011 East Tudor Road, MS 121, Anchorage, AK 99503–6199.

Public Availability of Comments

As stated above in more detail, 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.

Tribal Consultation and Comment

As expressed in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian tribes (tribes) as listed in 73 FR 18533 (April 4, 2008). ANILCA does not specifically provide rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, because tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries have elected to provide tribes an opportunity to consult on this proposed rule. The Board will consider other opportunities for tribal consultation, as appropriate. The Board will consider tribes' information, input, and recommendations, and address their concerns as much as practicable.

Compliance with Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018–0075, which expires October 31, 2009. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant.

OMB bases its determination of significance upon the following four criteria:

a. Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801

et seq.), this rule is not a major rule. It does not have an effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

ANILCA does not specifically provide rights to tribes for the subsistence taking of wildlife, fish, and shellfish. And while, for this rule, E.O. 13175 does not require the agencies to consult with tribes, the Secretaries have elected to provide tribes an opportunity to consult on this rule. The Board will provide a variety of opportunities for consultation through: Commenting on proposed changes to the existing rule; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 1321

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Calvin H. Casipit, Alaska Regional Office, U.S. Forest Service.

List of Subjects in 36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

List of Subjects in 50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend subpart B of part 242 of title 36 and part 100 of title 50 of the Code of Federal Regulations, as set forth below.

PART ___—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Amend § ___.10 by revising paragraph (d)(4)(vi), redesignating paragraphs (d)(4)(vii) through (xix) as paragraphs (d)(4)(viii) through (xx), and adding a new paragraph (d)(4)(vii) to read as follows:

§ ___.10 Federal Subsistence Board.

* * * * *

(d) * * *

(4) * * *

(vi) Restrict the taking of fish and wildlife on public lands for nonsubsistence uses, close or open public lands for the take of fish and wildlife for nonsubsistence uses, or otherwise modify the requirements regarding the taking of fish and wildlife on public lands for nonsubsistence uses when necessary for the conservation of healthy populations of fish or wildlife, to continue subsistence uses of fish or wildlife, or for reasons of public safety or administration;

(vii) Restrict the taking of a particular fish or wildlife population on public lands for subsistence uses, close public lands to take for subsistence uses, or otherwise modify the requirements for take from a particular fish or wildlife population on public lands for subsistence uses when necessary to ensure the continued viability of a fish or wildlife population, or for reasons of public safety or administration (As soon as conditions warrant, the Board may also reopen public lands to the taking of a fish and wildlife population for subsistence users to continue those uses.);

* * * * *

3. Revise the introductory text of paragraph (a) of § ___.18 to read as follows:

§___.18 Regulation adoption process.

(a) The Board will accept proposals for changes to the Federal subsistence regulations in subparts C or D of this part according to a published schedule, except for proposals for emergency and temporary special actions, which the Board will accept according to procedures set forth in § ___.19. The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or subpart D regulations over a period of years. The Board will develop and publish proposed regulations in the **Federal Register**, publish notice in local newspapers, and distribute comments on the proposed regulations in the form of proposals for public review.

* * * * *

4. Revise §___.19 to read as follows:

§___.19 Special actions.

(a) *Emergency special actions.* In an emergency situation, the Board may immediately open or close public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for take for subsistence uses, or close public lands to take for nonsubsistence uses of fish and wildlife,

or restrict the requirements for take for nonsubsistence uses, if necessary to ensure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons. The Board may also reopen public lands to nonsubsistence uses if new information or changed conditions indicate that the closure is no longer warranted.

(1) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board may seek Council recommendations on the proposed emergency special action. Such a Council recommendation, if any, will be subject to the requirements of § ___.18.

(2) The emergency action will be effective when directed by the Board, may not exceed 60 days, and may not be extended unless the procedures for adoption of a temporary special action, as set forth in paragraph (b) of this section, have been followed.

(b) *Temporary special actions.* After adequate notice and public hearing, the Board may temporarily close or open public lands for the taking of fish and wildlife for subsistence uses or modify the requirements for subsistence take, or temporarily close public lands for the taking of fish and wildlife for nonsubsistence uses or restrict take for nonsubsistence uses. The Board may make such temporary changes only after it determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and is not an unnecessary restriction on nonsubsistence users.

(1) Prior to implementing a temporary special action, the Board will consult with the State of Alaska and the Chairs of the Regional Councils of the affected regions.

(2) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board will seek Council recommendations on the proposed temporary special action. Such Council recommendations, if any, will be subject to the requirements of § ___.18.

(3) The length of any temporary action will be confined to the minimum time period or harvest limit determined by the Board to be necessary under the circumstances. In any event, a temporary opening or closure will not extend longer than the end of the current regulatory cycle.

(c) The Board may reject a request for either an emergency or a temporary special action if the Board concludes that there are no time-sensitive circumstances necessitating a regulatory change before the next regular proposal cycle. However, a special action request that has been rejected for this reason may be deferred, if appropriate and after consultation with the proponent, for consideration during the next regular proposal cycle. The Board will consider changes to customary and traditional use determinations in subpart C of this part only during the regular proposal cycle.

(d) The Board will provide notice of all regulatory changes adopted via special action by posting the change on the Office of Subsistence Management website (*http://alaska.fws.gov/asm/osm.cfml*). When appropriate, notice may also include distribution of press releases to newspapers, local radio stations, and local contacts, as well as direct notification to the proponent and interested parties. The Board will publish notice and reasons justifying the special action in the **Federal Register** as soon as practicable.

(e) The decision of the Board on any proposed special action will constitute its final administrative action.

(f) Regulations authorizing any individual agency to implement closures or restrictions on public lands managed by the agency remain unaffected by the regulations in this part.

(g) You may not take fish and wildlife in violation of any restriction, closure, or change authorized by the Board.

Dated: October 6, 2009

Ken Salazar,

Secretary of the Interior, Department of the Interior.

Dated: July 22, 2009

Dennis E. Bschor,

Regional Forester, USDA—Forest Service.

[FR Doc. E9–24653 Filed 10–13–09; 8:45 am

BILLING CODE 4310–55–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0908; FRL–8957–9]

Approval and Promulgation of Air Quality Implementation Plans; Ohio Administrative Code Rule 3742–21–17 Portable Fuel Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Ohio Environmental Protection Agency submitted a revision to its State Implementation Plan (SIP) under the Clean Air Act in order to reduce air pollution in Ohio. The SIP revision consists of a new regulation entitled Ohio's Administrative Code Rule 3745–21–17 ''Control of VOC Emissions from Portable Fuel Containers.'' This rule impacts sale, use, and manufacture of Portable Fuel Containers in the State of Ohio. EPA is proposing to approve this rule.

DATES: Comments must be received on or before November 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0908, by one of the following methods:

1. *www.regulations.gov:* Follow the online instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register,** EPA is approving the State's SIP revision submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all

public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register.**

Dated: September 9, 2009.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E9–24609 Filed 10–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0339; FRL–8947–3]

Revisions to the Arizona State Implementation Plan, Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions and precursors from steam generating units, cogeneration units, stationary gas turbines, process heaters and internal combustion engines. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by November 13, 2009.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2009–0339], by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: 322, Power Plant Operations, 323, Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources and 324, Stationary Internal Combustion (IC) Engines. In the Rules and Regulations section of this **Federal Register,** we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 10, 2009.

Jane Diamond,

Deputy Regional Administrator, Region IX.

[FR Doc. E9–24548 Filed 10–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R04–OAR–2009–0765; FRL–8968–7]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation on July 13, 2009. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (FIP) concerning Sulfur Dioxide (SO_2), Nitrogen Oxides (NO_X) annual, and NO_X ozone season emissions for the State of Tennessee, promulgated on April 28, 2006, and subsequently revised December 13, 2006. Although the District of Columbia Circuit Court found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. EPA is continuing to approve CAIR provisions into SIPs as appropriate. EPA previously approved an ''abbreviated SIP'' for Tennessee, primarily consisting of rules governing allocation of allowances to electric generating units (EGUs) for use in the trading programs established pursuant to CAIR and providing for voluntary opt-in to these programs on August 20, 2007 (72 FR 46388), effective on October 19, 2007. Tennessee has now requested, in a revised submittal dated September 21, 2009, and a clarification letter dated September 24, 2009, that EPA act on a portion of the July 13, 2009, submittal as an abbreviated SIP.

Consequently, EPA is proposing to approve a SIP revision that addresses the transition of the State's NO_X Budget Trading Program (Tennessee Air Pollution Control Regulations [TAPCR] Rule 1200–03–27–.06) to the State's CAIR NO_X Ozone Season Trading Program (TAPCR 1200–03–27–.11); the expansion of the current applicability provisions in the CAIR NO_X Ozone Season Trading program to include units that are not otherwise subject to the trading program but are subject to the States NO_X Budget Trading Program; and the methodology to be used to allocate ozone season NO_X allowances to these units under the CAIR FIPs. Tennessee is also seeking approval of technical corrections to the CAIR NO_X Ozone Season Trading Program opt-in provisions, as noted in the August 20, 2007, approval. EPA is not making any changes to the CAIR FIP, but is amending the appropriate appendices to note EPA's approval of Tennessee's SIP revision.

DATES: Comments must be received on or before November 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0765, by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* EPA–R04–OAR–2009–0765, 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:* 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–2009–0765. 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: Steven Scofield, 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) 562–9034. Mr. Scofield can also be reached via electronic mail at *scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Proposing To Take?

EPA is proposing to approve a revision to Tennessee's SIP, submitted by Tennessee on July 13, 2009, as clarified herein, that would modify the application of certain provisions of the CAIR FIP concerning NO_X Ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP). Tennessee is subject to the CAIR FIPs that implement the CAIR requirements by requiring certain EGUs to participate in the EPA-administered CAIR cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. This SIP revision provides a methodology for allocating NO_X allowances for the NO_X ozone season trading program for NO_X SIP Call trading sources that are not EGUs as defined by CAIR, but are subject to the CAIR NO_X ozone season trading program. The CAIR FIPs provide that this methodology, if approved, will be used to allocate NO_X Ozone Season allowances to sources in Tennessee. Consistent with the flexibility provided in the FIPs, these provisions will also be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIP for Tennessee. EPA is also proposing to approve technical corrections to the CAIR NO_X Ozone Season Trading Program opt-in provisions, as noted in the August 20, 2007, approval. Since EPA will no longer administer the NO_X Budget Trading Program, Tennessee has chosen to terminate its NO_X Budget Trading program rules (TAPCR Rule 1200–03–27–.06). EPA is, therefore, proposing to approve provisions which terminate the State's NO_X Budget

Trading Program because those requirements are now addressed by the CAIR NO_X Ozone Season FIP, as modified by the State's abbreviated SIP. Finally, EPA is not making any changes to the CAIR FIP, but is amending the appropriate appendices to note EPA's approval of Tennessee's SIP revision.

II. What Is the Regulatory History of the CAIR and the CAIR FIPs?

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 national ambient air quality standard (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 1 to September 30). 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.

CAIR explains to subject states what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective on May 25, 2005, that the states had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all states covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone season trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to effectively create a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all states covered by the CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow states to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (*e.g.,* the methodology for allocating NO_X allowances to sources in the state), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of states subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements. On October 19, 2007, EPA amended CAIR and the CAIR FIPs to clarify the definition of ''cogeneration unit'' and thus the applicability of the CAIR trading program to cogeneration units.

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 FIPs 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. Therefore, CAIR and the CAIR FIP are currently in effect in Tennessee.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes state-wide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires states to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the state's choosing and demonstrating that such control measures will result in compliance with the applicable state SO_2 and NO_X budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that states must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs. With two exceptions, only states that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for states that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for states that include all non-EGUs from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most states will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such states, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, states may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (*e.g.*, the

NO_X allowance allocation methodology).

A state submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that states may only make limited changes to the model rules if the states want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include all NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_X ozone season trading program;

2. Provide for State allocation of NO_X annual or ozone season allowances using a methodology chosen by the State;

3. Provide for State allocation of NO_X annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR SO_2, NO_X annual, or NO_X ozone season trading programs under the opt-in provisions in the model rules.

With the approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the State by that approved SIP revision.

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions, states may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the State's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for NO_X allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the State's decisions. Submission of an abbreviated SIP does not preclude future submission of a CAIR Full SIP revision. In this case the July 13, 2009, submittal (revised on September 21, 2009, and clarified on September 24, 2009) from Tennessee has been submitted as an abbreviated SIP revision.

V. Analysis of Tennessee's CAIR SIP Submittal

A. Elements of Tennessee's Submittal

In response to CAIR, Tennessee adopted rules that it submitted on September 8, 2006. These rules were intended to constitute a full SIP submittal, addressing the requirements under CAIR without reliance on the CAIR FIPs. Nevertheless, to expedite action on key provisions, Tennessee requested that EPA act on a subset of these rules constituting an abbreviated SIP (the rules defining the allocation of NO_X allowances to EGUs under the CAIR FIP and provisions for sources voluntarily to opt into the SO_2, NO_X annual, and NO_X ozone season trading programs), while deferring action on the remainder of the rules necessary to constitute a full SIP.

Rulemaking on a full SIP submittal involves a broader range of issues than rulemaking on an abbreviated SIP submittal. EPA wished to expedite action on Tennessee's NO_X allowance allocations and its rules allowing sources voluntarily to opt into the trading programs. Therefore, as requested by Tennessee, EPA took action on the abbreviated SIP portion of Tennessee's submittal and did not act on the remaining portions of Tennessee's September 8, 2006, submittal. EPA promulgated a direct final approval of these abbreviated SIP potions of Tennessee's rules on August 20, 2007 (72 FR 46388), which became effective on October 19, 2007.

On February 11, 2009, Tennessee adopted revisions to its CAIR NO_X Ozone Season Trading Program and on July 13, 2009, submitted a request to EPA for approval of these revisions into the SIP. That request was revised on September 21, 2009, and supplemented by letter to EPA dated September 24, 2009, clarifying portions of the submittal.

B. State Budgets for Allowance Allocations

The CAIR NO_X annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 pounds per million British thermal unit (lb/mmBtu) for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_X budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_X annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO_2 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA.

Under CAIR, each allowance allocated in the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.50 ton of SO_2 emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO_2 emissions in the CAIR trading program.

The CAIR FIPs established budgets for Tennessee as 50,973 (2009–2014) and 42,478 (2015–thereafter) tons for NO_X annual emissions, 22,842 (2009–2014) and 19,035 (2015–thereafter) tons for NO_X Ozone season emissions, and 137,216 (2010–1014) and 96,051 (2015–thereafter) tons for SO_2 emissions. In Tennessee's SIP revision, submitted on July 13, 2009, Tennessee has chosen to include all NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_X ozone season trading program. As a result of this SIP revision, the CAIR NO_X ozone season budget will be increased annually by 5,666 tons to account for such NO_X SIP Call trading sources. The total Tennessee CAIR NO_X Ozone Season budgets are, therefore, 28,508 (2009–2014) and 24,701 (2015 and thereafter) tons. EPA is proposing to approve Tennessee's State trading budgets under TAPCR 1200–3–27–.11(2)(c).

EPA notes that, in *North Carolina*, the Court determined, among other things, that the state SO_2 and NO_X budgets established in CAIR were arbitrary and capricious. 531 F.3d at 916–21. However, as discussed above, the Court also decided to remand CAIR but to leave the rule in place in order to ''temporarily preserve the environmental values covered by CAIR'' pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws. Id. at 1178. Pursuant to the Court's ruling, EPA is developing a new rule that will undergo notice and comment which will result in a final replacement rule for CAIR. In the meantime, EPA is implementing CAIR by approving SIP revisions that are consistent with CAIR (such as the provisions setting state SO_2 and NO_X budgets for the CAIR trading programs) in order to ''temporarily preserve'' the environmental benefits achievable under the CAIR trading programs.

C. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone-season model trading rules both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR Part 96, subparts A through I. While the provisions of the NO_X annual and ozone-season model rules are similar, there are some differences. For example, the NO_X annual model rule (but not the NO_X ozone season model rule) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_X annual emissions. As a further example, the NO_X ozone season model rule

reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program after the 2008 ozone season and is coordinated with the NO_X SIP Call program. The NO_X ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone-season trading program. In addition, states have the option of continuing to meet their NO_X SIP Call requirement by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program.

The provisions of the CAIR SO_2 model rule are also similar to the provisions of the NO_X annual and ozone season model rules. However, the SO_2 model rule is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for Federal rather than state implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

Tennessee is subject to the CAIR FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions and the CAIR FIP trading programs for SO_2, NO_X annual, and NO_X ozone season apply to sources in Tennessee. Consistent with the flexibility it gives to the states, the CAIR FIPs provide that states may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. The July 13, 2009, submission of Tennessee is such an abbreviated SIP revision.

D. Applicability Provisions

In general, the CAIR model trading rules apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatt electrical (MWe) producing electricity for sale.

States have the option of bringing in, for the CAIR NO_X ozone season program only, those units in the state's NO_X SIP Call trading program that are not EGUs as defined under CAIR. EPA advises states exercising this option to add the applicability provisions in the state's NO_X SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_X ozone season trading program all units required to be in the state's NO_X SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_X ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (*i.e.,* units serving a generator with a nameplate capacity of 25 MWe or less) that the state currently requires to be in the NO_X SIP Call trading program.

In this SIP revision, Tennessee has chosen to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all units required to be in the state's NO_X SIP Call trading program that are not already included under 40 CFR 96.304. EPA is proposing to approve Tennessee's CAIR NO_X ozone season applicability provisions, under TAPCR 1200–3–27–.11(2)(b)3. In addition, Tennessee has revised the definitions for ''commence commercial operation'' and ''commence operation'' in order to support the expanded applicability. Although omitted by error from its original request, by a submittal dated September 21, 2009, Tennessee has requested that EPA approve Tennessee's revised definitions. Through this action, EPA is proposing to approve Tennessee's revised definitions, *i.e.*, TAPCR 1200–3–27–.11(2)(a).

E. NO_X Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO_X allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance allocation methodologies, states have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

Consistent with the flexibility given to states in the CAIR FIPs, Tennessee, in a SIP revision submitted to EPA on September 8, 2006, chose to distribute CAIR NO_X annual and CAIR NO_X ozone season allowances with its own methodology. That SIP revision was approved by EPA on August 20, 2007, and became effective on October 19, 2007 (see 72 FR 46388; August 20, 2007). In today's SIP revision, Tennessee is seeking approval of the expansion of the current applicability provisions in the CAIR NO_X ozone season trading program to include units that are not otherwise subject to the CAIR trading program but are subject to Tennessee's NO_X SIP Call trading program. Consistent with the expansion of the CAIR NO_X ozone season trading program applicability, Tennessee is revising the allocation methodology provisions in the CAIR NO_X ozone season trading program to cover these units. Tennessee's SIP revision indicates that the units that are being brought into CAIR NO_X ozone season as a result of the expansion of the CAIR NO_X ozone season trading program applicability will be allocated allowances in the amounts specified in the SIP.

EPA understands, and it is explained in a revised submission by Tennessee on September 21, 2009, that the reference to the SIP in Tennessee's SIP revision (TAPCR 1200–3–27–.11(2)(d)2.(ii)) refers to the allocation methodology identified in the State's NO_X SIP Call and that the Tennessee does not intend to change the allocation methodology for these sources, just to

include it in the new rules. In addition, the allocation provisions in section (d)1.(ii)(I) reference the ''State trading budget under part (b)1. of this paragraph.'' However, the Tennessee State trading budgets are now located in part ''TAPCR 1200–3–27–.11(2)(c)1.'' Tennessee has identified the reference to the ''State budget under part (b)1.'' as a typographical error and explained that the reference should instead be to the ''State trading budget under part (c)1. of this paragraph'' in a letter dated September 24, 2009.

Finally, the Tennessee revision under TAPCR 1200–3–27–.11(2)(d)2.(iii) refers to CAIR NO_X ozone season units identified in ''part (2)(b)2. of this rule'' that do not yet have a baseline heat input. Since it is Tennessee's intention to describe the procedure for allocating CAIR NO_X ozone season allowances to units that are being brought into the CAIR NO_X ozone season trading program from the NO_X Budget Trading Program under TAPCR 1200–3–27–.11(2)(b)3., Tennessee has clarified in a letter dated September 24, 2009, that the reference to units identified in ''part (2)(b)2.'' is a typographical error and should instead reference units identified in ''part (2)(b)3.'' EPA is proposing to approve Tennessee's allocation procedures under TAPCR 1200–3–27–.11(2)(d), as explained and clarified in the September 24, 2009, letter.

F. Individual Opt-in Units

The opt-in provisions allow for certain non-EGUs (*i.e.*, boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (*i.e.*, opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

In an earlier SIP revision approved by EPA on August 20, 2007, Tennessee chose to allow non-affected units meeting certain requirements to participate in the CAIR NO_X annual trading program, CAIR NO_X Ozone Season Trading program and CAIR SO_2 Trading Program by adopting by reference EPA's model rule provisions for opt-in units in 40 CFR part 96, subpart II, subpart III and subpart IIII, respectively. In adopting by reference the CAIR opt-in provisions, Tennessee had included in its rule a full written version of those provisions, which contained some technical errors, and did not specifically reference the CAIR model rule provisions related to opt-in units in other subparts of the CAIR model trading rules. Because Tennessee intended to adopt entirely the CAIR model rule opt-in provisions and because Tennessee indicated that it would correct the minor errors in the rule text, in the August 20, 2007, approval, EPA interpreted the Tennessee provisions as substantively identical to the CAIR model rule opt-in. As a result, the opt-in provisions in the CAIR FIP trading programs apply to units in Tennessee. In this SIP revision, Tennessee submitted corrections to the CAIR NO_X Ozone Season rule that had been identified in the earlier submittal approved by EPA on August 20, 2007. Today, EPA is proposing to approve those corrections to the CAIR NO_X Ozone Season trading program opt-in provisions.

VI. Proposed Action

EPA is proposing to approve Tennessee's SIP revision that includes an abbreviated CAIR SIP submitted on July 13, 2009, and revised September 21, 2009, as clarified herein. Tennessee is covered by the CAIR FIPs which require participation in the EPA administered CAIR FIP cap and trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. Under this SIP revision and consistent with the flexibility given to the states in the FIPs, EPA is proposing to approve Tennessee's CAIR NO_X ozone season provisions expanding the current applicability provisions in the CAIR NO_X ozone season trading program to include units that are not otherwise subject to the trading program but are subject to Tennessee's NO_X Budget Trading Program; revisions to the allocation methodology provisions (interpreted as discussed above) in the CAIR NO_X ozone season trading program to cover these units; and corrections to the CAIR NO_X Ozone season trading program opt-in provisions (as discussed above).

As provided for in the CAIR FIPs, the provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIPs in Tennessee. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(ee), with regard to NO_X ozone season emissions. EPA is not making any changes to the CAIR FIP, but is amending the appropriate appendices to note EPA's approval of Tennessee's SIP revision.

This action also approves the termination of the State's NO_X Budget Trading Program as discussed in Section I.

VII. 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

40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Incorporation by reference, Carbon monoxide, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Incorporation by reference, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 5, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–24705 Filed 10–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[EPA–HQ–OAR–2009–0174; FRL–8968–8]

RIN 2060–AP63

Emissions Factors Program Improvements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The purpose of this Advanced Notice of Proposed Rulemaking (ANPRM) is to convey issues raised by stakeholders about EPA's emissions factors program, inform the public of our initial ideas on how to address these issues, and solicit comments on our current thinking to resolve these issues. Our goal is to develop a self-sustaining emissions factors program that produces high quality, timely emissions factors, better indicates the precision and accuracy of emissions factors, encourages the appropriate use of emissions factors, and ultimately improves emissions quantification.

Although initially developed for emissions inventory purposes only, use of emissions factors has been expanded to a variety of air pollution control activities including permitting, enforcement, modeling, control strategy development, and risk analysis. This ANPRM discusses the appropriateness of using emissions factors for these activities.

DATES: Comments must be received on or before November 13, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0174. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov*. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, *ANPRM Docket,* EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0174. The U.S. Environmental Protection Agency's (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 Public Reading Room.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas A. Driscoll, Measurement Policy Group (MPG), Office of Air Quality Planning and Standards (D243–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5135; fax number: (919) 541–1039; e-mail address: *driscoll.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline. The information in this preamble is organized as follows:

I. General Information
  A. Does this action apply to me?
  B. What should I consider as I prepare my comments for EPA?
  C. Where can I get a copy of this document and other related information?
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VI. Statutory and Executive Order Reviews

I. General Information

A. Does this action apply to me?

This notice is likely to be of interest to a variety of parties, including owners and operators of stationary sources who use emissions factors and, in particular, those that are subject to source testing requirements under EPA air rules (*i.e.,* New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants (NESHAP), and Maximum Achievable Control Technology (MACT) standards); industry sectors that believe that the emissions factors currently used to characterize their emission sources could be updated and improved; industry sectors that currently lack emissions factors; State, local, and tribal air pollution control agencies (S/L/Ts) and other individuals and organizations with an interest in emissions factors. In that the use of emissions factors has expanded beyond developing emissions inventories to other uses (*e.g.,* developing emissions limits for incorporation into New Source Review (NSR) and Title V operating permits, determining applicability to air pollution regulations, determining compliance with emissions standards, conducting air quality impact analyses, developing control strategies, and performing risk analyses (*i.e.,* section 112(f) residual risk requirements)), S/L/Ts, industry representatives, environmental action groups, individuals and other organizations may have a vested interest in this notice.

All of these parties are encouraged to read this notice and to submit comments for EPA's consideration. We realize that in many cases organizations other than EPA develop emissions factors for a variety of purposes, and, in most cases, we do not require the use of EPA emissions factors. However, because the EPA factors are so broadly used and accepted, we are soliciting information and feedback on how they are developed, currently used, and how they can be improved.

B. What should I consider as I prepare my comments for EPA?

Do not submit CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will be available on the Worldwide Web through the Technology Transfer Network (TTN). The TTN provides information and technology exchange in various areas of air pollution control. Following signature, an electronic version of this document will be posted at *http://www.epa.gov/ttn/oarpg* under ''Recent Additions.''

II. Background Information

A. The Role of Emissions Factors and Stakeholder Comments

An emissions factor is a representative value that attempts to relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant. These factors are usually expressed as the mass of pollutant divided by a unit mass, volume, distance, or duration of the activity emitting the pollutant (*e.g.,* kilograms of particulate emitted per megagram of coal burned). Such factors facilitate estimation of emissions from various sources of air pollution. In most cases, these factors are simply averages of all available data of acceptable quality that were collected through source performance testing, and are generally assumed to be representative of population averages for all facilities in the source category.

Quantifying air emissions is a vital aspect of all air pollution programs. Emissions factors have long been a fundamental tool in developing national, regional, state, and local emissions inventories for air quality management decisions and in developing emissions control strategies. More recently, emissions factors have been applied in determining site-specific applicability and emissions limitations in operating permits by federal agencies, S/L/Ts, consultants, and industry. These users have requested guidance on the use of emissions factors and other emissions quantification tools (*e.g.,* emissions testing and monitoring, mass balance techniques) in developing permits that are more practical in their enforcement.

Under ideal circumstances, all emissions data users would quantify emissions from ongoing operations with continuous emissions monitoring, periodic emissions performance testing, or frequent calculation using well-accepted engineering principles, such as mass balances or other detailed engineering calculations. Because these methods can be time and resource intensive, users sometimes do not have or are unable to secure data sufficient to allow detailed site-specific emissions determinations. In some cases, measurement via instruments or long-term performance testing, which would provide such data, is not feasible or too costly. Without such data, emissions factors, which are assumed to be representative of population-average values, are frequently used, along with production information as a quick, low-cost method to estimate emissions.

EPA's Office of Air Quality Planning and Standards (OAQPS) has long recognized the importance of emissions factors and has focused effort and resources on developing and documenting emissions factors. The EPA-approved emissions factors are contained in an online document called the ''AP–42 Compilation of Air Pollutant Emissions Factors'' (hereafter referred to as ''AP–42'') available at *http://www.epa.gov/ttn/chief/ap42/index.html*. The document is organized into 15 chapters that describe industrial emission sources and the derivation of industry-specific emissions factors. Many of the individual sections of this document are supported by an associated background report providing summaries of the individual test data and a corresponding assigned quality rating, the rationale for grouping and using individual data, and the assignment of the factor and factor quality.

Emissions factors were originally established only for use in estimating emissions for developing national emissions inventories. However, as mentioned earlier, emissions factors are used for many other air pollution control activities for which they were not designed.

AP–42, which was developed by OAQPS, is not the only repository of emissions factors. Emissions factors have been developed for a number of other programs and there are other databases that contain emissions factors. For example, EPA's Office of Atmospheric Programs has recently proposed a greenhouse gas reporting rule and provided many emissions factors for sources to use in assessing their emissions. In addition, EPA's Office of Research and Development

administers the SPECIATE database that contains many emissions factors. Because the applications, uses, and requirements of these other emissions factors databases are different than AP–42, these databases have operated in a fairly autonomous manner. However, we are seeking comment on whether there should be more interaction among these databases. For a discussion of SPECIATE, see section IV.D.

As part of a reevaluation of the emissions factors program, EPA interviewed and surveyed various emissions factors users and held a series of workshops in 2003 and 2004 with stakeholders to solicit their input on what is needed to update and improve the emissions factors program.[1] First and foremost, stakeholders (industry, S/L/Ts, EPA program offices, environmental action groups, and others) indicated that EPA needs to continue to maintain the AP–42 factors information compilation and retrieval system. In addition, they indicated that it takes EPA too long to develop emissions factors, that data submitted for regulatory development have not been used to develop new emissions factors, that there have been several inappropriate uses for emissions factors, and that, in general, EPA is not developing new emissions factors. The stakeholders said that EPA should develop criteria to address the development and uses of emissions factors for purposes other than just emissions inventory development, such as for use as screening tools for compliance determinations, applicability purposes, and preparing air program permit applications. They also said that the current program is unresponsive to their needs, too complex for their active participation, and lacks transparency concerning data manipulation. More recently, the National Academy of Sciences (NAS) (see National Research Council of the National Academies, 2004, Air Quality Management in the United States, Washington, DC: The National Academies Press) and EPA's Office of Inspector General (OIG) (see U.S. EPA, Office of Inspector General Evaluation Report: EPA Can Improve Emissions Factors Development and Management, Report No. 2006–P–00017, March 22, 2006) also reviewed and commented on the emissions factors program. Their comments echoed those of all other stakeholders in that the EPA must continue to maintain the emissions factors program, but it must be improved to support EPA and stakeholder uses. They also noted that EPA should quantify uncertainty to improve emissions factors and that EPA should be developing and updating emissions factors regularly.

B. Overview of the Emissions Factors Improvement Program

Based on the results of the emissions factors reevaluation process that included collecting stakeholder input, preparing an improvement plan, and an internal effort to review and reexamine our efforts, we have identified four focus areas for improvement that are the basis for this action:

- Designing a process for developing and improving emissions factors to allow easier and more effective participation by interested parties, to be open and transparent, to accommodate the continuing (self-sustaining) development and improvement of factors rather than being a large, one-time effort to address the current needs, and to provide an electronic mechanism for test report submittal and review. We want to develop a process that, at the end of the emissions factors development, will result in high quality emissions factors.
- Improving methods for compiling and providing emissions factors data and other pertinent information to users, including complete and easy access to all available test data.
- Developing guidance on the application of EPA's default emissions factor or the selection of a more appropriate emissions factor for specific applications, calculating emissions factors from available test data or other information, conducting emissions tests to facilitate the development of emissions factors, and evaluating and considering data quality.
- Updating existing emissions factors and developing more factors where gaps currently exist.

EPA intends to implement a multi-part process to improve the emissions factors program. The first part involves further development of the existing electronic reporting tool (ERT) to make it easier for S/L/Ts, industry, and other stakeholders to plan, document, accept, assess, and transmit emissions test data. The second part involves upgrading the AP–42 factors information system into WebFIRE. WebFIRE is an Internet-based application that compiles and retrieves emissions factors and performance test data and information; making it an interactive, up-to-date, and easy to expand and enhance replacement for the current AP–42. Additionally, to make the emissions factors development process easier and more transparent, EPA plans to rewrite the existing emissions factors development procedures and reissue the revised document following a public review and comment process. Finally, in order to acquire adequate data for the development or improvement of the emissions factors, we are considering requiring the submission of certain performance testing information by industry to EPA's OAQPS via electronic reporting. Implementing this multi-part effort will result in a self-sustaining emissions factors program receiving ongoing data submittals to improve emissions estimation for regulatory authorities and others to use in: (1) Developing emissions inventories, (2) updating emissions standards, (3) identifying and evaluating control strategies, (4) determining applicability of permit and regulatory requirements, (5) assessing risks, and (6) conducting other air pollution control activities. We believe this effort will reduce the burden of handling test data, while improving access to and the utility of the data.

C. Goals for the Emissions Factors Improvement Program

We believe the critical element in improving the emissions factors program is changing the role of OAQPS from sole developer of emissions factors to a facilitator who provides stakeholders with the tools to participate in all aspects of the process, generates tools that capture the existing work performed by stakeholders and enhance consistency across the program, audits and oversees the program, and develops policies for the appropriate use of emissions factors in non-inventory applications where there are no policies or where existing policies are inadequate. To this end, we encourage collection and submission of critical site-specific process and testing information that will allow stakeholders to improve the predictive accuracy of emissions factors and characterize the associated uncertainties. We also want to encourage and facilitate the electronic documentation and transfer of source test information to reduce stakeholder workload, ease assessment, increase communications, establish consistency (content and assessment), increase the transparency of the entire program, and provide information transfer to critical air programs (emissions factors development, compliance verification, emissions inventory, permitting, *etc.*).

Finally, we currently are considering replacing the highly subjective manual method of updating all emissions factors

[1] A copy of the draft report, Emissions Factors Program Improvement Efforts (September 2005), is available on EPA's Web site at: *http://www.epa.gov/ttn/chief/efpac/workshops/efp_improvement_efforts_draft.pdf.*

for a source category with a more consistent, objective, and automated system that better delineates source descriptions so that emissions factors' source categories are more meaningful and useful. Guidance is a critical part of developing emissions factors. As such, we are updating guidance of procedures for preparing emissions factors to make the procedures clearer, improve the predictive accuracy of the resulting emissions factors, improve stakeholders' confidence in the revised process, and help us achieve our overall goals of improving the emissions factors program.

III. Emissions Factors Development Process and Tools

We seek to replace the manual emissions factor development process, which is shown in Figure 1. The manual emissions factors development process begins with the performance and documentation of source tests at individual facilities. After obtaining the report of the source test, the emissions factors developer (EPA) assesses the documentation with respect to its representativeness to the source category and its precision and accuracy of quantifying the facility's emissions. Test reports are then grouped by process (using the source classification code, or SCC), control device employed, and pollutant. These groupings are reviewed to combine related processes and control technologies that will result in comparable data being used to establish or revise emissions factors. After making determinations about the use of data with differing test report quality ratings, the emissions factors are calculated (or recalculated) with an associated factor quality rating. The public is notified of the availability of the draft factors and is given an opportunity to comment on them. After consideration of the public comments, EPA publishes the new or revised factors in AP–42.

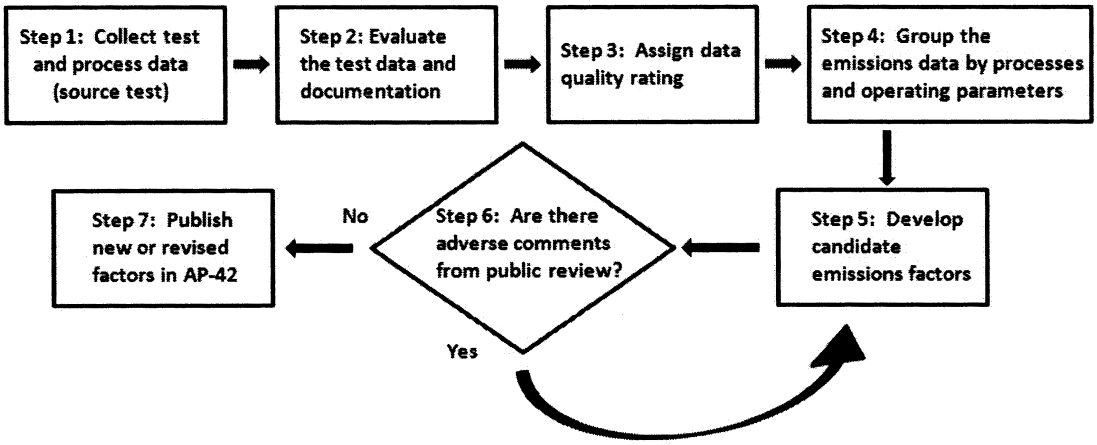


Figure 1. Manual Emissions Factors Development Process

As will be discussed in more detail in section IV, we propose to move from this subjective resource intensive system where EPA relies on a relatively open-ended set of criteria to make major decisions such as the test data and factor quality ratings to one that is objective (more science based) and designed to reduce the variability associated with manual emissions factor development. The new system will provide an objective evaluation scheme for grading the quality of each emissions test, as well.

We are in the process of updating and revising three key existing tools (WebFIRE, ERT, and the emissions factors guidance document) to help us improve the current system. Note that the revised emissions factors guidance document will provide information for implementing both WebFIRE and ERT. The existing tools are described in the remainder of this section. Section IV describes how we plan to augment and update these tools to develop the improved emissions factors development program.

A. WebFIRE

WebFIRE, on the EPA Web site at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main,* is the Internet version of the Factor Information Retrieval (FIRE) Data System software application (in a Microsoft Access format) database. WebFIRE contains EPA's recommended emission estimation factors for criteria and hazardous air pollutants obtained from AP–42, Locating and Estimating (L&E) documents, and other documents. The WebFIRE database usually contains a single value (factor) for source classification code (SCC),[2] control, and pollutant combination. Users can conduct simple or detailed searches for emissions factors by process, control device, and/or pollutant. There is a separate database (*http://www.epa.gov/ttn/chief/database/search.html*) that is available to access the complete test reports and other references cited in the section and background report. Also, for many AP–42 sections there is a background report containing summaries of the contents of the supporting test reports, assessments of the quality of these test reports, judgments on the combining and separation of reports for averaging, and the final assessment of the quality rating assigned to the final factor. We are modifying WebFIRE to connect these three components and provide stakeholders with improved access and management capabilities.

B. Electronic Reporting Tool (ERT)

In order to streamline the collection of source test data and ensure the completeness of data collection for the development of emissions factors, we created the ERT. The current version of the ERT is available at *http://www.epa.gov/ttn/chief/ert/ert_tool.html.* The ERT is a Microsoft Access desktop application that is currently an electronic alternative to the submittal of paper test plans, reports, and

[2] There are currently a few emissions factors in AP–42 with duplicate values (factors). EPA is working to correct these emissions factors so that there are no duplicates.

evaluations. Currently, data collected using 19 of EPA's emissions measurement methods for stationary sources can be handled by the ERT. The ERT supplements the time-intensive manual preparation and transcription of stationary source emissions test plans and reports for emissions sources testing with an electronic alternative where the resulting data can be transmitted more easily and quickly to the Agency and S/L/Ts who choose to use this system.

The ERT provides a format and a process that: (1) Documents the key information and procedures required by the existing EPA Federal Test Methods; (2) facilitates coordination among the source, the test contractor, and the regulatory agency in planning and preparing for the emissions test; (3) provides for consistent criteria to characterize quantitatively the quality of the data collected during the emissions test; (4) standardizes the form and content of test reports; and (5) calculates the emissions factor, and exports the emissions factor and associated data to WebFIRE. We expect the ERT to significantly reduce the monitoring and testing burden for testers, source owners or operators, S/L/Ts, EPA, and other interested stakeholders in collecting, reviewing, storing, and accessing test data and reports.

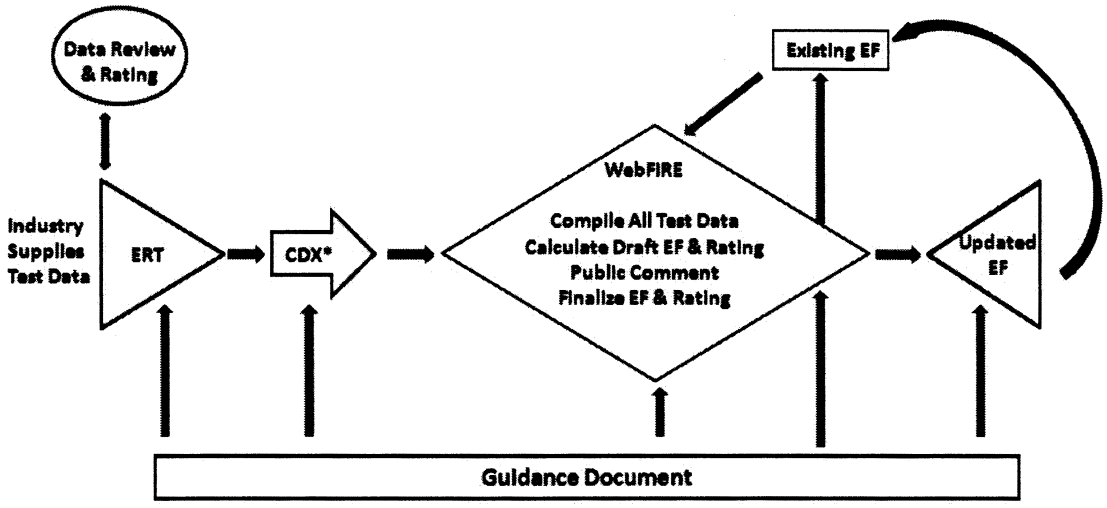
C. Emissions Factors Development Guidance

We have developed guidance to assist in the emissions factors development process titled, ''Procedures for Preparing Emissions Factors'' (EPA–454/R–95–015).[3] This document is intended for use by EPA employees, EPA contractors, and external stakeholders. It describes the procedures, technical criteria, and standards and specifications for developing and reporting air pollutant emissions factors or equations for publication in AP–42. The document also includes background on emission factors and their uses and limitations. It describes the pollutant terminology used in AP–42 and discusses some of the emissions test methods used to measure these pollutants. The reasons and procedures for initiating revisions to emissions factors are also discussed. In addition, public participation procedures are discussed. Many of the changes discussed in the proposed emissions factor development process will be reflected in a revised procedures document.

IV. Changes to the Emissions Factors Program, Emissions Factors Development, and Associated Tools

A. Potential Revisions to the Emissions Factors Development Process: Overview and Issues

As described in this notice, our current plans are to move from the relatively static format for emissions factors development to one that is more flexible, current, and transparent. We will strive for a balanced process that may be more prescriptive in many aspects of the program while providing users with the flexibility to derive factors that are more suitable for their specific intended purpose. Figure 2 provides an overview of how this process could work. We believe this process can provide source owners or operators with the tools they need to develop emissions factors and provide environmental authorities with the tools they can use to assess the quality and uncertainty of emissions test data. These tools should reduce real or perceived barriers to emissions factors development and result in a substantially improved emissions factors development process.



*Central Data Exchange (see below)

Figure 2. Proposed Emissions Factor Development Process

Under the proposed system, source test data would be compiled electronically via the ERT or another electronic format by the source submitting the data. Because the ERT does not yet support all test methods and because some users may prefer to use a different format, we have provided a spreadsheet template that is to be used to submit source test reports that do not use the ERT. See *http://www.epa.gov/ttn/chief/ert/ert_tool.html* for a copy of

[3] We have previously prepared a revised procedures document (2006 draft) for public review. Based on the comments we received, that document was withdrawn and never finalized.

the current version of the spreadsheet. We are also seeking comment on the availability of other electronic formats that currently may be used by sources to report source test information to their S/L/Ts and whether these formats could be used or adapted to fit into this proposed process.

In general, we believe that standardization of the test report's form and content will enhance the emission factor development process, while at the same time increase accuracy of the emissions factors. Performance test data compiled in the ERT will also provide value to the enforcement and compliance monitoring community through the readily-available information from the tests in an electronic format. The ERT will provide other items of information from stack tests that may be used for evaluation that EPA's stationary source compliance monitoring/enforcement system, the Air Facility System (AFS), does not currently house such as method test used, process being tested, emissions levels and stack test review date. However, we recognize that such report standardization could have an impact on S/L/T data systems and how they electronically store such information. Some sources might still be required to submit paper or other reports to satisfy S/L/T requirements. We request comment on how the design of the ERT might mitigate these concerns.

We expect that our improved emissions factors' development process, including the ERT, will facilitate the submittal of new test data from a number of sources. As explained later in this notice, we are considering requiring certain facilities to submit electronically their performance test data to WebFIRE. In addition, it is possible that sources or groups with an interest in adding or revising emissions factors for certain categories might be motivated to submit data from previous tests or tests conducted for other purposes than complying with a Federal standard. To the extent that these data are representative of current practices in the category, they could and should be considered in emissions factor development.

We believe that the field evaluations and source test assessments performed by S/L/Ts improve the reliability of the test data. For example, such assessments will help to ensure testing requirements are met, the test plan was followed, and results were accurately recorded while also minimizing sample recovery/handling errors and equipment errors. We want to encourage this type of third party review of all source tests. Ideally the S/L/T would use the tools and criteria we provide to conduct this review, but in some cases acceptable reviews might be provided by independent contractors or others with an interest in developing or revising certain emissions factors. Well conducted and documented source tests that have been subject to such review can potentially receive a higher quality rating than tests that have not been reviewed.

We seek comment on other ways that we could encourage independent ''third party'' reviews and the weight we should give them in assigning a quality rating. Even in the absence of quality reviews for a test, there will be broader quality assurance provisions in the proposed process. EPA plans to conduct audits of selected tests to ensure their quality as part of the overall program. In addition, we will retain the public review and comment features of the existing system to provide additional assurance that tests submitted to the system are assigned an appropriate quality rating. However, at this time, it is not our intent to make this process a formal rulemaking process.

Under the current performance test evaluation system, test data quality is rated A through D, with A-ratings assigned to well documented tests performed by using an EPA reference test method, or when not applicable, a sound methodology that is well-documented. At the other end of the spectrum, a D-rated test is based on test reports with minimal documentation or where a generally unacceptable method was employed. The test quality is reported in enough detail for adequate validation, and raw data are provided that can be used to duplicate the emission results presented in the test report. In the absence of better test reports, lower-rated tests may provide an order-of-magnitude value for a source category emission factor. Specific criteria that are considered in assigning the test report quality ratings include source operation (*e.g.,* whether the source was conducting the test under representative operating conditions), test method and sampling procedures, process information (extent to which process variation explains variation in test runs), and documentation of the analysis and calculations. After assigning a preliminary emission data quality rating based on these criteria, the quality of production data is considered. Test data that include the collection of production or process data during the test are rated at a higher level than tests that do not include production data.

Under the process being considered, the ERT or alternative electronic format would be modified to provide a rating for the quality of the individual test based on specified algorithms and data quality objectives. The very process of using the ERT will address many of the rating issues described above by encouraging submittal of the information needed for an A rating. We are not seeking comment on specific changes to the ERT and associated procedures document. However, we are interested in comments on the general features we should incorporate to move us to an automated system for compiling test data and calculating or assigning corresponding test ratings. We are also seeking comments on whether the use of different formats for the ratings might be helpful for stakeholders. For example, would a more prescriptive numerical test report assessment rating focus more attention on the quality of the test reports, thereby improving the information in these reports and provide more information to the stakeholders on the quality of the data? As described above, should a well-documented performance test conducted according to the Federal Reference Method that has been reviewed by an independent third party receive a rating adjustment to reflect the results of the third party verification? Also, we are seeking comment on whether the third party reviewer should have the authority to reduce the quality rating of a test report (such as noting poor documentation or test performance deficiencies).

Under our conceptual approach, the source test data would be transferred from ERT to EPA's Central Data Exchange[4] (CDX), which is the point of entry on the Environmental Information Exchange Network (Exchange Network) for environmental data exchanges to the Agency. In the future, we may consider using the capabilities of the CDX to provide for future exchanges of information in these reports electronically with facility, state, or federal data systems. For example, as mentioned earlier, it is possible that there might be other audiences for the ERT data such as the AFS. This EPA database contains compliance monitoring and enforcement data for stationary sources of air pollution regulated by EPA and S/L/Ts. The environmental regulatory community uses this information to track the compliance status of point sources with various programs regulated under the Clean Air Act. With certain modifications, the ERT could be designed to collect information used by AFS. We believe that by providing stack

[4] For more information on the CDX, see *http://www.epa.gov/cdx/.*

test and facility data electronically through the ERT in a format for S/L/Ts to update AFS would result in a decrease of some existing reporting requirements' burden for S/L/Ts. We seek comments on whether the ERT information should be used to provide input to the AFS (and whether this would decrease S/L/T reporting burden). Transfers to other data systems such as the National Emissions Inventory, Toxics Release Inventory, and Title V reporting also may be desirable. We request comments on how and whether the ERT could be expanded to address other program needs.

The Cross-Media Electronic Reporting Regulation (CROMERR) [5] has been recently promulgated to provide the legal framework for electronic reporting of information and data to EPA and others who administer EPA programs. CROMERR is intended to reduce the cost and burden of electronic reporting while maintaining the level of corporate, legal, and individual responsibility and accountability that exists in the traditional paper format. At this time, we intend to develop ERT to fully comply with CROMERR.

Once received through CDX, the source test data would be stored in WebFIRE. We currently plan to update WebFIRE to collate and integrate the data into emissions factors calculations for similar processes, pollutants, and control devices. For example, our current plan is to upgrade WebFIRE to calculate automatically the arithmetic mean of the data in individual source test reports to provide updated emissions factors on a periodic schedule. Please note that we do not envision that this approach would be used to update emissions factors as each source test is received. Source test data will not be used for new or amended emissions factors until the data have been vetted through our public review process. Additional features such as calculations of other statistical and distribution characteristics, including the standard deviation and range of data values, could also be added. We seek comments on what kinds of statistical information would be helpful for stakeholders.

The frequency of emissions factors updates is an issue for which we are seeking comment. As noted above, while WebFIRE might theoretically be structured to calculate a new or revised emissions factor whenever a qualified test is submitted, we understand that updating emissions factors very frequently may be disruptive to emissions factors users because it could create a rapidly moving target that could add significant uncertainty to users. Instead, we think a better approach is to schedule periodic updates. Such updates might be based on a specified calendar schedule to allow interested parties to understand when an update might be expected. Because updating emissions factors impacts many other programs, such as operating and new source review permitting, modeling, risk and technology analysis, control strategy development, enforcement, and others, we believe that updating specific emissions factors more than once per year would complicate activities of these other programs. Other triggers could be when a certain volume of new data is submitted in certain categories, or when the newly submitted data results in significant changes to the emissions factor. There also might be value in making supplementary updates whenever there is an associated review of an existing standard (every 8 to 10 years). We are seeking comments on the frequency and scheduling of emissions factors updates.

Some stakeholders have expressed concern that new data would be used to automatically update emissions factors and that there would be no opportunity afforded to comment on the accuracy, representativeness, and completeness of the new data. We believe this is a valid concern and are planning, as discussed above, to only update emissions factors on a periodic schedule. In addition, we are planning on incorporating a full public review and comment period into WebFIRE, similar to the existing system for updating emissions factors. When all data for a specific source category, control device, and pollutant are compiled and resultant emissions factors are drafted, we currently notify all subscribers to the CHIEF list serve *(http://www.epa.gov/ttn/chief/listserv.html)* that new draft emissions factors are available for public review. We plan to add a feature into WebFIRE that will automatically notify subscribers of the availability of new proposed emissions factors for review and comment.

We plan to add flexibility to WebFIRE so that the user may calculate their own emissions factor using a different mix of test reports than those used for the existing emissions factor. Sources already have the ability to suggest alternative factors, but this change to WebFIRE could help make the development process more transparent. This capability might lessen the need for extremely frequent updates and would allow the calculation of emissions factors for specific applications for which the average emissions factor is inappropriate. However, the resulting ''user calculated'' emissions factors would not be considered ''official'' EPA factors and we do not plan to retain these emissions factors in WebFIRE.

We currently plan to build into WebFIRE decision criteria that would be used to select the test data to be used in an emissions factor update. For example, one of the current decision criteria includes the exclusion of C- and D-rated data whenever A- or B-rated test data are available. We seek comment on this approach and other criteria we should consider. We anticipate that the changes to the data reporting system will generally result in higher quality and significantly more data than may have been available in the past for developing some emissions factors. At what point and under what conditions do we drop lower quality data from the emissions factor calculation? If we allow the use of lower quality data, how should it be incorporated? For example, if we have an existing emissions factor that is based upon several ''C'' rated tests and we receive a new high quality performance test, should we average together all of the data or only use the most recent high quality test? Would a numerical quality rating that would allow automated selection criteria be more useful than the current letter rating system?

WebFIRE will be revised to assign an emissions factor quality rating based on specified criteria. We presently assign an emissions factor rating to indicate the ability of the overall average factor to represent a national annual average emissions rate for the source category. The emission factor rating is an overall assessment of how good a factor is, based on both the quality of the test(s) or information that is the source of the factor and on how well the factor represents the emission source. Higher ratings are for emission factors based on many unbiased observations, or on widely accepted test procedures. In the current procedures guidance document, we state as an example that an emissions factor based on 20 or more source tests on different randomly selected plants would likely be assigned an ''A'' rating if all tests are conducted using a single valid federal reference measurement method. Likewise, the guidance indicates that a single observation based on questionable methods of testing would be assigned an ''E'' rating. Should the current EPA approach for WebFIRE incorporate more standardized and consistent criteria for

[5] For more information on CROMERR, see EPA's Web site at: *http://www.epa.gov/CROMERR/index.html.*

assigning emissions factor quality ratings? Should the criteria be predicated upon an estimated predictive accuracy of the national average emissions factor? How should the quality rating of the supporting test data be incorporated into the emissions factor quality rating?

As we revise WebFIRE, a key issue will be how it groups emissions data into related clusters for which the average emissions factors will be developed. What groupings could be performed automatically and which ones would require external manual assessment and management? Who should be responsible and what additional level of peer review should be introduced? Examples of some of the groupings we consider in the present system include the source category, process type, representativeness of source, emission source, equipment design, operating conditions, raw material or fuel characteristics, control devices, and test method used. We request comment on the ways we should incorporate these groupings into WebFIRE and whether there are additional criteria that should be added. For example, what is the best way to characterize facilities for emissions factor development purposes? Currently we are using SCC and pollutant codes with control device type. Is the current characterization system robust enough?

Once the SCC for the facility is tested, the specific pollutant measured, and the control device is determined, the existing procedures should guide the developer through a process of grouping the data. One type of grouping may result in combining data from several SCCs (for example Utility, Industrial, Commercial and Institutional combustion, or the four types of Portland Cement Manufacturing processes). Another type of grouping could result in data from different types of control devices being combined. In the emissions factor development process, these characteristics (and others) are evaluated to determine whether there is a significant difference in the factors when different SCC and/or controls are represented. We traditionally combine data from different SCC and controls for some pollutants, if the factors are not significantly different. The criteria used to determine whether to combine data have varied. Should a more standardized assessment and decision criteria be developed? Should these criteria be based upon a statistical approach? Would a combination of statistical and non-statistical approaches be reasonable? If so, when would one approach be preferred over the other approach?

In some cases, a grouping of SCC and control device type has what appears to be a bimodal distribution of emissions. When detailed information is available in the test reports, these differences could be attributed to differences in the raw material, the production method, the end product specification, or one or more production or control device parameters. What methods should be used to assess and address these situations? Should the same assessment approach used to cluster data be used? Should there be a more rigorous approach adopted? In addressing situations where there are significant differences, how should they be addressed? In the past, these situations have been addressed through the expansion of the available SCCs. In some cases this has led to increased confusion for the user of emissions factors. In lieu of expanding the available SCCs, should we develop additional criteria in WebFIRE to allow for broader differentiation of the emissions factors?

How do we determine whether a specific source has significantly changed such that the existing emissions factor is no longer appropriate? There are many examples of significant changes, including variance in control device performance over time or process changes that alter emissions. We are seeking comment on how to determine whether a process change is significant enough to warrant a new or revised emissions factor. We are also seeking comment on how to account for control device performance in establishing emissions factors.

Another question is how WebFIRE will assess data collected by non-EPA reference methods, such as those developed by the California Air Resources Board or the American Society for Testing and Materials (ASTM). We believe that, in many cases, these ''other'' methods may not be significantly different from EPA-reference methods and, as is the case of some ASTM methods, can be used as alternatives to EPA reference methods or are referenced in some of EPA's reference methods. To the extent the method is a close replica of the EPA method, we believe that WebFIRE should be able to note the different, but similar, method when using its data to develop emissions factors. We currently accept performance test data collected from non-EPA reference methods to develop or revise emissions factors and we are inclined to continue this practice. We are seeking comment on whether the use of methods other than EPA-reference methods should be noted when used to develop emissions factors. Another similar issue is where multiple methods can be employed to test a pollutant. For example, there are several federal reference methods for testing particulate matter. The particulate matter methods were usually designed for a specific source category or process, but now have been used for other sources. One approach we have been considering is a cross walk in WebFIRE and/or the ERT to explain the differences between the various methods and pollutants being tested and when such methods are appropriate. Are there some methods that should be excluded from WebFIRE? For example, EPA Method 25A can be used to develop a mass emissions factor. However, it does not measure all the components of hydrocarbons. We also request comment on how the quality rating might be adjusted to account for methods that are less easy to compare directly.

There are issues associated with the process for developing draft factors. We request comment on how new test data should be presented (prior to WebFIRE calculating the emissions factor), when a commenter believes there are errors in the test data. Some stakeholders have suggested that we should make all data available as they are submitted (for public review and comment), but not to be used to update the emissions factors until all available data are compiled and evaluated. Should the commenter provide a third party review or update, should the test be returned to the facility for correction, or should EPA perform the third party review? Should the draft emissions factor be presented (along with the new test data) and should the draft factor quality be presented? In general, what should be the responsibilities of the commenters, EPA, and the tested source? We are also seeking comment on whether there should be a specified time for submitting comments? Should data be posted to the site when it is submitted or during some specified period prior to the update of the emission factor in WebFIRE?

There are several data handling criteria associated with preparing draft emission factors. These criteria are addressed in the current procedures document and include data averaging, rounding, outliers, detection limits, use of blanks, and format and unit of measure of the factor. We are requesting comment on whether any changes or additions are needed regarding these criteria as we develop changes to WebFIRE. We are especially interested in your comments on how to average

test data that is below the detection limits of the analyzer. Similarly, we currently provide the arithmetic mean as the best measure of an emissions factor to provide a tool for estimating emissions where there are gaps in emissions inventories. However, other descriptive statistics such as median, mode, range, percentiles, and standard deviation may also be useful in characterizing emissions for other purposes. How the precision of the supporting data is characterized is a related issue. In general, we believe that the impact associated with the emissions variability between sources will be reduced when we obtain improved test reports via the ERT or alternative electronic format and as we obtain a larger number of higher quality tests. We expect that more high quality data will yield more accurate emissions factors. In addition, improved process information will allow for developing a process based factor which will improve the predictive accuracy of the resulting emissions estimate. We request comment on our plans to provide additional information on the precision and accuracy of the emissions factors in the new emissions factors development process. This additional information would include the median, mode, range, and standard deviation of the data set used to develop the emissions factor. What methodologies and criteria should be used to achieve more and better factors? Should WebFIRE be limited only to factors that have documented supporting source test data? Should we continue to allow the expansion of emissions factors based upon unsupported assessments (*i.e.,* assumed control efficiencies applied to average controlled factors to arrive at an uncontrolled factor, and then a subsequent assumed control efficiency applied to that uncontrolled factor to arrive at a controlled factor)?

Some stakeholders have requested development of emissions factors for uncontrolled processes. It is not surprising that the existing emissions factors characterize emissions for controlled processes, because these are the emissions sources that typically are subject to regulation and required to conduct performance tests to demonstrate compliance. However, should a source desire to test uncontrolled processes and enter the information into the ERT, we would accept such data. A broader issue might be how we could encourage stakeholders to provide any data (controlled or uncontrolled) and/or to adopt the use of the ERT for reporting of testing programs not required for federal regulatory purposes.

Some industry groups and trade associations independently have developed industry-specific emissions factors. In some cases, these stakeholders have asked us to include their emissions factors in WebFIRE without a critical review of the source testing and resultant data. Should these groups choose to submit their data through the ERT or an alternative electronic format and result in highly rated tests, we believe their data should be considered the same as any other data for calculating emissions factors. However, some of these tests may involve information that the sources being tested consider proprietary or the test reports may lack critical details because they were conducted for different purposes. Where do we draw the line in accepting such data for use in developing emissions factors? If we accept some lesser quality tests and data, would others be encouraged to do the same which may result in less transparency in the process and poorer quality emissions factors? If CBI data are considered by us, how can we assure the other stakeholders of the reliability of the supporting data without incurring a workload on ourselves that would result in substantial slowing of the process? A similar issue is whether we should accept assessment of their source test data by stakeholders. We believe one way to address this concern is to have an independent third party review. We have discussed third party review to ensure objectivity of the data elsewhere in this notice.

We intend for the revised emissions factors development process guidance to retain the opportunity for public review of the individual test data, the emissions factor calculations, and associated quality rating prior to finalizing any new or revised emissions factor. However, as previously discussed our current thinking is to modify some of the aspects of the review process. For example, we currently plan to change from revising entire sections in AP–42 at one time to a review of recently added source test data. We are also considering conducting a periodic review of the entire WebFIRE (limited to data that had been submitted since the last review) at a single time. We request comment on these changes and suggestions for alternative approaches to updating emissions factors and handling data before they are used to update emissions factors. We also recognize the potential impact that changing emissions factors can have on sources (*e.g.,* a higher revised emissions factor could mean that the source may be out of compliance, or the source may become subject to newly applicable requirements such as Title V or Toxics Release Inventory reporting). Should we limit reviews to the additional source tests or should we allow reviewers to address the implications of these additions? We request comment on any steps that could enhance public review of the emissions factor development process and outcome and will contribute to the timely development of new and revised factors.

B. Test Data Submittal Requirements

We believe that an additional enhancement to the current emissions system is for us to take steps to increase the quality and quantity of performance test data submittals. With the ERT, we believe we have a tool to encourage the submission of higher quality test data. However, the quantity of data submittals has to be increased to ensure continuous development of better emissions factors. Unfortunately, while the ERT has been available for several years, we are not seeing widespread use of it to submit data to EPA for use in emissions factors development. There could be several reasons that test data submittals to EPA are not more widespread.

- There is no regulatory driver requiring submission of data.
- Stakeholders are worried that data submitted this way will result in emissions factors being updated too quickly, making the verification of appropriate emissions factors a more difficult process.
- The ERT is perceived as requiring too much data or more data are required than what is normally required by S/L/Ts for performance testing.
- There are electronic compatibility issues for agencies with electronic reporting systems that are similar to ERT in scope. Some agencies may have their own electronic reporting systems, but these may be limited to the reporting of the test results only.
- There is a perception that using the ERT costs more than the traditional paper formats or that using the ERT will increase the costs of performance testing to collect the information required by the ERT.
- Agencies still require paper reports or a signed copy of the report.

In order to ensure we receive timely submittal of data necessary for a robust emissions factors program, we are considering using the authority under section 114 of the Clean Air Act to require the electronic submission to EPA of performance test reports conducted for compliance certifications or other regulatory purposes. Specifically, we are considering

amending the reporting provisions of the 40 CFR parts 60 (New Source Performance Standards (NSPS)), 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP)), and 63 (Maximum Achievable Control Technology (MACT standards)) General Provisions to require electronic submittal of performance tests that are already required by standards in these parts. The General Provisions contain requirements, such as monitoring, recordkeeping, and reporting that are common to all NSPS, NESHAP, and MACT rules. We want to emphasize that this approach would not add any additional performance testing. Nor do we anticipate that this requirement would significantly increase the reporting and recordkeeping burden of sources that are already required to submit their performance test data. As described below, we think that using the ERT will likely result in reducing the overall burden of submitting test data by standardizing the reporting form and automating many of the quality assurance and calculation features associated with paper reporting. We are seeking comments on the concept of requiring electronic submittal of performance reports. We are also seeking comments on any perceived reduction (or other benefits) or addition in costs to stakeholders should we require the submittal of performance tests required by parts 60, 61, and 63. Should we propose such requirements in a future rulemaking, we will assess this potential burden reduction.

We also request comment on whether we should specify specific required elements to be contained in source test reports. The components would include not only the documentation of the conduct of the stack sampling activities, but also the process parameters, such as, process operations, control device design, and monitoring parameters that are indicative of the emissions performance of the process and control device. We believe that requiring these components should not increase performance test burdens, because this kind of information is required in the existing methods and are necessary to evaluate the conformance to the test method or for compliance with applicable parts 60, 61, or 63 provisions. The advantage of the ERT, which was developed with input from stack testing companies, is that it would provide a standardized method and template to collect and store all the documentation required.

We believe that obtaining these test data already collected for other purposes and using them in the emissions factors development program will save industry, S/L/Ts, and EPA time and money. A benefit of submitting these data to WebFIRE electronically is that these data will greatly improve the overall quality of the existing and new emissions factors by supplementing the pool of emissions tests data upon which the emission factor is based and by ensuring that data are more representative of current industry operational procedures. Submitting these data to EPA will address a common complaint we hear from industry and regulators that emissions factors are out-dated and/or not representative of a particular source category. We also believe that having these data will enable EPA to conduct more effective residual risk analyses (required under section 112(f) of the Clean Air Act Amendments of 1990) and periodical technology reviews for parts 60 and 63 NESHAP and MACTs respectively, without requiring industry to submit additional data. Moreover, as each source category emissions' factors are populated with more high-quality tests, the accuracy of the emissions factors will increase. The regulations at 40 CFR parts 60, 61, and 63, the NSPS, NESHAP, and MACTs already have performance test requirements and, again, this rule would not add additional testing. However, we will need to revise the reporting requirements for these rules. One option we are contemplating is to amend the reporting requirements of the general provisions for 40 CFR parts 60, 61, and 63 to require submittal of required performance testing to EPA. Hundreds of these performance tests are conducted each year and the resultant test reports and pertinent data reside in S/L/Ts' filing cabinets. EPA does not receive these tests routinely, and does not have funding to travel to the S/L/T offices to copy and/or scan these tests to obtain the data. Subsequently emissions factors remain static.

We are seeking comment on the scope of required data submittals. For example, there are some source categories with numerous sources and frequent testing requirements. In some cases, this might result in hundreds of submittals for the same category. Should there be a process to limit the number of reports in these situations? Also, should there eventually be a cutoff in the submittal requirement after several years of data have been submitted? Statistic analyses show that data from more than 30 source tests normally do not appreciably impact the mean value of the emissions factor. On the other hand, if we limit the number of source test reports, then how would we determine that there had been significant changes in processes and/or controls that might influence the existing emissions factors, suggest the need for new emissions factors, or the need for new source classification codes?

Requiring submission of performance test data will require coordination with respect to changes to ERT and WebFIRE. For example, ERT will need to be updated to accommodate other pollutant measurements that may be required in 40 CFR parts 60, 61, and 63. The ERT also needs to be modified to transmit data to a centralized point (EPA's Central Data Exchange), so that it could be stored in WebFIRE for future use.

We believe that ERT, or an alternate system (such as some existing S/L/T electronic performance test submittal software), should be the preferred method of submitting test data that ensures the quality of the data that are used in emissions factors development. In addition to providing an easy way to submit performance tests and more consistency in these submissions, the ERT addresses some source test reporting deficiencies we have observed over the years. For example, not all source tests received from S/L/Ts include the documentation necessary to verify that the procedures established in the applicable test method are being performed. Test reports also may fail to include reports and the requisite documentation from laboratories describing the analyses performed.

Documentation is sometimes lacking regarding the facility's production level, process flow rate, secondary products, final products, or other integral information. Information regarding the facility's performance, *i.e.* at normal or near maximum production levels at the time of testing, may also be needed. Critical design and operational information on the equipment used to control the pollutants being tested also may be missing. Given our objective to improve the quality of data used to develop emissions factors, we think this detailed information may be needed. The absence of any of this information will be considered in rating the quality of the performance test data.

In summary, we request comment on whether additional source and testing information should be required to be submitted to the ERT to enhance the emissions factor development process. To what extent should background information, like a process flow data, on the source be required to be provided? Finally, additional data may be needed to develop algorithms (based on emissions factors), such as those used in

the TANKS[6] program. In cases where we seek information on process conditions, we may find that a few sources may consider this information or data to be CBI. There are several issues with requiring CBI, and we are seeking comment on the receipt of CBI to develop more accurate emissions factors.

C. Emissions Factors Content and Format

The existing AP–42 currently expresses emissions factors as the arithmetic mean, which generally is an expeditious choice for use in traditional applications such as emissions inventories gap filling. However, our current thinking is to identify ways to expand the scope of emissions factors' application into areas where the existing format of the factors may not satisfy the new application. For example, it may be helpful to provide the range of the test data to users, so that they can understand the variability of the source tests used to develop a particular emissions factor. Also, WebFIRE could be modified to calculate and provide other relevant statistical and distribution characteristics, including the standard deviation, in order to provide users with a more complete description of the data. Such a description, whether tabular or graphical, could help educate users and allow them to make better informed decisions. We seek comment on the type and format of emission factor information beyond the mean value that would be useful for stakeholders.

D. Interacting With the SPECIATE Database

SPECIATE is the EPA repository of total organic compound (TOC) and particulate matter (PM) speciation profiles for emissions from stationary and mobile air pollution sources. The profiles are key inputs to air quality modeling and source-receptor modeling applications. SPECIATE essentially provides emissions factors and information for pollutants, from both controlled and uncontrolled processes, at a level of detail that is not adequately or traditionally presented in AP–42. The emissions factors developed for SPECIATE are gleaned from available sources, such as test data, literature searches or academic studies. References and data quality ratings are provided to guide the user. We are seeking comment on whether SPECIATE (or any other source of emissions factors) should be linked to or contained in WebFIRE.

V. Request for Comment and Next Steps

As described throughout this notice, EPA is soliciting comments to help in improving the way emissions factors are developed and used. We also encourage readers to submit other general comments and supporting data that could help us further improve the emissions factors program. In order to ensure a well balanced response and develop the best possible product, we encourage the submittal of both comments offering suggestions and changes and those supporting our current thinking on potential emissions factors program improvements.

For the convenience of the reader, the following list summarizes the major areas for which we are seeking comment:

- Is it appropriate to amend the reporting provisions of the 40 CFR parts 60, 61, and 63 General Provisions to require electronic submittal of performance tests that are already required by standards in these parts?
- As acknowledged earlier, emissions factors are used for many air pollution control activities that were not envisioned when this program was established. We are seeking comment on the appropriateness of using emissions factors for these other purposes and, if they are to be used for other purposes, should there be any other requirements for these emissions factors (such as using only high rated emissions factors for permitting) or more information required for these emissions factors (such as greater precision and accuracy).
- Are third party reviews of performance tests needed and, if so, then how could we encourage third party reviews of test reports and what weight should we give reviews in assigning a quality rating?
- Should we require electronic submittal of performance tests via the ERT or some similar electronic submittal software (such as existing S/L/T submittal software)? What is the availability of other electronic formats that currently may be used by sources to report source test information to their S/L/Ts? Could these formats be used or adapted to fit into our proposed process?
- Would a different format for the ratings of test data be useful? For example, would a numerical system provide more information on the quality of the test rating?
- If needed, should additional information be required as part of ERT to enhance the emissions factors development process? Should we obtain continuous emissions monitoring data in a fashion that could be used for emissions factors development in the next versions of ERT and WebFIRE?
- We plan to build into WebFIRE decision criteria that would be used to select the test data to be used in an emissions factors update. For example, we may have four performance tests conducted in 1979 and four performance tests conducted in 1995 where the source made a slightly different product. What tests should we use to develop the emissions factors and what criteria should we consider to select the performance tests?
- How should emissions data be grouped into related clusters for which the average emissions factors will be developed? Examples of some of the criteria we consider in the present system include the source category, process type, representativeness of source, emission source, equipment design, operating conditions, raw material or fuel characteristics, control devices, and test method used.
- How should WebFIRE assess data collected by non-EPA reference methods (such as those developed by the California Air Resources Board) or data from two different methods that are averaged to develop an emissions factor? How might the quality rating be adjusted to account for methods that are less easy to compare directly?
- At what frequency or schedule should emissions factors in WebFIRE be updated?
- There are several data handling criteria associated with preparing draft emission factors. These criteria include data averaging, rounding, outliers, detection limits, use of blanks, and format and unit of measure of the factor. How should we account for these potential variables in emissions factors?
- Besides calculating the arithmetic mean to be used as the traditional emissions factor, what other statistical characteristics should additional features such as calculations of median and mode factors or other information from the data sets also be provided and in what format, *i.e.,* tabular or graphical, should they be provided?
- Should there be a process to limit the number of performance test reports from a particular source category submitted to EPA? For example, should we establish a threshold in the submittal requirement after 50 or 100 performance tests have been submitted? If so, then how would EPA know when source categories significantly change process or controls, such that we would want

[6] TANKS is a Windows-based computer software program that estimates volatile organic compound (VOC) and hazardous air pollutant (HAP) emissions from fixed- and floating-roof storage tanks. *TANKS* is based on the emission estimation procedures from Chapter 7 of AP–42.

additional performance tests for emissions factors revisions?

- What steps could enhance public review of the emissions factors development process and outcome and contribute to the timely development of new and revised factors?

When finalized, the Emissions Factors Guidance will address many of these issues.

We will consider the comments submitted in response to this ANPRM as we proceed to implement an improved emissions factors program.

VI. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), this is a ''significant regulatory action'' because we expect this action to raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. Because this action does not propose or impose any requirements, and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various statutes and Executive Orders that normally apply to rulemaking do not apply in this case. Should EPA subsequently determine to pursue a rulemaking, EPA will address the statutes and Executive Orders as applicable to that rulemaking.

List of Subjects in 40 CFR Parts 60, 61, and 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Emissions factors, Performance testing.

Dated: October 7, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–24684 Filed 10–13–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 74, No. 197

Wednesday, October 14, 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

Cooperative State Research, Education, and Extension Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request an extension for a currently approved information collection (OMB No. 0524–0026) for Form CSREES–665, ''Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance,'' and Form CSREES–666, ''Organizational Information.'' Upon OMB approval of this collection, the burden for the Form CSREES–665 will be transferred to OMB control number 0524–0039, ''Cooperative State Research, Education, and Extension Application Kit for Research and Extension Programs.''

DATES: Submit comments on or before December 14, 2009.

ADDRESSES: Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods to Jason Hitchcock, Director, Information Policy, Planning and Training; Mail: CSREES/USDA; Mail Stop 2216; 1400 Independence Avenue, SW.; Washington, DC 20250–2299; Hand Delivery/Courier: 800 9th Street, SW., Waterfront Centre, Room 4217, Washington, DC 20024; or E-mail: *jhitchcock@csrees.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jason Hitchcock, Director of Information Policy, Planning, and Training; Information Systems and Technology Management; CSREES/USDA, E-mail: *jhitchcock@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance and Organizational Information.

OMB Number: 0524–0026.

Expiration Date of Current Approval: February 28, 2010.

Type of Request: Intent to extend a currently approved information collection for three years.

Abstract: CSREES has primary responsibility for providing linkages between the Federal and State components of a broad-based, national agricultural research, extension, and education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and carry out the intent of Congress by administering formula and grant funds appropriated for agricultural research, extension, and education. Before awards can be made, certain information is required from applicants to assure compliance with the applicable civil rights laws and to effectively assess the potential recipient's capacity to manage Federal funds.

Need for the Information: Form CSREES–665 ''Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance'': By signing this form, the organization certifies that it complies with the Civil Rights Act of 1964, as amended. The applicant agrees that it will offer its programs to all eligible persons without regard to race, color, national origin, gender, disability, age, political beliefs, religion, marital status, or familial status and that people will not be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives the Federal financial assistance from the Department of Agriculture. This information is submitted to CSREES on a one-time basis.

Form CSREES–666 ''Organizational Information'': This form enables CSREES to determine that applicants recommended for awards will be responsible recipients of Federal funds. The information pertains to organizational management and financial matters of the potential grantee. This form and the documents which the applicant attaches to it provide CSREES with information such as the legal name of grantee, certification that the organization has the legal authority to accept Federal funding, identification and signatures of the key officials of the organization, the organization's practices in regard to compensation rates and benefits of employees, insurance for equipment, subcontracting with other organizations, etc., as well as the financial condition of the organization and certification that the organization is not delinquent on Federal taxes. All of this information is considered by CSREES prior to award to determine if the grantee is both managerially and fiscally responsible. This information is submitted to CSREES on a one-time basis. If sufficient changes occur within the organization, the grantee submits revised information.

Estimate of the Burden: CSREES estimates the number of responses for the Form CSREES–665 will be 4350 with an estimated response time of 5 minutes per form, representing a total annual burden of 363 hours for this form. CSREES estimates the number of responses for the Form CSREES–666 will be 150 with an estimated response time of 6.3 hours per form, representing a total annual burden of 945 hours for this form. These estimates are based on a survey of grantees that were approved for grant awards. They were asked to give an estimate of time it took them to complete each form. This estimate was to include such things as: (1) Reviewing the instructions; (2) searching existing data sources; (3) gathering and maintaining the data needed; and (4) actual completion of the forms. The average time it took each respondent was calculated from their responses.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have a practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the

validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection 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.

Done at Washington, DC, this 6th day of October 2009.

Rajiv J. Shah,

Chief Scientist, USDA, Under Secretary for REE.

[FR Doc. E9–24677 Filed 10–13–09; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection: Comment Request: Supplemental Nutrition Assistance Program (SNAP) Education and Administrative Reporting System (EARS)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. The proposed collection is an extension, without change, of a currently approved collection.

The purpose of the Education and Administrative Reporting System (EARS) form is to collect uniform and standard information on nutrition education activities (SNAP–Ed) funded by SNAP. The data collected will inform management decisions, support policy initiatives, and provide documentation for legislative, budget and other requests that support planning within the agency.

DATES: Written comments must be submitted on or before December 14, 2009.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Jane Duffield, Chief, State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 818, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Jane Duffield at 703–605–0795, Room 824 or via e-mail to *jane.duffield@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 824 Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval.

All comments will also be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection form and instructions should be directed to Jane Duffield at (703) 605–4385.

SUPPLEMENTARY INFORMATION:

Title: Education and Administrative Reporting System.

OMB Number: 0584–0542.

Form Number: FNS–759.

Expiration Date: 08/31/2010.

Type of Request: Extension, without change, of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) developed the Education and Administrative Reporting System (EARS) for the nutrition education (SNAP–Ed) component of the Supplemental Nutrition Assistance Program (SNAP), which is provided for in Section 11 of the Food and Nutrition Act of 2008 (7 U.S.C. 2020 (f)(3)(B)(ii)). In 2003, the Agency convened a workgroup of diverse stakeholders to assist with this task, including people from the State, local, and federal levels, as well as academia.

The EARS form was approved by the Office of Management and Budget (OMB) in Fiscal Year (FY) 2007. The first phase of EARS implementation, launched in FY 2008, required SNAP State agencies to report on financial questions #9 and #10 on the EARS form. Full implementation of all applicable EARS questions is required of SNAP State agencies by FY 2010.

EARS provides uniform data and information about the nutrition education activities of all participating States across the country. Data collected on the EARS form includes demographic characteristics of participants receiving nutrition education benefits, information about education topics and strategies, and use of resources. The EARS form is designed as an annual report that SNAP State agencies submit using the Food and Nutrition Service (FNS) web-based Food Program Reporting System (FPRS). FPRS is available to SNAP State agencies between October 15 and December 30 of each year for the submission of EARS data for the prior FY's nutrition education activities.

Affected Public: Supplemental Nutrition Assistance Program (SNAP) State Agencies, and implementing partners such as extension universities and non-profit organizations and local program operators.

Estimated Number of Respondents: 52.

Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 52.

Hours per Response: 54.

Total Annual Reporting Hours: 2,808.

Total Annual Burden Hours: 2,808.

Estimated Number of Respondents: 52 SNAP State agencies.

Dated: October 5, 2009.

Julia Paradis,

Administrator.

[FR Doc. E9–24678 Filed 10–13–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for the Rural Economic Development Loan and Grant Program for Fiscal Year 2010

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice is to invite applications for loans and grants under the Rural Economic Development Loan and Grant (REDLG) program pursuant to

7 CFR part 4280, subpart A for fiscal year (FY) 2010 subject to the availability of funding. The commitment of program dollars will be made to applicants of selected responses that have fulfilled the necessary requirements for obligation. Expenses incurred in developing applications will be at the applicant's risk. Historically, Congress has appropriated funding for these programs. This Notice is being issued prior to passage of a FY 2010 Appropriations Act, which may or may not provide an appropriation for these programs, to allow applicants sufficient time to leverage financing, submit applications, and give the Agency time to process applications within the 2010 fiscal year. A subsequent notice identifying the amount received in the appropriations will be published, if any.

DATES: The deadline for receipt of applications in the USDA Rural Development State Office is: First Quarter, September 30, 2009; Second Quarter, December 31, 2009; Third Quarter, March 31, 2010; and Fourth Quarter, June 30, 2010.

ADDRESSES: Submit applications in paper format to the USDA Rural Development State Office in the state where your project is located. A list of the USDA Rural Development State Offices addresses and telephone numbers are as follows:

District of Columbia

USDA Rural Development, Specialty Lenders Division, 1400 Independence Avenue, SW., STOP 3225, Room 6867, Washington, DC 20250–3225, (202) 720–1400.

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, 230 N. 1st First Ave., Suite 206, Phoenix, AZ 85003, (602) 280–8701/TDD (602) 280–8705.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, # 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2903/TDD (720) 544–2976.

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office, 2118 W. Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100/TDD (317) 290–3343.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858.

Kansas

USDA Rural Development State Office, 1303 S.W. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331.

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169.

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, 900 Technology Boulevard, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222/TDD (775) 885–0633.

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ

08054, (856) 787–7700/TDD (856) 787–7784.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737,

(701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 1201 NE. Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3300/TDD (503) 414–3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000/TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1550/TDD (804) 287–1753.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760.

West Virginia

USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700/TDD (307) 233–6733.

FOR FURTHER INFORMATION CONTACT: The Rural Development State Office identified in this Notice where the project will be located.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Type: Rural Economic Development Loans and Grants.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance Number: 10.854.

Dates: Application Deadline: Completed applications must be received in the State Office as follows: First Quarter, September 30, 2009; Second Quarter, December 31, 2009; Third Quarter, March 31, 2010; and Fourth Quarter, June 30, 2010.

I. Funding Opportunity Description

The Regulations for these programs are at 7 CFR part 4280, subpart A. The primary objective of the program is to promote rural economic development and job creation projects. Assistance provided to rural areas, as defined, under this program may include business startup costs, business expansion, business incubators, technical assistance feasibility studies, advanced telecommunications services and computer networks for medical, educational, and job training services and community facilities projects for economic development. Awards are made on a competitive basis using specific selection criteria contained in 7 CFR part 4280, subpart A. Information required to be in the application includes an SF–424, ''Application for Federal Assistance;'' a Resolution of the Board of Directors; AD–1047, ''Debarment/Suspension Certification;'' Assurance statement for the Uniform Act; Restrictions on Lobbying, AD 1049; ''Certification Regarding Drug-Free Workplace Requirements;'' RD 400–1, ''Equal Opportunity Agreement;'' RD 400–4, ''Assurance Agreement;'' Seismic certification (if construction); Form RD 1940–20, ''Request for Environmental Information;'' RUS Form 7, ''Financial and Statistical Report;'' and RUS Form 7a, ''Investments, Loan Guarantees, and Loans,'' or similar information; and written narrative of project description. Applications will be tentatively scored by the State Offices and submitted to the National Office for review.

Definitions

The definitions are published at 7 CFR 4280.3.

II. Award Information

Type of Awards: Loans and Grants.

Fiscal Year Funds: FY 2010.

Maximum Anticipated Award: Loans—$740,000; Grant—$300,000.

Anticipated Award Dates: First Quarter, December 15, 2009; Second Quarter, March 16, 2010; Third Quarter, June 15, 2010; and Fourth Quarter, September 15, 2010.

III. Eligibility Information

A. Eligible Applicants

Loans and grants may be made to any entity that is identified by USDA Rural Development as an eligible borrower under the Rural Electrification Act. In accordance with 7 CFR 4280.13, applicants that are not delinquent on any Federal debt or otherwise disqualified from participation in these programs are eligible to apply. An applicant must be eligible under 7 U.S.C. 940c.

B. Cost Sharing or Matching

For loans, either the Ultimate Recipient or the Intermediary must provide supplemental funds for the project equal to at least 20 percent of the loan to the Intermediary. For grants, the Intermediary must provide supplemental funds for the project equal to at least 20 percent of the grant to the Intermediary.

C. Other Eligibility Requirements

Applications will only be accepted for projects that promote rural economic development and job creation.

D. Completeness Eligibility

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

IV. Fiscal Year 2010 Application and Submission Information

A. Address To Request Application Package

For further information, entities wishing to apply for assistance should contact the Rural Development State Office identified in this NOFA to obtain copies of the application package.

Applicants are encouraged to submit applications through the Grants.gov Web site at: *http://www.grants.gov.* Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov Web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. To use Grants.gov, applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or at *http://www.dnb.com.*
- You may submit all documents electronically through the Web site, including all information typically included on the application for REDLGs and all necessary assurances and certifications.
- After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the deadline, you may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.

Please note that applicants must locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity Number, which can be found at *http://www.grants.gov.*

B. Content and Form of Submission

An application must contain all of the required elements. Each selection priority criterion outlined in 7 CFR 4280.42(b), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 4280, subpart A, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice.

C. Submission Dates and Times

Application Deadline Dates: First Quarter, September 30, 2009, Second Quarter, December 31, 2009, Third Quarter, March 31, 2010, and Fourth Quarter, June 30, 2010.

Explanation of Deadlines: Applications must be in the Rural Development State Office by the deadline dates as indicated above.

V. Application Review Information

The National Office will score applications based on the grant selection criteria and weights contained in 7 CFR part 4280, subpart A, and will select an Intermediary subject to the Intermediary's satisfactory submission of the additional items required by 7 CFR part 4280, subpart A and the USDA Rural Development Letter of Conditions.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification for funding from the Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the loan/grant award will be approved. Provided the application requirements have not changed, an application not selected will be reconsidered in three subsequent funding competitions for a total of four competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application.

B. Administrative and National Policy Requirements

Additional requirements that apply to Intermediary's selected for this program can be found in 7 CFR 4280, subpart A. Applicable provisions of 7 CFR parts 3015, 3019, and 3052 also apply.

VII. Agency Contacts

For general questions about this announcement, please contact your Rural Development State Office identified in this NOFA.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this Notice is approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0024.

Nondiscrimination Statement

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

Dated: September 23, 2009.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–24612 Filed 10–13–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kings River Experimental Watershed Forest Health and Research Project

AGENCY: Sierra National Forest, Forest Service, USDA.

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

SUMMARY: The Forest Service will prepare a Kings River Experimental Watershed Forest Health and Research Project (KREW Project) Environmental Impact Statement (EIS). The EIS will evaluate the environmental effects of the KREW Project which is designed to treat portions of the Kings River watershed to improve forest health and to examine the short- and long-term effects of these treatments. The research will lead to information that will be instrumental in future land management planning for the Sierra National Forest (SNF) and other Sierra Nevada forests.

DATES: Comments concerning the scope of the analysis must be received by November 13, 2009. The draft environmental impact statement is expected December 2009 and the final environmental impact statement is expected April 2010.

ADDRESSES: Send written comments to Judi Tapia, SNF, Supervisor's Office, 1600 Tollhouse Road, Clovis, CA 93611, Attn: KREW Project.

Comments may also be sent via e-mail to *jetapia@fs.fed.us,* or via facsimile to 559–294 4809.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. We intend to use comments received from the public to help formulate our draft EIS so please provide any suggestions or concerns prior to the close of the comment period.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

FOR FURTHER INFORMATION CONTACT: For research information, contact Carolyn Hunsaker, Ecologist, Pacific Southwest Research Station (PSW), available by phone at 559–323–3211 or via e-mail at *chunsaker@fs.fed.us.* For forest management information, contact Judi Tapia at 559–297–0706 extension 4938 or via e-mail at: *jetapia@fs.fed.us.* Information regarding the KREW Project EIS can be found on the SNF Web site located at: *http://www.fs.fed.us/sierralprojects/.*

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

SUPPLEMENTARY INFORMATION: The Forest Service routinely conducts land management activities to help restore forests to a healthy, diverse, fire-resilient condition by reducing stand densities and fuel loads. Such management activities involve thinning forests to reduce competition among trees for water, nutrients, and sunlight; to reduce the continuity of fuels; and to protect and/or reestablish a resilient, diverse forest ecosystem.

PSW, in collaboration with the SNF, propose to complete a land management project to achieve forest health goals, part of which is the subject of research to assess the response of the ecosystem to these management practices. The forest management practices are designed for ecological restoration: for example, to reduce the effects of uncharacteristic wildfire, drought, invasive species and insect attack while providing habitat for wildlife species including sensitive species such as California spotted owl, Pacific fisher, and Yosemite toad.

The proposed KREW Project activities, implemented under the SNF Land and Resources Management Plan (LRMP) as amended by the 2004 SNF LRMP Amendment, have two coupled components: Component 1, management treatments and Component 2, research to examine ecosystem response to those treatments. The research has been underway since 2000 to instrument the subject watersheds and measure baseline (pre-treatment) ecological response. Upon completion of the forest restoration treatments planned post-treatment data collection will be completed.

The project area encompasses 3,051 acres and has two separate parts: the KREW Providence Unit (1,899 acres) and the KREW Bull Unit (1,152 acres). The KREW Providence Unit is off of the Dinkey Creek Road, adjacent to the Providence Creek Road. The KREW Bull Unit is on Patterson Mountain adjacent to the Ross Crossing Road and includes part of the Teakettle Experimental Forest.

Much is known about vegetative responses to thinning in terms of growth rates, resistance to insect attack, and resulting fire behavior in treated stands. Less is known about physical, biological, and chemical responses to moderate thinning of trees and application of prescribed fire at a watershed scale. The KREW Project research component is a replicated, paired-watershed research area for headwater streams in the southern Sierra Nevada. The KREW Project research addresses both basic and applied science questions regarding sustainable forests for current and future conditions. The KREW Project research component is a formal research project and has a scientist reviewed study plan that is periodically updated (*http://www.psw.fs.fed.us/snrc/water/kingsriver*). The Forest Service already collects data at eight instrumented watersheds on the following topics to meet KREW Project research goals:

- Hydrology.
- Meteorology.
- Air quality.
- Sediment & turbidity.
- Soils & geomorphology.
- Water chemistry.
- Biology.

—Stream macroinvertebrates.
—Algae.
—Riparian & upland vegetation & fuels.
—Yosemite toad.

In June of 2009, the Sierra Nevada Alliance highlighted the need to monitor, protect and restore Sierra Nevada headwater resources. The KREW Project is uniquely positioned to allow researchers to collect data from an area where a particular management practice is applied along with corresponding data from a similar, but untreated area. By conducting various types of thinning and prescribed fire treatments and comparing data from paired areas, the proposed research project is intended to evaluate the watershed-scale effects of management activities designed to create a more sustainable forest in a financially viable way.

Purpose and Need for Action

The KREW Project has two goals: the SNF's goal of forest health treatment for

the Providence and Bull Units of the Kings River watershed and PSW's goal of information development on treatment methods. There is an urgent need to treat headwaters in the Kings River watershed to improve forest health and reduce the risk of catastrophic fire, and while doing so, to further our understanding of ecological responses to forest management activities.

Sierra waters are critical for the health and welfare of California and yet there has been minimal attention and resources dedicated to the protection and restoration of this headwater resource. The Sierra Nevada Alliance reports that 75% of California's rain and snow falls in the Sierra which provides 55 to 65% of California's developed water. The need for the proposed research in the Sierra Nevada is emphasized by financial support to the KREW Project from the State of California, CalFed Watershed Program administered by the California Regional Water Quality Control Board, and by a recent report from the Sierra Nevada Alliance, ''Investing in California's Headwaters: The Sierra Nevada.'' In addition, the National Science Foundation is funding university scientists to perform research to cooperate with the KREW Project. The research component of the KREW Project influenced the siting selection of the California portions of the National Ecological Observatory Network. The KREW Project research component is designed to be relevant to Federal, State and private forest land. The KREW Project will also provide much needed data for the Southern Sierra Integrated Regional Water Management Plan.

North and others in 2009 recognized that ''management practices that help restore the forest headwaters of Sierran watersheds will benefit water production and quality for downstream users.'' The SNF and PSW have been working toward the goal of forest health treatment in the Kings River watershed for more than a decade. As each year goes by, the health of the forest in these areas has a greater potential to be impacted by various factors including drought, uncharacteristic wildfire and insect infestation. Treatment to enhance ecological health in the Kings River watershed has been delayed due to setbacks in the completion of key environmental documentation. It is important that treatments be accomplished and research information be available to provide factual information for the design of future forest management activities.

The KREW Project objectives include:

- Treat the Providence and the Bull Units to improve forest ecological health in a financially viable way.
- Define the variability in and understand the processes of headwater streams, their riparian areas, and associated watersheds.
- Evaluate the effects of management activities (prescribed fire, mechanical thinning, and commercial tree harvesting) designed to create a more sustainable forest.
- Provide an instrumented research site to evaluate regional stresses such as air pollution and climate change.
- Develop a multidisciplinary database that is dense enough in time and space for computer modeling applications.

Proposed Action

The proposed action would apply treatments on the majority of the acres in Providence and Bull Units for ecological restoration and study their short- and long-term effects at the watershed scale. The proposed action includes tree thinning with commercial tree harvest, underburning, reforestation, plantation maintenance, fuels treatments, and herbicide treatments to plantations and noxious weeds. Tree removal and retention emphasizes heterogeneity through a variable growing space retention based on aspect, slope position, site productivity, tree species and recognition of micro-site conditions. Restoration of native species composition is proposed through the regeneration of pine species; the retention of existing brush, pine and oaks consistent with the desired conditions; enhancement of growing conditions of existing young pine; and the eradication of noxious weed species.

The integrated condition of the streams and their associated watersheds and riparian areas will be evaluated with physical, chemical and biological measurements taken under a formal research study. The research areas within the Units, a subset of the entire proposed treatment area, have been assigned a treatment type for the purpose of the experimental design. The 1,899-acre Providence Unit includes research watersheds of 298 acres of potential thinning, 327 acres of underburn, 245 acres of combined underburning and potential thinning, and 120 acres of control (untreated). The 1,152-acre Bull Unit includes research areas of 131 acres of thinning, 342 acres of underburn, and 412 acres of combined thinning and underburning. The 562-acre control area for the Bull Unit is outside the KREW Project. Only a portion of the research areas designated for mechanical thinning will be thinned. Forest management treatments also occur outside the research areas and are not constrained by the research design.

Lead and Cooperating Agencies

The KREW Project is a collaborative effort between the SNF and the PSW. The PSW and the SNF share responsibility as the lead agency.

Responsible Officials

Ed Cole, SNF Forest Supervisor, Supervisor's Office, 1600 Tollhouse Road, Clovis, CA 93611

Peter Stine, Program Manager, PSW, 1731 Research Park Drive, Davis, CA 95618.

Nature of Decision To Be Made

The decision to be made is whether to implement the planned forest health treatments and proceed with research on the effects of those treatments, alternative forest health treatments, or select no action.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Public scoping meetings will be held at the SNF, Supervisor's Office, 1600 Tollhouse Road, Clovis on Wednesday October 14th at 3 p.m. to 4:30 p.m. and from 6:30 to 8 p.m. on the same date at the SNF High Sierra Ranger District, 29688 Auberry Road, Prather, CA.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Dated: October 1, 2009.

Edward C. Cole,

Forest Supervisor.

[FR Doc. E9–24373 Filed 10–13–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Central Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–

393), the Salmon-Challis National Forest's Central Idaho Resource Advisory Committee will conduct a business meeting which is open to the public.

DATES: Monday, October 19, 2009, beginning at 1 p.m.

ADDRESSES: Public Lands Center, 1206 South Challis Street, Salmon, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review of RAC 2009 projects, possible approval of RAC project proposals, and preparing for the 2010 RAC project season. The meeting is an open public forum. Some RAC members may attend the meeting by conference call or electronically.

FOR FURTHER INFORMATION CONTACT: William A. Wood, Forest Supervisor and Designated Federal Officer, at 208–756–5111.

Dated: September 30, 2009.

William A. Wood,

Forest Supervisor, Salmon-Challis National Forest.

[FR Doc. E9–24649 Filed 10–13–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Olympic Coast National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Olympic Coast National Marine Sanctuary Advisory Council: The Commercial Fishing seat and the Education seat. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by November 20, 2009.

ADDRESSES: Application kits may be obtained from Olympic Coast National Marine Sanctuary, 115 5. Railroad Ave., Suite 301, Port Angeles, WA 98362. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Andrew Palmer, 115 5. Railroad Ave., Suite 301, Port Angeles, WA 98362, e-mail *Andrew.palmer@noaa.gov.*

SUPPLEMENTARY INFORMATION: Sanctuary Advisory Council members and alternates serve three-year terms. The Advisory Council meets bi-monthly in public sessions in communities in and around the Olympic Coast National Marine Sanctuary.

The Olympic Coast National Marine Sanctuary Advisory Council was established in December 1998 to assure continued public participation in the management of the sanctuary. Serving in a volunteer capacity, the advisory council's 15 voting members represent a variety of local user groups, as well as the general public. In addition, five Federal government agencies and one federally funded program serve as non-voting, ex officio members. Since its establishment, the advisory council has played a vital role in advising the sanctuary and NOAA on critical issues. In addition to providing advice on management issues facing the Sanctuary, the Council members serve as a communication bridge between constituents and the Sanctuary staff.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

Dated: October 6, 2009.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–24673 Filed 10–13–09; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–421–811)

Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On May 26, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from the Netherlands. *See Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 24823 (May 26, 2009) (*Preliminary Results*). The merchandise covered by the order is purified CMC as described in the ''Scope of the Order'' section of this notice. The period of review (POR) is July 1, 2007, through June 30, 2008. We afforded interested parties an opportunity to comment on the *Preliminary Results*. We received comments from interested parties and, consequently, have made changes to our calculation based on our analysis of the comments received. Therefore, the final results differ from those published in the Department's *Preliminary Results*. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards, Brian Davis, or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8029, (202) 482–7924, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2009, the Department published the preliminary results of the administrative review of the antidumping duty order covering purified CMC from the Netherlands. *See Preliminary Results*. The parties subject to this review are CP Kelco B.V. and its U.S. affiliate, CP Kelco U.S., Inc. (collectively, CP Kelco). The petitioner in this proceeding is The Aqualon Company, a division of Hercules Incorporated (petitioner).

We invited interested parties to comment on the *Preliminary Results*. On June 26, 2009, CP Kelco timely filed its comments on the *Preliminary Results* and requested a public hearing. *See* Case Brief from Arent Fox LLP (counsel for respondent) titled ''Purified Carboxymethylcellulose from the Netherlands; Case Brief of CP Kelco B.V.,'' dated June 26, 2009 (Case Brief). On June 30, 2009, petitioner timely submitted comments in lieu of a formal brief in reply to the June 26, 2009, case brief filed by CP Kelco. *See* Letter from Haynes & Boone, LLP, regarding ''Comment by Petitioner Aqualon Company in Lieu of Reply Brief,'' dated June 30, 2009. On July 2, 2009, CP Kelco withdrew its request for a public hearing. *See* CP Kelco's letter regarding ''Withdrawal of Hearing Request,'' dated

July 2, 2009. On July 15, 2009, counsel for CP Kelco met with Department officials. *See* Ex–parte Memorandum to the File through Angelica L. Mendoza, Program Manager, Office 7, from Patrick Edwards and Brian Davis, Case Analysts, titled ''Administrative Review of the Antidumping Duty Order on Purified Carboxymethylcellulose from Netherlands: Meeting with Counsel for Respondent,'' dated July 17, 2009.

Scope of the Order

The merchandise covered by the order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in CP Kelco's case brief and petitioner's comment in lieu of a formal reply brief are addressed in the Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from the Netherlands,'' dated October 7, 2009 (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the brief and rebuttal and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://www.trade.gov/ia/ . The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received from the interested parties, we have made changes to the margin calculation for CP Kelco, in order to account for CP Kelco's factoring expenses as a direct selling expense. For a discussion of the changes which the Department has made to the margin calculation for CP Kelco, *see* ''Memorandum to the File: Final Results of Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from the Netherlands: Analysis of the Sales Responses Submitted by CP Kelco B.V.,'' dated October 7, 2009. A public version of this memorandum is on file in the Central Records Unit.

Final Results of the Review

We determine the following percentage weighted–average margin exists for the period July 1, 2007, through June 30, 2008:

Manufacturer / Exporter	Weighted–Average Margin (Percentage)
CP Kelco B.V.	24.23 percent

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), the Department normally calculates an assessment rate for each importer of the subject merchandise covered by the review. CP Kelco has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific duty assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes.[1] These rates will be assessed uniformly on all entries of the respective importers made during the POR. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by reviewed companies for which these companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of purified CMC from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) The cash deposit rate for CP Kelco will be the rate established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less–than-fair–value (LTFV) investigation or previous reviews, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be the all–others rate of 14.57 percent from the LTFV investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005). These cash deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this

[1] In instances where the importer is unknown (*e.g.*, EP sales), we have calculated customer-specific duty assessment rates.

review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 7, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Comment in the Issues and Decision Memorandum:

Comment 1: The Department's Use of Factoring Discounts

[FR Doc. E9–24700 Filed 10–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–956]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Initiation of Antidumping Duty Investigation

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

DATES: *Effective Date:* October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Drew Jackson at (202) 482–4406 or Melissa Blackledge at (202) 482–3518, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On September 16, 2009, the Department of Commerce (''Department'') received an antidumping duty (''AD'') petition [1] concerning imports of certain seamless pipe (''seamless pipe'') from the People's Republic of China (''PRC'') filed in proper form by United States Steel Corporation and V&M Star L.P. (on September 28, 2009, TMK IPSCO, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union also entered the proceeding as petitioners). On September 21, 2009, the Department issued a request to United States Steel Corporation, V&M Star L.P., TMK IPSCO, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, (collectively, ''Petitioners'') for additional information and for clarification of certain areas of the Petition. Based on the Department's request, Petitioners filed two supplements to the Petition, one regarding general issues and one addressing AD-specific issues, on September 25, 2009 (''Supplement Regarding General Issues to the AD/CVD Petition'' and ''Supplement to the AD Petition,'' respectively). On September 25, 2009, the Department requested further information from Petitioners, including suggested refinements to the scope. On September 29, 2009, Petitioners filed a second supplement to the Petition in response to the Department's September 25, 2009 request (''Second Supplement Regarding General Issues to the AD/CVD Petition''). Also, on September 29, 2009, the Department issued additional requests to Petitioners for further information and clarification of certain areas of the Petition. Based on the Department's request, Petitioners again filed two supplements to the Petition, one regarding general issues and one addressing AD-specific issues, on October 1, 2009 (''Third Supplement Regarding General Issues to the AD/CVD Petition'' and ''Second Supplement to the AD Petition''). On September 30, 2009, the Department requested comments from Petitioners on revisions made by the Department to the proposed scope language. In response to the Department's request, Petitioners reiterated their scope comments filed in the Second Supplement Regarding General Issues to the AD/CVD Petition. *See* memorandum to the file from Drew Jackson regarding ''Initiation of the Antidumping Duty Investigation of Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China (''Scope Memorandum'').

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''Act''), Petitioners allege that imports of seamless pipe from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports materially injure, and threaten further material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry and unions because Petitioners are interested parties, as defined in section 771(9)(C) and (D) of the Act, and have demonstrated sufficient industry support with respect to the investigation that they request the Department to initiate (*see* ''Determination of Industry Support for the Petition'' below).

Scope of Investigation

The products covered by this investigation are seamless pipe from the PRC. For a full description of the scope of the investigation, please see the ''Scope of the Investigation'' in Appendix I of this notice.

Comments on the Scope of Investigation

During our review of the Petition, we discussed the scope of the investigation with Petitioners and suggested a number of revisions to the scope language, including the removal from the scope of all language that relies on end-use to define covered merchandise. While Petitioners made a number of the suggested revisions to the scope, they did not remove end-use language from the scope. *See* Supplement Regarding General Issues to the AD/CVD Petition at 4; Second Supplement Regarding General Issues to the AD/CVD Petition, Item 3; and Scope Memorandum. The Department has inherent authority to define the scope of the investigation and may depart from the scope as proposed by a petition. *NTN Bearing Corp.* v. *U.S.,* 747 F. Supp. 726, 731 (CIT 1990). In this case, consistent with the position taken in circular welded carbon quality steel pipe from the PRC, we have revised the scope by removing all end-use language from it. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* 73 FR 31970 (June 5, 2008) (''*Circular Welded Pipe''*) at

[1] *See* Petition for the Imposition of Antidumping Duties: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China, dated September 16, 2009 (''Petition'').

Comment 1 (''* * * the Department prefers to define product coverage by the physical characteristics of the merchandise subject to investigation.''). As noted in *Circular Welded Pipe,* excluding end-use language from the scope provides certainty with respect to product coverage and will enable any potential future orders to be effectively administered by the Department and enforced by U.S. Customs and Border Protection. Further, clarity with respect to scope will ensure that respondents in the investigation will know precisely what is included in the definition of subject merchandise.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding the product coverage of the scope. The Department encourages all interested parties to submit such comments by October 26, 2009, which is twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period for scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination in this investigation.

Comments on Product Characteristics for the Antidumping Duty Questionnaire

We are requesting comments from interested parties regarding the appropriate physical characteristics of seamless pipe to be reported in response to the Department's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors of production, as well as to develop appropriate product reporting criteria.

Interested parties may provide any information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product reporting criteria and order of importance. We note that it is not always appropriate to use all product characteristics as product reporting criteria. We base product reporting criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe seamless pipe, it may be that only a select few product characteristics reflect meaningful commercial differences.

In order to consider the suggestions of interested parties in developing the product characteristics for the antidumping duty questionnaire, we must receive comments at the above-referenced address by October 26, 2009. Additionally, rebuttal comments must be received by November 2, 2009.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition). With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation requested in the Petition. As noted, the Department has changed the definition of the class or kind of merchandise to be investigated from that which was initially requested by Petitioners. The reference point from which the domestic like product is defined is the class or kind of merchandise that is the basis for the Department's initiation of this investigation. Based on our analysis of the information submitted on the record, we have determined that seamless pipe constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[3]

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation'' in Appendix I of this notice. To establish industry support, Petitioners provided their own 2008 production of the domestic like product, and compared this to the estimated total production of the domestic like product for the entire domestic industry.[4] To estimate 2008 production of the domestic like product, Petitioners used data from an industry publication, published by the American Iron and Steel Institute (''AISI'') which compiles data on domestic producers' shipments of seamless standard, line

[2] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), *citing Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

[3] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Certain Seamless Pipe from the PRC (''Initiation Checklist'') at Attachment II (''Industry Support''), dated concurrently with this notice and on file in the Central Records Unit, Room 1117 of the main Department of Commerce building.

[4] *See* Initiation Checklist at Attachment II.

and pressure pipe. Petitioners approximated domestic production of seamless pipe by inflating the volume of domestic shipments reported by AISI by the ratio of the difference between Petitioners' own production and shipments in the applicable calendar year.[5]

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department, including a search of the Internet, indicates that Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[6] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[7] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[8]

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties (*e.g.,* domestic producer and unions) as defined in section 771(9)(C) and (D) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting that the Department initiate.[9]

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (''NV''). In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry's injured condition is illustrated by reduced market share, increased import penetration, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production, reduced shipments, increased inventory overhang, reduced employment and wages, and an overall decline in financial performance.[10] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[11]

Period of Investigation

In accordance with 19 CFR 351.204(b)(1), because the Petition was filed on September 16, 2009, the anticipated period of investigation (''POI'') is January 1, 2009, through June 30, 2009.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department has based its decision to initiate an investigation of seamless pipe from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in the *Initiation Checklist.*

U.S. Price

Petitioners obtained an export price (''EP'') from a distributor's offer to sell PRC-produced seamless pipe to a potential customer located in the United States. The offer is dated within the POI. Petitioners presented an affidavit attesting to the offer and its terms of sale.[12]

The U.S. price in the offer includes movement costs to ship the merchandise from the factory in the PRC to the U.S. port and a distributor mark-up. Therefore, to calculate the net U.S. price, Petitioners deducted movement expenses and a distributor's mark-up that was based on their own experience and knowledge of the industry.[13]

For additional details regarding the U.S. price and the deducted movement expenses and distributor mark-up, see the *Initiation Checklist* at 7.

Normal Value

According to Petitioners, in every previous less-than-fair value investigation involving merchandise from the PRC, the Department has concluded that the PRC is a non-market economy (''NME'') country. Therefore, it has based NV on factors of production and surrogate values.[14] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation.[15] Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners used India as the surrogate country because they claim India is at a level of economic development comparable to that of the PRC and is a significant producer of comparable merchandise.[16] In support of these claims, Petitioners referenced the Department's previous findings that India is at a level of development comparable to the PRC, provided per capita income data for 2007 as reported in the *World Development Report 2009,*[17] and presented data from the World Steel Association as reported in the *Steel Statistical Yearbook 2008,* showing that India produced 1,218,000 metric tons of tubular steel products in 2007, the greatest quantity produced among countries commonly considered by the Department to be at a level of economic development comparable to that of the PRC.[18]

After examining the information provided by Petitioners, the Department has determined that the use of India as

[5] *See id.*

[6] *See* Section 732(c)(4)(D) of the Act, and Initiation Checklist at Attachment II.

[7] *See* Initiation Checklist at Attachment II.

[8] *See id.*

[9] *See id.*

[10] *See* Initiation Checklist at Attachment III, ''Analysis of Allegations and Evidence of Material Injury and Causation,'' for details.

[11] *See id.*

[12] *See* Supplement to the AD Petition, at Exhibit Supp. II–1.

[13] *See* Volume II–A of the Petition, at 8–9, and Exhibits II–6, II–11, II–12, II–13, and II–14, and Supplement to the AD Petition, at 3–4.

[14] *See* Volume II–A of the Petition, at 1 and 9.

[15] *See id.; see also* Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, regarding The People's Republic of China Status as a Non-Market Economy, dated May 15, 2006. This document is available online at *http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf.*

[16] *See* Volume II–A of the Petition, at 2–4.

[17] *See* Volume II–A of the Petition, at 3, and Exhibit II–3(A).

[18] *See* Volume II–A of the Petition, at 2, 3, Figure 1, and Exhibit II–5.

a surrogate country is appropriate for purposes of initiation. However, after initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioners calculated NVs and dumping margins using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated NVs for four seamless pipe products of various sizes [19] using the consumption rates of a U.S. producer of seamless pipe during the period January 2009, through June 2009.[20] Petitioners stated the U.S. producer was selected because, like the PRC producer, it is a large integrated producer of seamless pipe.[21]

Petitioners valued the factors of production using reasonably available, public surrogate country data, including Indian import data from the Indian Ministry of Commerce, published in the Monthly Statistics of Foreign Trade of India as compiled by the Word Trade Atlas (''WTA''). Petitioners used WTA data for the period September 2008, through February 2009, the most recent six months of data available at the time of the filing of the Petition.[22] In addition, Petitioners used exchange rates, as reported by the Federal Reserve, to convert Indian Rupees to U.S. Dollars.[23]

Petitioners valued royalties imposed in the PRC on mined ore using data from the Indian Mines and Minerals Development and Regulation Act.[24]

Petitioners valued labor using the wage rate data published on the Department's Web site, at *http://ia.ita.doc.gov/wages/05wages/05wages-051608.html#table1.*[25]

Petitioners valued electricity using Indian electricity rates from the Central Electricity Authority in India for 2006.[26]

Petitioners valued water using data from the Maharashtra Industrial Development Corporation.[27]

Where values were not contemporaneous with the POI, Petitioners adjusted these values for inflation using wholesale price index data published by the International Monetary Fund, which is available online at *http://www.5-imfstatistics.org/imf/.*[28]

Petitioners based factory overhead, selling, general and administrative expenses (''SG&A''), and profit, on data from the fiscal year, ending March 31, 2009, of two Indian producers of pipe and tube, the Steel Authority of India, Ltd. (''SAIL''), and Tata Steel Limited (''Tata''), with adjustments as requested by the Department.[29] Petitioners based the financial ratios for seamless pipe on the simple average of SAIL's and Tata's overhead, SG&A, and profit ratios, asserting that SAIL and Tata are large integrated steel producers like the PRC producer on which Petitioners based their calculation, and are producers of merchandise comparable to seamless pipe.[30]

Fair-Value Comparisons

The data submitted by Petitioners provide a reason to believe that seamless pipe from the PRC is being, or is likely to be, sold in the United States at less than fair value. Based on comparisons of the net U.S. price to NVs, Petitioners calculated an estimated dumping margin of 98.37 percent.[31]

Initiation of Antidumping Investigation

Based upon our examination of the Petition concerning seamless pipe from the PRC and other information reasonably available to the Department, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether seamless pipe from the PRC is being, or is likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Targeted-Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted-dumping analysis in AD investigations, and the corresponding regulation governing the deadline for targeted-dumping allegations, 19 CFR 351.301(d)(5).[32] The Department stated that ''[w]ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.'' [33]

In order to accomplish this objective, interested parties that wish to make a targeted-dumping allegation in this investigation pursuant to section 777A(d)(1)(B) of the Act, should submit such an allegation to the Department no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

The Department will request quantity and value information from the exporters and producers listed with complete contact information in the Petition. The quantity and value data received from NME exporters/producers will be used to select mandatory respondents.

The Department requires respondents to submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status.[34] Appendix II of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters/producers no later than October 27, 2009. In addition, the Department will post the quantity and value questionnaire along with filing instructions on its Web site, at *http://ia.ita.doc.gov/ia-highlights-and-news.html.*

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and

[19] *See* Volume II–A of the Petition, at 9–10, and Exhibit II–15.

[20] *See* Volume II–A of the Petition, at Exhibit II–15, and Attachments A and B.

[21] *See* Second Supplement to the AD Petition, at 6–7.

[22] See Volume II–B of the Petition, at Exhibit II–15(Q) and (R), and Supplement to the AD Petition, at Exhibit Supp. II–9.

[23] *See* Volume II–A of the Petition, at Exhibit II–15(E).

[24] *See* Volume II–A of the Petition, at Exhibit II–15, and Attachments C and D.

[25] *See* Volume II–A of the Petition, at Exhibit II–15, and Attachment F.

[26] *See* Volume II–A of the Petition, at Exhibit II–15(H), and Volume II–B of the Petition, at Exhibit II–15(Q).

[27] *See* Volume II–A of the Petition, at Exhibit II–15, and Attachments DD and EE.

[28] *See* Volume II–A of the Petition, at Exhibit II–15(I)(1).

[29] *See* Volume II–A of the Petition, at Exhibit II–15, and Attachment FF and GG, and Second Supplement to the AD Petition, at 3–4, and Exhibits Second Supp. II–21, II–22, and II–24.

[30] *See* Supplement to the AD Petition, at 16–18.

[31] *See* Second Supplement to the AD Petition, at 3–4, and Exhibit Second Supp. II–1.

[32] *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008).

[33] *See id.* at 74931.

[34] *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 10221, 10225 (February 26, 2008); and *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005).

producers must submit a separate-rate status application.[35] The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register.** The separate-rate application will be due sixty (60) days from the date of publication of this initiation notice in the **Federal Register.** As noted in the ''Respondent Selection'' section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate rate status. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration of separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates/Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of combination rates because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[36]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the Government of the PRC. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than November 2, 2009, whether there is a reasonable indication that imports of seamless pipe from the PRC materially injure, or threaten material injury to, a U.S. industry. A negative ITC determination covering all classes or kinds of merchandise covered by the Petition will result in the investigation being terminated. Otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 6, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (*e.g.,* hot-finished or cold-drawn), end finish (*e.g.,* plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (*e.g.,* bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other than stainless steel) pipe or ''hollow profiles'' suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing and Materials (''ASTM'') or American Petroleum Institute (''API'') specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, ASTM A–1024, and the API 5L specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusion discussed below.

Specifically excluded from the scope of the investigation are unattached couplings.

The merchandise covered by the investigation is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Appendix II

OFFICE OF AD/CVD OPERATIONS QUANTITY AND VALUE QUESTIONNAIRE

Requester(s):
{insert name of company}
{company address}
{contact name and title}
{contact telephone number}
{contact fax number}
{contact e-mail address}

Representation: {insert name of counsel and law firm and contact info}

Case: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China.

Period of Investigation: January 1, 2009, through June 30, 2009.

Publication Date of Initiation: October 14, 2009.

Officials in Charge:
Howard Smith, Program Manager, AD/CVD Operations, Office 4, Telephone: (202) 482–5193, Fax: (202) 482–5105, E-mail Address: *Howard_Smith@ita.doc.gov.*
Drew Jackson, International Trade Compliance Analyst, AD/CVD Operations, Office 4, Telephone: (202) 482–4406, Fax: (202) 482–5105, E-mail Address: *Drew_Jackson@ita.doc.gov.*

Filing Address:
Secretary of Commerce, Attention: Import Administration (Drew Jackson), APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

On October 6, 2009, the Department initiated an antidumping duty investigation to determine whether certain seamless carbon and alloy steel standard, line, and pressure pipe (''subject merchandise'') from

[35] *See* Import Administration Policy Bulletin, Number: 05.1, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' dated April 5, 2005, available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05-1.pdf* (''Policy Bulletin, Number: 05.1''); *see also Certain Circular Welded Carbon Quality Steel Line Pipe From the Republic of Korea and the People's Republic of China: Initiation of Antidumping Duty Investigations,* 73 FR 23188, 23193 (April 29, 2008) (''*Certain Circular Welded Carbon Quality Steel Line Pipe from the PRC*'').

[36] *See* Policy Bulletin, Number: 05.1; *see also Certain Circular Welded Carbon Quality Steel Line Pipe from the PRC,* 73 FR at 23193.

the PRC was sold in the United States at less than fair value during the period January 1, 2009, through June 30, 2009 (the period of investigation or ''POI'').[37]

Section 777A(c)(1) of the Tariff Act of 1930, as amended (''the Act''), directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, as is the case in this investigation, section 777A(c)(2) of the Act permits the Department to examine either (1) a sample of exporters, producers or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

In advance of the issuance of the full antidumping duty questionnaire, we ask that you respond to the following Quantity and Value Questionnaire requesting information on the quantity and U.S. dollar value of all of your sales to the United States during the period January 1, 2009, through June 30, 2009, of merchandise covered by the scope of this investigation (see Appendix I) and produced in the PRC. A full and accurate response to the Quantity and Value Questionnaire from all participating respondents is necessary to ensure that the Department has the requisite information to appropriately select mandatory respondents.

The Department is also requiring all firms that wish to qualify for separate-rate status in this investigation to complete a separate-rate status application as described in the notice of initiation. In other words, the Department will not give consideration to any separate-rate status application made by parties that fail to timely respond to the Quality and Value Questionnaire or fail to timely submit the requisite separate-rate status application.

To complete this investigation within the statutory time frame, the Department will be limited in its ability to extend the deadline for the response to the Quantity and Value Questionnaire.

A definition of the scope of the merchandise subject to this investigation is included in Appendix I. Your response to this questionnaire may be subject to on-site verification by Department officials.

Format for Reporting Quantity and Value of Sales

In providing the information in the chart below, please provide the total quantity, in metric tons, and total value (in U.S. dollars) of all your sales to the United States during the period January 1, 2009, through June 30, 2009, of merchandise covered by the scope of this investigation (see Appendix I) and produced in the PRC.[38]

- Please include only sales exported by your company directly to the United States.
- Please do not include any sales of subject merchandise *manufactured* in Hong Kong in your figures.

Additionally, if you believe that you should be treated as a single entity along with other named exporters, please complete the chart, below, both in the aggregate for all named parties in your group and, in separate charts, individually for each named entity. Please label each chart accordingly.

Market: United States	Total quantity in metric tons[39]	Terms of sale[40]	Total value[41] ($U.S.)
1. Export Price[42]			
2. Constructed Export Price[43]			
3. Further Manufactured[44]			
Total			

[FR Doc. E9–24703 Filed 10–13–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on October 27, 2009, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than October 20, 2009.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 29, 2009 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5

[37] An electronic copy of the initiation notice may be found on the Internet at the following address: *http://ia.ita.doc.gov/frn/2009/0910frn/*.

[38] Please use the invoice date when determining which sales to include within the period noted above. Generally, the Department uses invoice date as the date of sale, as that is when the essential terms of sale are set. If you believe that another date besides the invoice date would provide a more accurate representation of your company's sales during the designated period, please report sales based on that date and provide a full explanation.

[39] If any conversions were used, please provide the conversion formula and source.

[40] To the extent possible, sales values should be reported based on the same terms (*e.g.,* FOB).

[41] Values should be expressed in U.S. dollars. Indicate any exchange rates used and their respective dates and sources.

[42] Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States.

[43] Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation. Do not report the sale to the affiliated party in the United States, rather report the sale made by the affiliated party to the unaffiliated customer in the United States. If you have further manufactured sales, please report them under Item 3, rather than under Item 2.

[44] ''Further manufactured'' refers to merchandise that undergoes further manufacture or assembly in the United States before sale to the first unaffiliated customer.

U.S.C. app. 2 § 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: October 7, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9–24696 Filed 10–13–09; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board (SAB); Meetings

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday November 3, 2009, from 10:15 a.m. to 4:45 p.m. and Wednesday, November 4, 2009, from 9 a.m. to 3 p.m. These times and the agenda topics described below are subject to change. Please refer to the Web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

Place: The meeting will be held both days at the Hilton Washington DC/Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910. Please check the SAB Web site *http://www.sab.noaa.gov* for confirmation of the venue and for directions.

Status: The meeting will be open to public participation with a 30-minute public comment period on November 3 at 4:15 p.m. (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments should be received in the SAB Executive Director's Office by October 29, 2009 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after October 29, 2009, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The meeting will include the following topics: (1) Report from the Climate Working Group Review of NOAA Climate Information Products and Applications (2) Preliminary Draft Report from the Oceans and Health Working Group; (3) Final Report from the SAB Census of Marine Life Subcommittee; (4) NOAA Response to the SAB Report ''Fire Weather Research in NOAA: A Burning Agenda for NOAA''; (5) Overview of the Report from the President's Ocean Policy Task Force; (6) NOAA Strategy in the Arctic and (7) An Overview of Marine Spatial Planning and related technology issues.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, E-mail: *Cynthia.Decker@noaa.gov;* or visit the NOAA SAB Web site at *http://www.sab.noaa.gov*.

Dated: October 7, 2009.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E9–24669 Filed 10–13–09; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils from Belgium: Notice of Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2009, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on stainless steel plate in coils from Belgium for the period of review (POR), May 1, 2008, through April 30, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 20278 (May 1, 2009).

On June 1, 2009, in accordance with 19 CFR § 351.213(b), the Department received a timely request from ArcelorMittal Stainless Belgium N.V. (AMS Belgium) to conduct an administrative review of AMS Belgium. AMS Belgium was the only party to request this administrative review.

On June 24, 2009, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on stainless steel plate in coils from Belgium covering one respondent, AMS Belgium. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009).

On September 22, 2009, AMS Belgium timely withdrew its request for review. Thus, we are rescinding this administrative review.

Rescission of Administrative Review

Pursuant to 19 CFR § 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. On September 22, 2009, AMS Belgium withdrew its request for an administrative review. AMS Belgium withdrew its request before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order on stainless steel plate in coils from Belgium for the POR. Therefore, in response to AMS Belgium's withdrawal of its request for review, and pursuant to 19 CFR § 351.213(d)(1), the Department rescinds the administrative review of the

antidumping duty order on stainless steel plate in coils from Belgium for the period May 1, 2008, through April 30, 2009.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR § 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We have been enjoined from liquidating entries of the subject merchandise produced and exported by Ugine & ALZ Belgium N.V (U&A Belgium). Therefore, we do not intend to issue liquidation instructions to U.S. Customs and Border Protection (CBP) for entries made during the period May 1, 2008, through April 30, 2009, until such time the preliminary injunction issued on January 16, 2009, is lifted.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR § 251.213(d)(4).

Dated: October 7, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–24701 Filed 10–13–09; 8:45 am]

BILLING CODE 3510–DS–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the renewal President's Volunteer Service Awards (PVSA), parts A, B, C, D and E. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by December 14, 2009.

ADDRESSES: Send comments to: Corporation for National and Community Service, Attn. Office of Public Affairs, Attn: Mr. David Premo, (Project Officer), 1201 New York Avenue, NW., Washington, DC, 20525.

FOR FURTHER INFORMATION CONTACT: David Premo, (202) 606–6717, or by e-mail at *DPremo@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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.

I. Background

The President's Volunteer Service Awards were created by Executive Order on January 30, 2003. The awards are administered by the Corporation for National and Community Service. Under the Executive Order, the Corporation was directed to (among other things) design and recommend programs to recognize individuals, schools, and organizations that excel in their efforts to support volunteer service and civic participation, especially with respect to students in primary schools, secondary schools, and institutions of higher learning. The President's Volunteer Service Awards meet this requirement. In order to recognize individuals, schools and organizations, the program must collect information about the individuals and organizations and their activities to verify that they have earned the award.

The information collected will be used by the Program primarily to identify recipients of the President's Volunteer Service Awards and the Call to Service Awards (4000 hours or more.) Individuals or organizations can be nominated by an organization or third party. The nominations will be reviewed by the administering agency for compliance and awards will be made on that basis. Information also will be used to assure the integrity of the Program (so that, for example, an individual or organization does not receive an award twice for the same project), for reporting on the accomplishments of the Program, for the public awareness campaign (such as press releases and Web site information on winning projects), and to further the purposes of the Executive Order (such as fostering partnerships and coordination of projects and to promote civic engagement).

II. Current Action

The existing collection is set to expire on February 28, 2010. Therefore, the Corporation is now seeking public comment regarding the President's Volunteer Service Awards, parts A, B, C, D and E.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: President's Volunteer Service Awards, parts A, B, C, D and E.

OMB Number: 3045–0086.

Agency Number: None.

Affected Public: All citizens of the United States.

Total Respondents: 200,000.

Frequency: On occasion.

Average Time per Response: 20 minutes.

Estimated Total Burden Hours: 66,666 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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: October, 6, 2009.

Rhonda Taylor,

Acting Director of Corporate Relations.

[FR Doc. E9–24654 Filed 10–13–09; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 13, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

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

Dated: October 7, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Common Core of Data National Public Education Financial Survey (NPEFS) 2009–11.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 5264.

Abstract: As a result of American Recovery and Reinvestment Act of 2009 (ARRA), NCES has been asked to add six data items to the Common Core of Data National Public Education Financial Survey (NPEFS) in order to allow an adjustment in the state per pupil expenditure (SPPE) used in allocating Title I, Impact Aid, and other ED funds. The Department must be able to exclude the ARRA expenditures from the SPPE so that they will not affect the allocation process. States are already required to track the ARRA revenues separately. The six additional data items will provide the necessary detail to exclude ARRA expenditures from SPPE and allow states to report total ARRA expenditures and their functional allocations, such as for classroom instruction or school construction. The estimated additional data burden time is 8 hours per respondent, for a total of 79 burden hours per state data technician and 19 burden hours per state data manager (total 5,264 burden hours). NPEFS annually gathers universe information from states about revenues and expenditures for public education, specifically revenues by source and expenditures by function and object, such as school administration costs, student transportation, food services, salaries, benefits, and supply costs.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4108. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E9–24727 Filed 10–13–09; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA State plans previously submitted by Indiana.

DATES: This notice is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is

the second revision the State plans for Indiana.

The revised State plans from Indiana provides information on program accomplishments and address changes in the respective budgets to account for the use of Fiscal Year 2008 and 2009 requirements payments. In accordance with HAVA section 254(a)(12), the State plan submitted for publication provides information on how Indiana succeeded in carrying out its previous State plan. The State confirms that the changes to the State plan were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from October 14, 2009, the State is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C).

EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Officials

The Honorable Todd Rokita, Secretary of State, State of Indiana, The State House, Room 201, Indianapolis, Indiana 46204, Phone: (317) 232–6531.

Thank you for your interest in improving the voting process in America.

Dated: October 2, 2009.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

SECRETARY OF STATE
STATE OF INDIANA

Todd Rokita
Secretary of State

September 23, 2009 Page 1

Mark W. Abbott, PhD
Director of Grants
U.S. Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, D.C. 20005

Dear Dr. Abbott:

Section 11 of Indiana's State Plan states that, "the Secretary of State shall...publish the changes in the *Federal Register* upon submitting the revised plan to the Election Assistance Commission." In accordance with Section 255 of the Help America Vote Act of 2002 (HAVA), I am pleased to file with the Election Assistance Commission (EAC), for publication in the *Federal Register*, this letter and the following new pages that reflect amendments made to the Indiana State Plan for Implementing the Help America Vote Act of 2002. These new pages, together with non-substantive changes that were made by the tri-partisan Vote Indiana Team, will constitute the Indiana HAVA State Plan.

Throughout the amended document, references to future activities and tasks encompassing Indiana's implementation of HAVA have been changed to reflect the completion or level of completion of these important implementation features. Additionally, certain changes in Indiana election law has led the Vote Indiana Team to add these changes to the State's HAVA outreach, training, and education initiatives. Finally, while remaining tri-partisan and representing a diverse group of Hoosier voters, some members of the Vote Indiana Team have been replaced by new members and the total number of Vote Indiana Team members has decreased. These and other non-substantive changes can be found throughout most sections of the Indiana State Plan. After previous consultation with EAC Staff, the State has elected not to include those changes for publication in the *Federal Register*. Instead, the State would direct the EAC and members of the public to the Indiana Secretary of State's HAVA website (www.in.gov/sos/elections/hava) to view and copy the complete Indiana State Plan as the Vote Indiana Team has amended it.

Substantive changes to the Indiana State Plan can be attributed to the FY2008 and FY2009 Title II requirements funds appropriation by Congress. These changes include a HAVA budget for State fiscal years 2010 and 2011. This budget contemplates ongoing funding for the Statewide Voter Registration System (SVRS), poll worker and election official training, voter education,

The State House, Room 201, Indianapolis, Indiana 46204, (317) 232-6531, FAX (317) 233-3283
email: aa@sos.IN.gov www.sos.IN.gov

SECRETARY OF STATE
STATE OF INDIANA

Todd Rokita
Secretary of State

HAVA administration, continued administration of the grievance process, voting system reimbursements, and the development and implementation of the online voter registration application -which will make it easier to Hoosiers to register to vote or update their registration information. Language was also added to ensure Indiana can obtain future Title II distributions in a quick and efficient manner.

The 2009 Amendments to the Indiana State Plan were developed in accordance with Section 255 of HAVA and the requirements for public notice and comment prescribed by Section 256 of HAVA.

On behalf of the State of Indiana, I thank the Commission for its assistance. I look forward to our continued collaboration to improve the administration of elections in Indiana and the country.

Sincerely,

Todd Rokita
Indiana Secretary of State

CC: J. Bradley King, Co-Director Indiana Election Division
Pamela Potesta, Co-Director Indiana Election Division

Attachments
-Substantive Changes to the State Plan: Pages 14 through 78
-"The Indiana State Plan to Implement the Help America Vote Act of 2002"

The State House, Room 201, Indianapolis, Indiana 46204, (317) 232-6531, FAX (317) 233-3283
email: aa@sos.IN.gov www.sos.IN.gov

In Indiana, even before HAVA passed, the Election Division acted to encourage all counties to submit applications for voting system reimbursement under the 2001 Indiana law. The Election Division advised clerks that while Congress and the state legislature were considering new laws that could change the amount and eligibility requirements for reimbursement, the county should act now to indicate its interest and to protect its eligibility. Some 72 of 92 counties followed that advice, and filed applications by the January 2003 deadline under state law.

In its 2003 session, the General Assembly passed a comprehensive bill to begin implementing HAVA in Indiana (Senate Enrolled Act 268). This new legislation provided an option to expand the availability of voting system reimbursement to counties that purchased a new voting system or upgrade between January 1998 and July 2001. However, Indiana law is still subject to the limits placed on its use of the federal money by HAVA.

In 2002, Indiana issued an initial Quantity Purchase Agreement (QPA) with four voting systems vendors whose optical scan or direct record electronic (DRE) voting systems were previously certified by the Indiana Election Commission. This original QPA was for a one year term, subject to renewal. However, since no vendor requested renewal before that QPA expired, the State has subsequently entered into a separate QPA for each specific voting system model following the certification of that voting system by the Indiana Election Commission. Replacement of lever machines **and punch card voting systems** in all Indiana counties is complete. **The separate QPAs with individual voting system vendors subsequently expired by the terms of those agreements.**

Public Law 209-2003 prohibits the use of lever machines and punch card systems in Indiana elections after December 31, 2005. Like most states, Indiana sought and was granted a waiver to extend HAVA's original deadline for replacement of all punch card and lever voting systems from 2004 until January 1, 2006.

Under the system set up by P.L. 209-2003, funds have been released in the following manner: each county seeking reimbursement applies to the Indiana Election Division, an agency of the executive branch. The Secretary of State and Indiana Election Division personnel review the applications and certifications regarding polling place accessibility. The Secretary of State and Indiana Election Division recommend disbursement of funds to the Budget Committee, a bipartisan body consisting of state legislators and the state budget director. The Budget Committee is statutorily required to review these recommendations. Disbursements will be made to the counties on the approval of the State Budget Agency, an executive branch agency, after review by the Budget Committee and subject to fund availability.

As of **May 4, 2009, 92** counties have received or have been approved to receive a total of **approximately $ 39** million in reimbursements for upgraded voting systems. **All** Indiana counties have accessible voting equipment to meet HAVA requirements

The elimination of punch card and lever machines, along with the implementation of accessible machines, **required** the use of Sections 101, 102, Title III, and state matching funds.

The Team supports the Secretary of State forming a committee to review the impacts of legislative mandates requiring voter verified paper audit trails (VVPATs) for counties

currently using DRE voting systems. The review should include fiscal impacts to counties and the state and availability of such technologies for voting systems affected in Indiana.

B. Statewide Voter Registration System

By January 1, 2006, the Indiana statewide voter registration system (SVRS) **was** online in all 92 Indiana counties. This **allowed for** the creation and maintenance of a more accurate list of persons legally authorized to vote in Indiana. In addition to using the system for voter registration, Indiana **has used** this single, centrally administered system to assist the Secretary of State **to provide** all Indiana voters access **with** a free web-based or phone-based information system that indicates where a voter's polling place is located and confirms a voter's registration record.

A consultant and steering committee, consisting of Team members, direct impact agencies (Indiana Bureau of Motor Vehicles, Indiana Department of Health, and the Indiana Department of Correction), and representatives from the clerks' and voter registration officials' association, **assisted** in the implementation of SVRS, along with ten "pilot counties" who volunteered to assist with the early phases of system rollout.

The State entered into a contract with a vendor, Quest Information Systems, Inc., for the implementation of SVRS. Per the Team's recommendation, the procurement process for the consultant and the statewide voting registration system adhered to minority business enterprises and women owned business enterprises requirements.

The continuous maintenance of the statewide voter registration system **has required** a well-coordinated interaction between county officials and state officials. Each county voter registration office, the Indiana Election Division, and the Secretary of State **has** immediate electronic access to the information contained in the computerized list.

Under the SVRS, the county voter registration office may change only data related to the voters registered in that respective county. The county voter registration office must electronically enter all voter registration information obtained by the county voter registration office into the computerized list on an "expedited basis." "Expedited basis" is defined by Indiana law as "...processing of a voter registration application...a cancellation of a voter registration application... a transfer of a voter registration application; or... another document that creates or amends the voter registration of an individual...not later than 48 hours after the document is received by a county voter registration office or an agency... required to transmit voter registration documents to a county voter registration office" (Ind. Code 3-5-2-23.2).

The county voter registration office shall perform list maintenance with respect to the computerized list on a regular basis. The Indiana Election Division shall coordinate the computerized list with the Indiana Department of Correction records so the county voter registration office can cancel the registration records of disfranchised individuals on an expedited basis. The Indiana Election Division shall also coordinate the computerized list with the Indiana State Department of Health so the county voter registration office can cancel the registration records of deceased individuals on an expedited basis.

E. Statewide Grievance Procedure

Indiana legislation establishes a statewide grievance procedure to comply with the HAVA requirement that a state based administrative complaint procedure be in place. Title III funds **have been budgeted** to establish this process which is explained in detail in section 9 (page 50) of this plan.

F. Training and Education

Since 2003, the Secretary of State, through the Indiana Election Division **and HAVA office, expanded** upon the **previous** training and educational opportunities for poll workers and voters, **many of** which are explained in detail in Section 3 (**page 19**) of this plan.

Public Law 230-2005 (SEA 341) states the Indiana Secretary of State shall administer a certified election worker program which must consist of courses that cover several aspects of election administration, including the duties of precinct election officers, the laws and procedures governing the operation of voting systems, and effective communications and problem solving techniques. An election worker's certification expires January 1 of the fourth year following certification. The Secretary may establish and administer requirements for the renewal of certification.

An election official and poll worker certification process will be developed and administered by the IED of the Secretary of State's office to more effectively train local election officials and poll workers; special focus will be on HAVA's requirements of accessible voting systems and polling places, provisional ballots and documentation for first-time mail-in registrants. Public Law 109-2005 (SEA 483), the photo identification requirement discussed in subsection C. of this Section **has been** a major focal point of **these** training initiatives.

The Team recommends that the Indiana Election Commission revise the election forms used by candidates and the public. The Team also supports using a portion of HAVA funds to hire a forms designer to improve forms. The Team recommends that forms be made in a fillable .pdf format and all forms on the web be improved by incorporating error trapping routines and drop down boxes for county information.

Section 2

Sec. 254 (a) IN GENERAL – The State plan shall contain a description of each of the following:

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of –

- *(a) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and*
- *(b) The methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measure adopted under paragraph (8)*

- development of videos and digital video disks (DVDs), with internet access to these videos)
- production of a video for county commissioners and others charged with selecting polling places

3. There **are** efforts to increase voter participation by providing information about the voting process to better educate voters. This information **includes** information about voting systems, photo identification requirements, voter rights and responsibilities, accessibility and military/overseas voting. This **includes** the following:

- development of agreements with local government and public television stations to air voter instructions on use of voting equipment and information about voter rights
- production of a master video on voter education
- offering assistance to county election boards which wish to arrange for the display of voting equipment in malls and local library systems
- Development/Production of Public Service Announcements and NCAS
- Production of written materials and web information on Voter's Bill of Rights, photo identification requirements, provisional ballots and overvoting
- Publication of Military/Overseas voter guide with a focus on absentee balloting process including additional information on military/overseas voting on Indiana Election Division website

In the spirit of fully informing local government officials who must carry out activities required under HAVA, the Team fully supports conducting HAVA workshops targeted to Indiana's local government officials. These opportunities occur during the annual meetings of the Association of Indiana Counties and Indiana Association of Cities and Towns.

The Plan's budget (set forth in section 6), set aside $3.9 million for voter education, election official education and training, and poll worker training. The plan called for $1.4 million of the $3.9 million to be set aside for voter education. **These funds may not be used for Get-Out-The-Vote (GOTV) efforts, as described in U.S. Election Assistance Commission Funding Advisory Opinion; FAO-008-005.**

The Secretary of State and Indiana Election Division **prepared a preliminary** training and voter education budget to provide the **Team's initiatives with immediate resources**. The Team recognized that significant training and voter education efforts were required to prepare for the 2004 election and to proceed before a final training and education budget was completed.

Based on the experience gained through the poll working training and voter education efforts undertaken for the 2004 election, the training and voter education budget emphasizes the production of "easy to understand" publications for the widest possible distribution to voters and on a "teach the teacher" approach in providing video and written publications for incorporation by county election boards into the county's own poll worker education process.

The establishment of the state certified poll worker program will supplement these county training efforts. Providing incentive (and recognition) for motivated poll workers to maintain and improve their skills in election administration.

Section 4

Section 254 (a) IN GENERAL – The state plan shall contain a description of each of the following:

(4) How the state will adopt voting system guidelines and processes which are consistent with the requirements of Title III.

Indiana Code 3-11-15-13.3 sets forth voting systems guidelines and processes consistent with the Voting Systems Standards set forth in HAVA. A voting system certification expires on October 1, **2009** or four years after that date, following approval of the system by the Commission.

- Under Indiana law, the Indiana Election Commission must approve any model of voting system before it may be used in an election. Indiana law now requires that a voting system shall meet the Voting Standards adopted by the Federal Election Commission on April 30, 2002 to be approved by the Commission for use in Indiana.

  On December 13, 2005, the U.S. Election Assistance Commission adopted new Voluntary Voting System Guidelines to replace the 2002 FEC Standards. However, the transition process to the new Guidelines is not complete.

  Due to delays in testing, federally accredited laboratories have not completed their review of some voting systems submitted while the 2002 Standards were in effect. These voting systems are expected to receive laboratory reports documenting their compliance with the 2002 Standards.

  In contrast, voting systems submitted to laboratories since 2008 are being tested for compliance with the 2005 Guidelines, and are expected to receive laboratory reports documenting their compliance with the 2005 Standards.

  Since the ongoing federal effort to complete implementation of the 2005 Guidelines will not be completed before the current certification of voting systems in Indiana expires on October 1, 2009, the Team notes that the 2009 session of the Indiana General Assembly enacted an amendment to Indiana Code 3-11-15-13.3 to provide that a voting system may be approved by the Indiana Election Commission if the system meets the requirements set forth in either the 2002 Standards or the 2005 Guidelines.

  The U.S. Election Assistance Commission is already considering further amendments to the 2005 Guidelines, but has not completed its work. Therefore, the Team recommends that the voting system guidelines adopted under Indiana law be revisited in the future to eventually phase out references to the 2002 Standards, and to adopt any revisions to the 2005 Guidelines that would improve the process of voting system certification.

  Indiana Code 3-11-15-13.3(b) permits a county to continue to use a voting system whose certification expired on or before October 1, 2005, if the voting system was approved by the Indiana Election Commission for use in Indiana elections before October 1, 2005, and purchased by the county before October 1, 2005, if the voting system otherwise complies with the applicable provisions of HAVA and Indiana election law. The

"October 1, 2005" date referenced the start of the current four year voting system certification term. Some counties currently use voting systems purchased before 2005 under this "grandfathering" provision. Other counties currently use voting system versions purchased after October 1, 2005 whose certifications will expire October 1, 2009 and may not be renewed.

Noting that the law specifically requires any voting system to comply with the applicable provisions of HAVA and the Indiana election code to qualify for continued use by a county under this "grandfathering" provision, the Team notes that the 2009 session of the Indiana General Assembly enacted an amendment to revise the "October 1, 2005" dates in this statute to read "October 1, 2009."

- Under Indiana law, the Commission may not approve a voting system for use in Indiana unless the system meets the requirements for voting systems set forth in the Indiana Code. The requirements include ensuring secrecy and, in the case of a **DRE** voting system, preventing a voter from voting for the same candidate or for or against the same public question more than once. In cases where an optical scan ballot card system is used with a precinct tabulator, voters are alerted by the system to any overvote and provided with an opportunity to correct any overvote error. Where paper ballots or optical scan ballot card voting systems without precinct tabulators are used or absentee ballots are mailed out, Indiana law **required** a voter education program be developed to inform voters using these systems of the effect of overvoting.
- Current Indiana law establishes uniform and nondiscriminatory standards to define what constitutes a vote on a paper ballot, optical scan voting system and electronic voting system. As referenced in the landmark United States Supreme Court decision in *Bush v. Gore*, 531 U.S. 98 (2000), Indiana statutes set forth very specific standards for determining what constitutes a vote in each type of voting system that may be used.
- The Indiana Code and election manuals produced by the Indiana Election Division are both very specific on how to accurately count each vote.

Public Law 221-2005 (HEA 1407) required the Secretary of State to establish the Voting System Technical Oversight Program. Under this Program, the State **has contracted** for technical assistance **with the Bowen Center of Ball State University to perform** a number of tasks related to the certification of voting systems in Indiana.

Indiana law requires that voting systems be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters. A county satisfies these requirements if the election board provides at least one electronic voting system or other voting system equipped for individuals with disabilities at each polling place. In accordance with HAVA requirements, Indiana law provides that each voting system (1) produce a permanent paper record with a manual audit capacity for the system and (2) provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced. The paper record produced must be made available as an official record for a recount or contest conducted with respect to any election in which the voting system was used.

Republican and one Democrat, and two members of the House of Representatives, one Republican and one Democrat. The Committee meets even when the General Assembly is not in session.

The HAVA Administrator, an employee of the Secretary of State, is charged with the day-to-day responsibilities of managing each of these accounts to ensure the distribution of funds in accordance with federal and state laws. The HAVA Administrator works with the State Budget Agency, the Auditor of State, and the Indiana Election Division Co-Directors to carry out these responsibilities. The HAVA Administrator also seeks clarification from the federal Election Assistance Commission concerning the federal audit requirements applicable to these accounts.

Section 6

Sec. 254 (a) IN GENERAL – The State plan shall contain a description of each of the following:

(6) The state's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on-

- *(a) the costs of the activities required to be carried out to meet the requirements of Title III;*
- *(b) The portion of the requirements payment which will be used to carry out activities to meet such requirements; and*
- *(c) The portion of the requirements payment which will be used to carry out other activities.*

Budget:

The total federal appropriations for HAVA, as of **July 2009**, were less than the amounts originally authorized by the federal legislation.

The following table outlines the assumptions regarding federal funding that the State has used in creating its budget for HAVA activities. These numbers reflect the following: (1) $15,752,875 in early payments received by Indiana as of June 17, 2003 (consisting of $9,522,394 in Section 102 payments and $6,230,481 in Section 101 payments); and (2) $48,544,987 in Title III requirement payments received by Indiana as of June, 2004.

The Plan's budget assumes that additional HAVA funds will be received (see "Distribution of "new" HAVA funds through 2011" [page 29].

Until full funding **is** received from the federal government, Indiana may not be able to initiate HAVA mandates described in this State Plan in the time prescribed.

Indiana legislation was enacted to allow for **the first three** required state matches (Public Law 224-2003, SECTION 98; Public Law 246-2005, SECTION 3.). Two of the three state matches were appropriated within the same *federal* fiscal year (FY 2004). **Indiana legislation was enacted to appropriate the fourth and fifth required state match (Public Law 108-2008, SECTION 6). The Team recommends that Indiana enact any necessary legislation to**

appropriate any future required state match for federal HAVA funds made available in late 2009 and beyond.

Interest earned on HAVA funds is to be reinvested in election administration and HAVA Title III compliance measures.

Federal Fiscal Year	*Total Federal funds*	*Indiana federal funds*	*5% match*
Early Payments	$325,000,000 (Sec. 101) $325,000,000 (Sec. 102) (appropriated)	$15.8 million	N/A
FY 2003	$810,000,000 (appropriated)	$17.3 million	$865,000
FY 2004	$1,498,360,620 (appropriated)	$31.17 million	$1,558,641
FY 2005	$0.00	$0.00	$0.00
FY 2008	**$115,000,000**	**$2,378,803**	**$125,200**
FY 2009	**$100,000,000**	**$2,068,525**	**$108,870**
Total	**$3,173,360,620**	**$69.13 million**	**$2,423,641**

Additional Funding: Health and Human Services grant

Section 261 of HAVA also authorizes the United States Secretary of Health and Human Services (HHS) to administer a grant program to do the following: (1) make polling places, including the path of travel, entrances, exits, and voting areas of each polling place more accessible to individuals with disabilities, including the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence as other voters); and (2) provide individuals with disabilities and other individuals described in (1) with information about the accessibility of polling places, including outreach programs to inform the individuals about the availability of accessible polling places and training election officials, poll workers, and election volunteers on how best to promote the access and participation of individuals with disabilities in elections.

The federal omnibus budget bill of 2003 and Indiana's Public Law 209-2003 authorized the state (through the Secretary of State, with the consent of the Indiana Election Division Co-Directors) to apply for grant funds. The funds **were** distributed based on each state's voting age population as a percentage of the national voting age population.

In response to applications submitted by the Secretary of State in each of **six** federal fiscal years, Indiana received the following as its share of these funds:

(A) Parking spaces marked and available to conform with IC 5-16-9
(B) The path to the facility that an individual must travel on the property where the facility is located
(C) The entrance of the facility to be used by voters
(D) The paths of travel within the facility to the rooms or areas where the voting system is located
(E) The rooms or areas in the facility where the voting systems are located."

Distribution of Indiana's HAVA funds (This chart is based on a $71.4 million budget.)

Total money: **$71.4 million**

20.8 % on SVRS which equals $14.84 million from Sec. 101, Title III requirements monies and state matching funds.
6.4 % on Training and Education which equals $4.6 million from Sec. 101 and Title III requirement monies.
15.7% on Strategic Reserve (to meet any HAVA requirements) which equals $11.23 million from Section 101 and Title III requirement monies
.14% on Administration of Grievance Procedure which equals $100,000 from Title III requirement monies.
1.4% on Administration of HAVA which equals *$1,015,000* from Sec. 101 funds • **This will include implementation costs of $275,000 for on-line voter registration.**
55.5% on Voting Equipment which equals $39.6 million from Sec. 101, 102, Title III requirement monies and state matching funds.

Account	*Amount*	*Distribution*	*Not Allocated*
Section 101	$6,230,481 (received)	Training & Education $1,730,481 Administration $740,000 Voting Equipment $1,486,449 Strategic Reserve $2,000,000 On-line Voter Registration $273,551	Not Allocated $ 0
Section 102	$9,522,394 (received)	Voting Equipment $9,522,394	Not Allocated $0
Title III Requirement Monies	$48,544,987 (received) $4,447,358 (pending)	Voting Equipment $26,730,481 Voter File $14,740,190 Grievance $50,000 Training and Education 2,713,124 Strategic Reserve $8,757,520	Not Allocated $0
State Match	$2,657,711 (received)	Voting Equipment $1,886,408 Grievance $50,000 Statewide Voter File $100,000 Training & Education $149,560 Strategic Reserve $470,294 Online Voter Registration $1,449	Not Allocated $0
Total	$71,402,901	$71,402,901	Not Allocated $0

Distribution of "new" HAVA funds, budget through 2011:

In 2008 and 2009, Congress appropriated funds for the states to help meet the remaining HAVA obligation to the states. Although still not fully funded according to the original HAVA legislation, Indiana's share of these two appropriations is:

Account	Amount	Allocation
2008 Title III Requirement Monies	$2,378,803	SVRS $2,040,190 Voter Education $338,613
2009 Title III Requirement Monies	$2,068,525	SVRS $1,800,000 Voter Education $204,992 Strategic Reserve $63,533
2008 State Match	$125,200	Grievance Procedure $50,000 Poll Worker Training $47,165 Strategic Reserve $28,035
2009 State Match	$108,870	Online Voter Registration $1,449 Voter Education $102,395 Strategic Reserve $5,026
Total	$4,681,398	$4,681,398

If Indiana receives additional federal HAVA funds from appropriations in the budget for the federal fiscal year beginning October 1, 2009, those funds will first be used to reimburse four counties, Boone, Cass, Parke, and Randolph ("VTI Counties"), for up to a total of $900,000 (the amount currently known to be the cost of voting systems purchased by those counties in 2007-08 to replace voting systems previously reimbursed with HAVA Section 102 and Title III requirement monies), as prescribed under Indiana Public Law 108-2008.

If these federal FY 2010 appropriations are not received by Indiana, the four aforementioned counties will receive reimbursements from the Section 101 allocation of $1,486,449.00 intended for the 18 identified "super responsible" counties (see page 34) for up to a total of $900,000 (or the amount that makes these counties whole). In this scenario, after distribution of funds to the four aforementioned counties, the remainder of the $1,486,449.00 will be distributed to the super responsible counties.

However, if a county is listed above and also considered a "super responsible" county (Boone County), that county shall only receive reimbursement under one classification and will forfeit reimbursement under the other classification.

Notwithstanding the statement above, additional future federal appropriations of Title III requirement monies will be placed into the strategic reserve and used for any of the Title III requirements activities described in this plan. Expenditures of these funds will be determined by the Secretary of State with the consent of the Co-Directors of the Indiana Election Division.

A. Voting Systems

It **was** necessary to use Section 101, Section 102, Title III and state matching fund monies to comply with HAVA voting systems requirements. Indiana had more than half of its voters using punch card or lever machines in November 2000.

Voting System Certification

Indiana law currently incorporates the 2002 FEC voting system standards. **In 2009, legislation was enacted to permit the Indiana Election Commission to approve a voting system application for certification if the voting system complies with either the 2002 FEC voting system standards or the 2005 United States Election Assistance Commission Voluntary Voting System Guidelines.**

The legislature has enacted the legislation recommended by the 2003 Plan to provide for more detailed scrutiny of applications for voting system certification, a four year term for certification **being** established, with all existing applications expiring October 1, 2005 and coming up for renewal during the off election year, notwithstanding any upgrades or improvements approved during the four year term.

Tier Structure for Voting System Reimbursement

Counties will be divided according to the following levels and definitions:

- Tier A = Qualifying Precincts under HAVA (precincts that used punch card or lever machines in the 2000 general election)
- Tier B = all remaining Indiana precincts

The state will set aside $*40.1* million to reimburse counties in the following manner:

- All counties will be eligible for reimbursement for up to $50,000 for voting system software to operate the voting systems within the county. This reimbursement will be available in any fiscal year. If a county purchases this software for less than $50,000, but pays more per precinct for voting systems, the county may also receive an amount equal to the county's savings on software costs to pay for additional voting systems.
- Tier A will be reimbursed up to $8,000 per precinct.
- Tier B will be reimbursed up to $4,000 per precinct.
- Tier A will be reimbursed on a first come, first served basis of federal FY 03 funds.
- Remaining precincts (those in Tier A who have not been reimbursed and Tier B) will be reimbursed on a first come, first served basis of federal FY 2004 funds.

The Team recognizes that this Plan proposes a reimbursement level for Tier A counties (up to $8,000) that exceeds HAVA's reimbursement amount for qualifying precincts using Section 102 monies ($3,192). It is the Team's intent to prioritize federal funding to alleviate as much as

reimbursement under Indiana Code 3-11-6.5. HAVA permits Section 101 funds to be expended for improving the administration of elections for federal office, including replacing voting systems, but does not specify any time limits during which the replacement must be made to qualify for reimbursement from these funds.

Funds set aside for "super responsible" counties that are not distributed, will be reinvested in election administration and HAVA compliance activities. It has been determined the following counties meet the definition of a "super responsible" county and will be reimbursed based on the formula ($2 million/total # precincts = $1,550.38/precinct). (Note: reimbursement cannot exceed the amount spent on voting systems.)

The funds designated for the "super responsible" counties listed below are to be held until such time as the Secretary of State, with consent of the Co-Directors of the Indiana Election Division, are able to determine that federal Title III requirements funds are allocated to Indiana from legislation passed after July 24, 2009, by Congress. Those funds will be used to reimburse counties specified in Indiana Public Law 108-2008 (see page 29).

In the event that Section 101 funds set aside for "super responsible" counties are used first to reimburse the four "VTI counties" (see pages 37-38 for reimbursement amounts), the "Reimbursement VTI Option" on the table below will determine the reimbursement amount for the "super responsible" counties. This uses the formula ($1,486,448.52/total # precincts = $521.30/precinct). This represents approximately 1/3 of the original calculated reimbursement.

County	Reimbursement	Reimbursement VTI Option
Boone*	$72,867.86	$0.00
Dearborn	$74,418.24	$25,022.40
Floyd	$93,022.80	$31,278.00
Fulton	$26,356.46	$8,862.00
Grant	$102,325.08	$34,405.80
Hamilton	$262,014.22	$88,099.70
Harrison	$54,263.30	$18,245.50
Hendricks	$72,500.00	$45,353.10
LaGrange	$24,806.08	$8,340.80
Lake	$400,000.00	$286,193.70
Marshall	$43,410.64	$14,596.40
Montgomery	$41,860.26	$14,075.10
Owen	$29,457.22	$9,904.70
Ripley	$41,860.26	$14,075.10
Scott	$62,015.20	$20,852.00
Spencer	$37,209.12	$12,511.20
Steuben	$29,457.22	$9,904.70
Switzerland	$18,604.56	$6,255.60
TOTAL	$1,486,448.52	$647,975.90

***(NOTE: Boone County qualifies for reimbursement under Indiana Public Law 108-2008, and will not receive an additional reimbursement under the "super responsible" classification.)**

Section 101 funds reinvestment in FY2010-FY2011 budget:

Account	Amount	Allocation
Section 101	$513,551	HAVA Administration $240,000 Online Voter Registration $273,551

Unless the original application already contains this information, the application for Section 101 monies must:

(1) list the name of each precinct in the county as of the date of the application;

(2) list the physical location (and mailing address if available) of the polling place designated in November 2004 (or that will be designated in the May 2006 election) to serve the residents of that precinct;

(3) state that the county election board will cooperate with the polling place accessibility survey scheduled for May 2004, subject to any amendments required to state law to permit access to polling places by survey personnel;

(4) certify that the county will make all permanent or temporary improvements to the polling place for the precinct no later than March 31, 2006 to comply with the accessibility standards set forth in state law (Indiana Code 3-11-8), and to the extent possible, make any additional improvements identified in the survey that are not specifically required by state or federal law;

(5) certify that, as of December 31, 2005, the polling place used for the precinct will contain at least one voting system to permit a voter who is blind or visually impaired to vote privately and independently in accordance with Public Law 209-2003;

(6) certify that no later than December 31, 2003, the county will adopt an ordinance establishing a local advisory council comprised of representatives of the disabilities community and elderly voters to provide assistance in choosing accessible polling places;

(7) list the date the county entered into a contract for the purchase, lease, or lease-purchase of voting system. (An executed and attested copy of the contract or adequate evidence of a contract must be attached);

(8) state whether or not this purchase or lease was entered into under a state quantity purchase agreement with a vendor certified to market voting systems in Indiana;

(9) include a written guarantee signed by the vendor that the voting systems obtained by the county comply with all requirements of Indiana law in effect as of the date of the amended application for these monies;

(10) include a certification by the county fiscal body that the monies received by the county will be used to pay any outstanding obligation incurred by the county for the voting system purchase subject to the reimbursement;

(11) include a certification by the county fiscal body that if these obligations have already been paid in full or in part by the county, that any remaining funds will be used to improve the administration of elections for federal office in the county.

The Election Division may prescribe that other information be included in the application, and shall assist each county in amending any previously filed application.

In the review of applications for disbursement of Section 101 monies, the State has followed the same procedures described in this Plan for the disbursement of Section 102 monies.

Application for "VTI Counties"

Whether the State receives FY2010 Title III requirement monies, or these counties are reimbursed from the "super responsible" county allocation (see page 29) the four qualifying counties must complete an application, based on previous version of the HAVA voting system reimbursement application, prior to receiving reimbursement for voting system purchases qualified under Public Law 108-2008. This notice specified the information required to be submitted as part of the application.

The application for HAVA reimbursements under Public Law 108-2008 must:

(1) list the name of each precinct in the county as of the date of the application;

(2) list the physical location (and mailing address if available) of the polling place designated in November 2008 (or that will be designated in the May 2010 election) to serve the residents of that precinct;

(3) state that the county election board will review polling place accessibility based on requirements contained in the Polling Place Accessibility Survey Form available on the Indiana Secretary of State's website at www.in.gov/sos/elections/files/access_survey.pdf;

(4) certify that the county will make all permanent or temporary improvements to the physical accessibility of the polling place for the precinct no later than 31 days prior to the first election following reimbursement under Public Law 108-2008 to comply with the accessibility standards set forth in state law (Indiana Code 3-11-8), and to the extent possible, make any additional improvements identified in the survey that are not specifically required by state or federal law;

(5) certify that, as of December 31, 2009, the polling place used for the precinct will contain at least one voting system to permit a voter who is blind or visually impaired to vote privately and independently in accordance with Public Law 209-2003;

(6) certify that no later than December 31, 2009, the county will adopt an ordinance establishing a local advisory council comprised of representatives of the disabilities community and elderly voters to provide assistance in choosing accessible polling places (unless said body exists per previous action of the county);

(7) the date the county entered into a contract for the purchase, lease, or lease-purchase of voting system. (An executed and attested copy of the contract or adequate evidence of a contract must be attached);

(8) whether this purchase or lease was entered into under a state quantity purchase agreement with a vendor certified to market voting systems in Indiana;

(9) a written guarantee signed by the vendor that the voting systems obtained by the county comply with all requirements of Indiana and federal law in effect as of the date of the amended application for HAVA monies;

(10) include a certification by the county fiscal body that the monies received by the county will be used to pay any outstanding obligation incurred by the county for the voting system purchase subject to the reimbursement;

(11) include a certification by the county fiscal body that if these obligations have already been paid in full or in part by the county, that any remaining funds will be used to improve the administration of elections for federal office in the county.

The Election Division may prescribe that other information be included in the application.

Counties qualified for reimbursement under this section will be eligible for reimbursement for the voting system hardware, software, and firmware associated with that system as well as removable devices manufactured by the voting system manufacturer specifically for the operation of the voting system such as accessibility devices and voting cards. The following table shows the reimbursement amounts based on information provided by each county's chief election official (Circuit Court Clerk).

County/Expense	Amount
BOONE	
60 Infinity Units	$189,000.00
48 Infinity Units + ADA Device	$161,760.00
48 Precinct Printers	$12,000.00
108 Tally Cards	$1,620.00
98 Vote Cards	$686.00
55 Start Cards	$385.00
EMS Software	$33,000.00
2 GemPlus Smart Card Reader	$74.00
BOONE TOTAL	$398,525.00

CASS	
40 eSlate	$100,000.00
5 Disabled access Unit Modules	$2,500.00
6 Judge's Controller	$15,000.00
20 Mobile Ballot Box/Audio Card	$1,200.00
4 ATA Card Reader/Writer	$500.00
4 eCM	$260.00
Election Management Software	$125,100.00
Extended Warranty	$4,600.00
Professional Services	33,250.00
Discount	-$100,100.00
Minus Title III Reimbursement (12/07)	-$73,512.00
CASS TOTAL	$108,898.00
PARKE	
13 Accuvote Touch Screen TS	$57,215.50
13 VIBS Kit	$4,160.00
26 Voter Card Encoder	$10,270.00
26 Supervisor Card	$208.00
65 Voter Access Card	$227.50
12 Accuvote TS Software Licenses	$1,200.00
13 AccuVote Optical Scan OS	$74,850.00
AccuVote OS Software License	$1,200.00
Minus discount received	-$6,892.20
*software licenses for 13th machines included in machine price per a 2nd order.	
PARKE TOTAL	$142,438.80
RANDOLPH	
28 Infinity Units	$88,200.00
18 Infinity Units + ADA Device	$60,660.00
18 Precinct Printers	$5,544.00
50 Tally Cards	$750.00
40 Vote Cards	$280.00
20 Start Cards	$140.00
1 EMS Software	$33,000.00
2 GemPlus Smart Card Reader	$74.00
RANDOLPH TOTAL	$188,648.00
GRAND TOTAL "VTI COUNTIES"	$838,509.80

Operational expenses, legal expenses, paper expenses, and interest expenses may be eligible for reimbursement.

The same restriction would apply to a supplemental application requesting voting system reimbursement from state matching funds, since HAVA Section 253(b)(5) requires that the State appropriate these funds for "carrying out the activities for which the requirements payment is made." As a result, these state matching funds would presumably be subject to the same use restrictions as the federal Title III requirement monies received by the State.

However, if an application is made for reimbursement of voting system expenses from Section 101 monies, a supplemental application could request reimbursement for purchasing voting systems after January 1, 1998 and before July 1, 2001 if the voting system meets the standards permitting reimbursement under Indiana Code 3-11-6.5, as amended in 2003. HAVA permits Section 101 funds to be expended for voting system replacement that improves election administration in a state, but does not specify any time period during which the purchase must have been made to qualify for disbursement.

To ensure that the disbursement of these funds comply with HAVA and P.L. 209-2003, the Secretary of State and Election Division must specify the accounts that are the source of each disbursement made for voting system reimbursement. For accounting purposes, this Plan assumes that disbursements will be made from available funds in the following order: Title III requirement monies; state matching funds. Disbursements from Section 101 funds for voting system reimbursement will not be made in any year until the, Title III requirement monies, and state matching funds available in that fiscal year have been disbursed.

Use of Traditional Paper Ballots

If the county has not acquired a voting system which complies with HAVA, the only remaining option for the county under Indiana law is to use traditional paper ballots to conduct the election. In any event, the county must acquire at least one fully accessible voting system for each polling place for use by blind voters or voters with other disabilities.

B. Statewide Voter Registration System

The Secretary of State with consent of the Co-Directors **implemented** a statewide voter registration system that complies with Title III HAVA requirements. A team of circuit court clerks, voter registration officials from different sized counties, and Statewide Voter File subgroup members **served** in an important advisory role in the selection of a vendor, development of the system, and the conversion of data for the system. The use of an independent consultant disqualified from submitting a response to the Request for Proposal for the statewide voter registration system **assisted** in providing necessary guidance from an entity with no financial interest in the final product.

Statewide Voter Registration System Costs

The Team recommends to the General Assembly to fully fund what is a state obligation, called the Statewide Voter File (SVRS). If full funding for the Statewide Voter File does not come from the budget for the July 1, 2009 through June 30, 2011 biennium, then the difference in funding will be made up from Team funds (HAVA funds).

Furthermore, to the extent that service level credits are acquired from the SVRS vendor, that those service level credits will be utilized to reduce the funding needed from Team funds (HAVA funds). If that is the case, the balance of those funds will be put into the HAVA fund's Strategic Reserve for future distribution.

The Team believes that the State and General Assembly should continue to fund SVRS as a state system and not make SVRS a funding burden on the counties.

The development costs of the statewide voter registration system **were** assumed by the State, using Title III requirement monies, and to the extent necessary, supplemented by Section 101 funds and State matching funds. The consultant hired to develop the systems requirement document sought to identify any opportunities for efficiency and savings that may be available from using existing or planned statewide networks to share pipeline space and to conduct coordinated training events with the administrators of those systems. However, since this coordination is subject to the responsibility for system administration vested in the Secretary of State and the Election Division by P.L. 209-2003.

Replacement and upgrade of voter registration system software

The "development costs" to be assumed by the State include the hardware and software necessary for the system to perform its functions.

Voter Registration System Training

Likewise, training both State and county voter registration administrators **are** a significant **ongoing** cost to the State. The **SVRS requires** a comprehensive training program to ensure that county voter registration personnel become familiar with the features of the system. .

If a county chooses to lease or purchase additional hardware or to provide training beyond what the State provides to ensure the maintenance and proper operation of the system, the county would be responsible for those costs.

The Team recommends that the Secretary of State and Indiana Election Division coordinate with the vendor for more in-person training and directly involve the Indiana Voter Registration Association (IVRA) in conducting, coordinating, and otherwise spear-heading new user training.

Voter Registration Software

In the operation of SVRS, the following will be necessary:

- The Secretary of State, with the consent of the Indiana Election Division, shall maintain and support the system.
- The Indiana Election Division shall **maintain** interaction between the voter registration system and the provisional ballot status application.

fourth year following certification. The Secretary may establish and administer requirements for the renewal of certification.

The IED will conduct additional seminars for clerks and county voter registration officials dedicated to HAVA election administration issues and procedures.

The state has not included voter education in its maintenance of effort.

The Plan budget sets aside an additional $47,165 for poll worker training and $646,000 for voter education.

The Team recommends that the Military and Overseas Voters Guides be directly distributed to military centers and installations in Indiana. The Team also recommends the Secretary of State produce a PowerPoint presentation on military voting and post the document on the Web. The Team further recommends that the Secretary of State ask the U.S. Department of Defense (DOD) specific questions regarding how the ballot delivery system (e-mail and fax) used by Indiana election administrators operated from their perspective, provide information on how the counties perceived it to work, and inquire if the DOD intends future improvements of the system.

D. Provisional Ballots

State law provided for provisional balloting beginning with the 2004 primary election. However, additional requirements to build a free access system, provide written documentation to provisional voters and protect provisional ballot voters' confidentiality were new under HAVA; these were addressed by additional Indiana legislation enacted in 2003.

The SVRS **includes** a provisional ballot status application program to permit a voter to obtain the provisional ballot access required to be made available under HAVA by using a secure on-line feature.

E. Grievance Procedure

HAVA requires the establishment of a state based administrative complaint procedure that will remedy grievances concerning Title III which include but is not limited to (1) voting system accessibility, (2) polling place accessibility, (3) any part of the voting process itself, (4) registration process, or (5) allegation of fraud. The details of this grievance procedure are explained under Section 9 (page 49) of this plan.

The Plan budget **currently** sets aside $50,000 for administration of the grievance procedure.

The Team recommends that the Indiana Election Commission (IEC) hold regularly scheduled meetings dedicated to the resolution of unresolved grievances, with meetings being canceled if there is not sufficient business to conduct. The Team also recommends to the IEC that better coordination be instituted surrounding the grievance procedure so the grievances can be adjudicated and those with complaints get an answer back soon. This is important so these citizens/taxpayers/voters know what has happened to their case.

It is recommended that the IEC hire an Administrative Law Judge (ALJ) to better move the process along. Since the IEC does not have its own budget, $50,000 is added to the HAVA grievance budget for this purpose.

The Team also recommends that the Election Division include the grievance form with their forms packet and on the forms CD distributed to county election administrators at the annual conference so county election officials can consider including the form with inspector kits for polling places.

F. Accessibility of Polling Place and Materials

The Secretary of State's office formed a partnership with the Governor's Planning Council for People with Disabilities (GPCPD) to conduct a statewide polling place accessibility study that established a baseline of Indiana's current environment as it relates to polling place accessibility. Each county also **formed** a local advisory council composed in part of voters with disabilities and elderly voters. The GPCPD **supplied** suggested members for the local advisory councils upon request. This council will advise the local officials on polling place accessibility and site selection. The survey and the establishment of the local council **was** required criteria for counties applying for reimbursement for voting systems.

Information will be provided by the Indiana Election Division to local election officials with suggestions about making their written materials and websites more accessible to voters with disabilities. The information will be created and organized by the GPCPD. Additional outreach will be directed toward military and overseas voters.

Currently, neither the state nor local officials have a maintenance-of-effort requirement for polling place accessibility or for the updating of materials and websites into accessible formats.

HAVA requires that voting systems provide alternative language accessibility as described in the Voting Rights Act of 1965. Using data from the 2000 United States Census, Indiana's population of non-English speaking residents does not meet the level that requires provision of voting information and materials in other languages. However, as the population of non-English speaking Hoosiers continues to increase, Indiana is taking steps to offer materials related to direct voter communication in the languages that are most prevalent. Currently, the Voter's Bill of Rights and the Application for Voter Registration Form are available in Spanish. As federal funds are available, the Indiana Election Division will translate more documents.

The Team supports production of materials in alternative formats (such as Braille) for use at polling places so grievances can be more easily and properly made.

G. Administration

The proposed budget sets aside an additional **$240,000)** for the administration of HAVA requirements **during the 2009-2011 biennium.**

including provisional ballots, documentation for first-time mail-in registrants or DREs for the disabled, except as provided below.

In 2000, counties were spending local monies on voter registration maintenance and voting system equipment.

The duplicate voter registration elimination program **was** no longer utilized after 2005 under Public Law 209-2003 **(see Indiana Code 3-7-38.1, *repealed 2006*).** However, approximately $225,000 was expended to conduct this program in 1999 - 2000 to compile a statewide voter registration system and will require a maintenance-of-effort. ~~**The State match of $688,880 appropriated under Public Law 246-2005 will be used to extent required for the state to meet this maintenance of effort requirement during state fiscal years 2006 and 2007.**~~

Section 8

Sec. 254 (a) IN GENERAL – The State plan shall contain a description of each of the following:

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success of units of local government in the state in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the state will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met

(A) Parking spaces marked and available to conform with IC 5-16-9
(B) The path to the facility that an individual must travel on the property where the facility is located
(C) The entrance of the facility to be used by voters
(D) The paths of travel within the facility to the rooms or areas where the voting system is located
(E) The rooms or areas in the facility where the voting systems are located."

Distribution of Indiana's HAVA funds (This chart is based on a $71.4 million budget.)

Total money: **$71.4 million**
20.8 % on SVRS which equals $14.84 million from Sec. 101, Title III requirements monies and state matching funds.
6.4 % on Training and Education which equals $4.6 million from Sec. 101 and Title III requirement monies.
15.7% on Strategic Reserve (to meet any HAVA requirements) which equals $11.23 million from Section 101 and Title III requirement monies
.14% on Administration of Grievance Procedure which equals $100,000 from Title III requirement monies.
1.4% on Administration of HAVA which equals *$1,015,000* from Sec. 101 funds • **This will include implementation costs of $275,000 for on-line voter registration.**
55.5% on Voting Equipment which equals $39.6 million from Sec. 101, 102, Title III requirement monies and state matching funds.

Section 12

Sec. 254 (a) IN GENERAL – The state plan shall contain a description of each of the following:

(12) In the case of a State with a State Plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year.

~~**This version of the State Plan is the initial State Plan required under the Help America Vote Act of 2002.**~~

All previous information in this Section is superseded by the following which constitutes a cumulative update of the State's progress as it pertains to the State's HAVA implementation actions found throughout the State Plan.

STATE'S PROGRESS ON THE IMPLEMENTATION OF HAVA

Indiana's voting systems and compliance with Section 301 of HAVA:

The State requested a waiver authorized by section 102(a)(3)(B) of HAVA to postpone replacement of lever machines and punch card systems. The waiver request was sent to the US General Services Administration in December 2003, and the General Services Administration approved the request by letter dated February 25, 2004. The waiver permitted the State to postpone replacement of voting systems to no later than the federal elections held after January 1, 2006, (instead of by January 1, 2004). The waiver was necessary because several counties needed more time to make sound decisions on what type of voting system to purchase.

Elimination of Lever Voting Machines and Punch Card Electronic Voting Systems:

All 92 Indiana counties replaced these voting systems prior to the first federal election following January 1, 2006. That election was the 2006 Primary Election held on May 2, 2006.

Accessibility of Voting Systems for Voters with Disabilities:

All 92 Indiana counties added accessible voting systems prior to the first federal election following January 1, 2006. That election was the 2006 Primary Election held on May 2, 2006. Systems added include Direct Record Electronic (DRE) and a hybrid of Optical Scan and DRE called the AutoMark®. At least one accessible machine was made available to voters with disabilities in every polling place in Indiana.

Alternative Language Accessibility:

All voter education, training, and outreach materials have been produced in two languages, English and Spanish, since 2004.

Military and Overseas Voters Accessibility:

Indiana permits absent uniformed services voters and overseas voters to request, submit, and receive absentee ballots via facsimile transmission and electronic mail (if using a secure program approved and operated by the US Department of Defense). Many Indiana counties participated in the Electronic Transmission Service (ETS), administered by the Federal Voting Assistance Program (FVAP), in order to send and receive election materials, including ballots, to these voters during the past several elections.

The HAVA office also produced a Military and Overseas Voters Guide which has been recognized as a best practice by both the DOD and Congress. That guide is available, as are all informational materials, online at www.sos.in.gov.

Provisional Voting in Indiana:

The Indiana Secretary of State and Election Division distributed publications with detailed information regarding the provisional ballot process to standardize the counting of provisional ballots by county election boards in the 92 counties.

Voter Information:

The HAVA office provides a variety of voter information materials (in English and Spanish) to voters and county election administrators each election cycle. Included in these materials are: The Indiana Voter's Bill of Rights, Chute posters reminding voters of the photo ID requirement, a Voter Information Guide containing deadlines and various election procedures, a standardized poll worker guide, PSAs (radio, print, television, and transit ads), training videos on election procedures and voting system operation, poll worker recruitment, and more. Indiana also requires an Absentee Voter's Bill of Rights be included with each absentee ballot mailed to voters. A full complement of voter information, training, education, and outreach materials can be found on the Secretary of State's website at *www.sos.in.gov.*

Statewide Voter Registration System (SVRS):

The State requested a waiver authorized by section 102(a)(3)(B) of HAVA to postpone the commencement of the SVRS. The waiver request was sent to the US General Services Administration in December 2003, and the General Services Administration approved the request by letter dated February 25, 2004. The waiver permitted the State to postpone replacement of voting systems to no later than January 1, 2006. The waiver was necessary in order to chose a vendor, develop, build, and implement the system.

All 92 Indiana counties were provided with connectivity and computer hardware necessary to operate the system. The system connects local and state election officials with each other and provides real-time updates from each county, the Bureau of Motor Vehicles, Social Security Administration, and the Departments of Health and Correction.

Identification Requirements:

HAVA requires certain first-time mail-registrants to provide identification (as set forth on page 16 of this document).

In addition to the above ID requirement mandated by HAVA, in 2005, Indiana's governor signed into law Public Law 109-2005, better known as Indiana's Photo ID law. The law states that all voters who wish to cast a ballot in-person at any election in Indiana must provide a photo ID which meets certain criteria to confirm the identity of that person before being allowed to cast a regular or absentee ballot. The law requires precinct election boards and absentee voter boards to request this form of ID from every voter who wishes to vote in-person whether the election workers know the voter or not.

A photo ID must meet the following criteria to be acceptable under the Indiana law *(IC 3-5-2-40.5)*. The ID must:

1) show the name of the voter and the name must conform to the name on the voter's registration record;
2) contain a photograph of the voter;
3) include an expiration date showing that the photo identification has not expired or that the photo identification expired after the date of the most recent general election; and
4) be a document issued by the United States or the State of Indiana.

Individuals do not have to provide a photo ID if they vote *(IC 3-11-10-1.2 and 3-11-8.25.1)*.

1) absentee by mail;
2) absentee by traveling board; or
3) in-person on Election Day in a precinct in which the polling place is located at a state-licensed care facility where the voter resides

Those who do not have or refuse to provide proper identification, but are otherwise qualified to vote, may vote a provisional ballot *(IC 3-11-8-25.1)*. That voter then has until noon 10 days after the election to provide proper identification to the county's election board, or complete a sworn affidavit confirming that the voter is; a) indigent and unable to obtain photo identification without the payment of a fee; or b) the voter has a religious objection to being photographed. *(IC 3-11.7-5-2.5 and IC 3-11.7-5-1)*.

A voter who does not have an Indiana Driver's License or photo identification card may receive a state photo identification card free of cost *(IC 9-24-16-10)*.

Vote with ID Taskforce

Following passage of the law and before its implementation, Secretary of State Todd Rokita brought together both proponents and opponents of the measure to help develop a plan for educating Hoosier voters about the new law and its requirements. Members of the media, legislature, county election officials, and public service organizations worked together to agree on an approach to conduct outreach and educate voters.

Implementation

Immediately, the Office of the Secretary of State began training and outreach efforts to inform local election administrators about how to implement the new law and to voters on

their rights and responsibilities under the new law. Informational literature and publications and training materials were produced to distribute to these groups and the media.

An extensive media campaign of both earned and paid media was instituted before the 2006 Primary Election. The office spent more than $1.2 million on education, training, and outreach efforts from the latter half of 2005 and throughout the 2006 election cycle.

Shortly after the law was enacted, the Office initiated a massive campaign to inform and educate Hoosier voters. The Office's election outreach strategy allocated over 1.25 million dollars in HAVA funds to educate Hoosiers about various features of elections, as well as to remind them to bring their ID to the polls. Media buys (in English and Spanish) were made totaling over $1.6 million in 2006, $75,000 in 2007, and $550,000 in 2008. These included print, radio, and TV ads. Photo-ID advertisements were also placed inside and on public transportation buses in all transit markets in the state – to ensure that non-drivers received the message. Election Administrators, representing each of Indiana's 92 counties, attended Poll Worker Training classes presented by the state. They received the statewide poll worker training curriculum including Photo ID and other procedural Election Day activities, developed and distributed by my office. The Office has developed partnerships and distributed newsletter and publications on photo ID through:

- ✓ **Signage at all Bureau of Motor Vehicle facilities.**
- ✓ **Major political parties.**
- ✓ **Department of Health – via a mailing to all nursing facilities.**
- ✓ **All 107 county offices of Indiana's Family and Social Services Agency.**
- ✓ **Most colleges and universities through student body e-mail distribution.**
- ✓ **Many, many others.**

Indiana has conducted 9 successful elections from 2005 through the unprecedented 2008 General Election.

Statistics

In May 2008, Indiana experienced one of its highest turnouts ever for a Primary Election. Turnout increased from 21 percent in the 2004 Primary to around 40 percent for the 2008 Primary. 76 percent of the participants took part in the Democratic Presidential Primary - up from just 40 percent who voted in the Democratic Presidential Primary in 2004.

In November 2008, Indiana once again experienced very high turnout. Turnout increased by over 300,000 voters when compared to the 2004 general election. Additionally, for the first time since 1964, the Democratic Presidential candidate won Indiana's electoral votes. Over the course of 2008, there were well over 345,000 newly registered voters and over 800,000 new or updated registration records.

Training, Education, and Outreach for Voters and Election Administrators:

Traditional Advertising

Education and outreach efforts have been a key deliverable of the Indiana Secretary of State's Office since the distribution of HAVA funding prior to the 2004 election.

Over the last three years, the office has administered media buys totaling over $1.6 million in 2006, $95,000 in 2007 (municipal election year) and $650,000 in 2008. This advertising includes Print, Radio, TV and Transit advertising. Using transit advertising on buses in all transit markets in the state enabled systematic coverage of non-drivers, in addition to traditional mediums.

These federal and state dollars were used to develop and air six different Public Service Announcements covering information on Photo ID, Accessibility, Voter Registration and General Information and Resources.

Funding earmarked for advertising was divided according to two goals: (1) to reach the maximum number of voting age adults and (2) to provide coverage to each of Indiana's 92 counties enabling the office to not only reach our population centers, but also the more rural areas of the state.

Outreach Publications

The HAVA team has developed partnerships and distributed newsletter and voter information publications through a variety of government agencies, corporations and non-profit organizations, including, but not limited to Saint Vincent Health, Emmis Communications, Clarian Health, Family and Social Services Agency, Department of Workforce Development, the Indiana Department of Veterans Affairs, Indiana Protection and Advocacy Services, the League of Women Voters, and the Association of County Libraries. Through the 2008 corporate and non-profit outreach initiative, the office partnered with more than 100 organizations to reach more than 300,000 Indiana employees.

Additionally, HAVA produces publications to educate voters, election administrators, and poll workers. These publications, all including information on photo ID requirements, totaled more than $90,000 for the 2006 election year, $45,000 for the 2007 election year and $85,000 for 2008. This information is distributed free of charge and includes:

- **Education publications; Indiana Voter Information Guide (English and Spanish), 5 Things You Need to Know on Election Day Postcard, Military/Overseas Voters Guide, voting system operation and use DVDs.**

- **Poll Worker Publications; Election Day Handbook, Poll Worker Information Guide, Donate for Democracy Brochure, Voting for your Future Brochure, Election Day Live Administrators Packet, voting system operation and use and poll worker training DVDs.**

- **Election Administration Publications, Election Day Handbook, Poll Worker Training and voting system operation and use DVDs, Voter's Bill of Rights (English and Spanish), Photo ID Chute Posters (English and Spanish).**

Section 13

Sec. 254 (a) IN GENERAL – The state plan shall contain a description of each of the following:

(13) A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

Process

The Vote Indiana Team is comprised of 30 diverse Hoosiers who are all stakeholders in the election process and who bring ethnic, geographic and tri-partisan political diversity to the planning process.

To prepare the original version of the Plan, tasks were assigned to one of five subgroups: Accessibility, Election Administration, Statewide Voter File, Training and Education, and Voting Equipment. Members served on two subgroups. Members were assigned to two subgroups, one per member's choice and one per chair's discretion to ensure balanced discussions. Members met over a six-month period including twenty-four subgroup meetings, which each lasted 1.5 hours, and five full team meetings. Meetings were held in accordance with Indiana's Open Door Law (I.C 5-14-1.5). Procedures on setting meeting agendas and handling deadlock were established at the first meeting. *Testimony and public comment were specifically sought at each meeting.* Meeting notes were kept of each meeting and made immediately available on the Indiana Secretary of State's website: www.sos.IN.gov. Materials were also available to the public by mail and electronic distribution. On the Secretary of State's website, a listserv permitted any individual with access to the internet to register as a member of the listserv and register any comments regarding the plan.

Letters were sent to each of the Clerks of Circuit Court and to county voter registration officials as local stakeholders advising them of the work of the Team and process involved for developing the state plan. In April, a draft state plan was developed in accordance with discussions from the subgroups, current legislation and ideas where gaps existed. The draft plan was distributed to the full Team for review at their April 11, 2003 meeting. Areas of concern were returned to the respective subgroup in order to reach a consensus. The subgroup's decisions were incorporated into the second draft that was also reviewed by the full Team prior to release for public comment.

The Vote Indiana Team met on May 30, 2003 to review subgroup suggestions and to discuss additional suggestions and comments from the entire group and from members of the public. At

Comments were sent to the chair of the Vote Indiana Team in writing at the following address: Todd Rokita, Indiana Secretary of State, 200 West Washington Street, Room 201, Indianapolis, Indiana 46204, or were emailed to VoteIndianaTeam@sos.state.in.us. Public comment on the Preliminary State Plan was also left at 317-234-VOTE or by contacting the Indiana Election Division toll free in Indiana at 800-622-4941(TDD). Comments were also faxed to 317-233-3283.

All comments were distributed to all team members upon receipt. The team considered all public comment at the final VIT meeting and adopted the 2003 Indiana State HAVA Plan.

The Vote Indiana Team was reconvened on June 23, 2005 to begin the process of amending the current Plan.

The Secretary of State submitted the proposed changes to the Plan for public comment on July 19, 2005.

Comments were sent to the chair of the Vote Indiana Team in writing at the following address: Todd Rokita, Indiana Secretary of State, 200 West Washington Street, Room 201, Indianapolis, Indiana 46204, or were emailed to VoteIndianaTeam@sos.state.in.us. Public comment on the Preliminary State Plan was also left at 317-234-VOTE or by contacting the Indiana Election Division toll free in Indiana at 800-622-4941(TDD). Comments were also faxed to 317-233-3283.

Current Composition of the Vote Indiana Team

Todd Rokita, Chair
Indiana Secretary of State

Rep. Kreg Battles
Indiana House of Representatives

Tonee Bell
African-American community representative

David Bottorff
Association of Indiana Counties

Amos Brown
African-American community and media representative

Dee Ann Hart
Disabilities community representative

Eric Holcomb
Office of the Governor

Kathy Hopf
Dubois Circuit Court Clerk

J. Bradley King
Co-Director, Indiana Election Division

Sen. Sue Landske
Indiana Senate

Sally LaSota
Lake County Election Board Administrator

Sen. Frank Mrvan
Indiana Senate

Kevin Ober
Indiana Republican Party representative

Linda Phillips
Tippecanoe Circuit Court Clerk

Pamela Potesta
Co-Director, Indiana Election Division

Rep. Kathy Richardson
Indiana House of Representatives

John Rudisill
Spencer County Elections Director

Evan Shearin (US Navy, Reserve)
Military representative

Tony Santana
Hispanic community representative

Kaylee Showers
Student representative

John Sorensen
Labor representative

Chris Spangle
Indiana Libertarian Party representative

Cindy Spence
Hendricks Circuit Court Clerk

~~Jennifer Wagner~~ Thomas Cook
Indiana Democratic Party representative

Beth White
Marion County Circuit Court Clerk

Facilitator: Joseph McLain, HAVA Administrator, Indiana Secretary of State's Office

Former Members: Christa Atkins, Libertarian Party representative; Tami Barreto, League of Women Voters; Sen. Billie Breaux, Indiana Senate; Rep. Dick Dodge, Frmr. Steuben County Commissioner and Association of Indiana Counties representative; Daniel Drexler, Libertarian Party representative; Pam Finlayson, Allen County Election Administrator; Linda Grass, Frmr Circuit Court Clerk; Bill Haan, Indiana Association of County Commissioners; Regina Harris, IVRA; Laura Herzog, IVRA; Suellen Jackson-Boner, GPCPWD; Gen. Michael Kiefer, military representative; Jon Laramore, Office of the Governor; Sen. Connie Lawson, Indiana Senate; Ed Mahern, Indiana House; Zach Main, Republican Party representative; Luke Messer, Republican Party representative; Martha Padish, frmr. Vermillion County Clerk; Issac Randolph, frmr Marion County CCC; Kristi Robertson, frmr IED Co-Director; Col. Joe Ryan, military representative; Doris Ann Sadler, frmr. Marion County Clerk; Anita Samuel, Governor's office; Lt. Governor Becky Skillman, Indiana Senate; Joe Slash, African-American community; **Jennifer Wagner, Democratic Party representative;** Harriet Wilkins, League of Women Voters, and Patricia Wilson, labor and Hispanic community.

This plan is respectfully submitted to the Election Assistance Commission, in accordance with Public Law 107-252, **this 18th day of September, 2009**.

Todd Rokita
Indiana Secretary of State

Additional Recommendations for Election Reform

Presidential Primaries

Before the 2008 Democratic Presidential Primary Contest, there were few recent instances where Indiana's primary schedule made a difference in the selection of a major party candidate for nomination to the Office of President of the United States. In 2008, both voter turnout and the number of votes cast were much higher than they had been for a Primary in generations. Indiana shared a national stage with few other states and for the first time in decades, helped chose a major party candidate for the November ballot.

At the time, several proposals were discussed among the public that would permanently make Indiana voters more involved in choosing national major party candidates. Among them, moving the Presidential Primary to an earlier date permanently, and supporting the National Association of Secretaries of State's (NASS) model legislation for a rotating regional primary (which would allow all states to have an early primary every 16 years).

The Vote Indiana Team recommends to the Indiana General Assembly or Legislative Council that the issue of moving to an earlier date of the presidential primary is worth studying during the 2009 interim with the goal that the summer study committee would send proposal(s) for the General Assembly to consider during the next legislative session.

Vote Centers

In 2006, the General Assembly passed a law that permitted the Indiana Secretary of State to select up to three counties to serve as pilots for the vote centers model of election administration. The pilot elections would be held during the 2007 Primary and Municipal elections. After successful tests in both Tippecanoe and Wayne counties in 2007, the General Assembly extended the pilot program to include the elections in 2008 and 2010, and permitted the addition of another county, Cass. All three county's vote centers' performed well during the historic 2008 Primary and General election cycles. Prior to their selection, each county was required to submit a Plan containing their proposal on the administration and operation of a vote centers election. Unanimous bi-partisan support among the county election board was also required before a county could submit an application.

An independent academic study conducted by Ball State University's Bowen Center for Public Affairs and eGov Partners, Inc. on behalf of the Pew Charitable Foundation and JEHT Foundation as part of their joint initiative "Make Voting Work", analyzed the vote centers pilots in Indiana and concluded:

"This evaluation of the installation and operations of Indiana Vote Centers over two election years has addressed two major assertions regarding Vote Centers: 1) by making voting more convenient Vote Centers will increase voter turnout, and 2) by consolidating precincts into Vote Centers, substantial cost savings will be realized in election administration.

Our findings show that, overall, the existence of Vote Centers, in and of themselves, do not increase voter turnout. Other factors, such as highly competitive electoral contests and well-financed and organized get-out-the-vote operations have much more to do with attracting more people to the polls. However, a major advantage of Vote Centers was uncovered when we examined early voting. By permitting registered voters to vote early at any Vote Center site—and by locating the early voting sites at high traffic areas such as grocery stores and shopping malls—a significant number of registered voters will take advantage and vote early. This surge in early voting reduces the pressure on polling sites on Election Day.

The data on the costs of holding elections clearly show that Vote Centers save money. Every jurisdiction, on a cost-per-vote basis, showed substantial savings over traditional precincts. The bulk of the savings are attributed to direct labor costs.

Finally, to assist election administrators who are considering adopting Vote Centers to replace traditional precinct-based voting, elements of a model are specified. The model is based on the Indiana experience and is designed to provide an overview as well as a roadmap for executing Vote Centers across America."

The Team encourages the Indiana General Assembly to make Vote Centers an option available to all counties. The Team further recommends the option of "no-fault" absentee voting (no reason is needed to vote absentee by mail) for those counties that use Vote Centers.

Absentee Voting Period

Currently, Indiana law prescribes that the in-office absentee voting period starts on the same day the voter registration period closes (29 days before the election). Election administrators across the state face hundreds and sometimes thousands of last-minute registration applications filed the same day many voters wish to begin voting absentee. The dual priorities tend to make processing new applications and requests for absentee voting difficult.

The Team recommends to the Indiana General Assembly that the in-office absentee voting period be shortened by one (1) day, from 29 to 28 days before the election.

Referenda Elections

The Team supports EHB 1447 (2009), as written on April 3, 2009, in regard to the funding of local government referenda during off-election years.

Appendix 3

HAVA Proposed FY2010-11 Budget

PROJECT	ITEM		AMOUNT
Revenue	HAVA REVENUE		
	2008 Federal Appropriation		$ 2,378,803.00
	2009 Federal Appropriation		$ 2,068,525.00
	2008 State Match		$ 125,200.00
	2009 State Match		$ 108,870.00
	Section 101 (Super Responsible Allocation)		$ 2,000,000.00
		SUB-TOTAL	$ 6,681,398.00
	STATE REVENUE*		
	FY2008 Encumbered Funds		$ 217,000.00
	FY2009 Encumbered Funds		$ 200,000.00
	FY2010 Budget Appropriation		$ 403,630.00
	FY2011 Budget Appropriation		$ 512,500.00
		SUB-TOTAL	$ 1,333,130.00
		TOTAL	$ 8,014,528.00
* Funds allocated for SVRS maintenance and operation.			
** Total appropriation was $512,000.00. However, the budget directs $108,870.00 to be used as the 2009 State Match.			
SVRS	Application Hosting		$ 864,000.00
	Network Connectivity		$ 784,320.00
	Software Licenses, Maintenance, Support		$ 780,000.00
	Program & Project Management		$ 1,320,000.00
	Help Desk Support		$ 660,000.00
	Application Changes		$ 525,000.00
	Training		$ 240,000.00
		SUB-TOTAL	$ 5,173,320.00
	Less State Revenue		($1,333,130.00)
	TOTAL FUNDING NEEDED		$ 3,840,190.00
Super Responsible Counties*	Boone (forfeited)		$ 72,867.00
	Dearborn		$ 74,418.24
	Floyd		$ 93,022.80
	Fulton		$ 26,356.46
	Grant		$ 102,325.08
	Hamilton		$ 262,014.22
	Harrison		$ 54,263.30
	Hendricks		$ 72,500.00
	LaGrange		$ 24,806.08
	Lake		$ 400,000.00
	Marshall		$ 43,140.64
	Montgomery		$ 41,860.26
	Owen		$ 29,457.22
	Ripley		$ 41,860.26
Super	Scott		$ 62,015.20

	Spencer		$ 37,209.12
	Steuben		$ 29,457.22
	Switzerland		$ 18,604.56
		TOTAL FUNDING NEEDED	**$ 1,486,448.52**
Online Voter Registration	Application Development		$ 150,000.00
	Public Awareness Campaign		$ 125,000.00
		TOTAL FUNDING NEEDED	**$ 275,000.00**
HAVA Administration	**Staff**		
	Salaries		$ 225,000.00
	Intern Stipend		$ 7,000.00
		SUB-TOTAL	**$ 232,000.00**
	Administrative Expenses		
	Phones		$ 2,400.00
	Office Supplies		$ 800.00
	Copiers		$ 2,000.00
	Mail/Shipping		$ 2,800.00
		SUB-TOTAL	**$ 8,000.00**
		TOTAL FUNDING NEEDED	**$ 240,000.00**
Grievance Procedure	Administrative Law Judge		$ 50,000.00
		TOTAL FUNDING NEEDED	**$ 50,000.00**
Poll Worker Training	**Train-the-Trainer**		
	Primary Election		$ 200.00
	General Election		$ 200.00
		SUB-TOTAL	**$ 400.00**
	Publications		
	Election Day Handbook		$ 25,500.00
	Poll Worker Training Video		$ 750.00
	Voter's Bill Of Rights		$ 2,700.00
	Voter's Bill Of Rights (Spanish)		$ 2,150.00
	Photo ID Chute Poster		$ 950.00
	Photo ID Chute Poster (Spanish)		$ 465.00
	Poll Worker Information Guide		$ 4,000.00
	Donate for Democracy		$ 2,600.00
	Election Day Live!		$ 7,250.00
		SUB-TOTAL	**$ 46,765.00**
		TOTAL FUNDING NEEDED	**$ 47,165.00**
Voter Education	**HAVA Outreach Events**		
	Registration Fees		$ 12,000.00
	Travel		$ 7,500.00
		SUB-TOTAL	**$ 19,500.00**
	Online Candidate Guide		
	Primary Election		$ 25,000.00
	General Election		$ 25,000.00
		SUB-TOTAL	**$ 50,000.00**
	Publications		
	Indiana Voter Information Guide		$ 20,625.00

Voter Education (cont.)	Indiana Voter Information Guide (Spanish)		$ 16,250.00
	5 Things You Need to Know...Postcard		$ 12,375.00
	Voter Information Magnet		$ 5,000.00
	Military/OS Voter's Guide		$ 8,000.00
	Forms Design		$ 5,000.00
		SUB-TOTAL	**$ 67,250.00**
	Outreach Mailings		
	Libraries		$ 500.00
	Long-Term Care Facilities		$ 500.00
	Churches		$ 4,000.00
		SUB-TOTAL	**$ 5,000.00**
	Public Service Announcements (Updates)		
	Production		$ 2,000.00
	Hosting		$ 2,250.00
		SUB-TOTAL	**$ 4,250.00**
	Photo ID Awareness		
	TV, Radio, Print (Primary Election)		$ 60,000.00
	Public Transportation Ads (Primary Election)		$ 35,000.00
	TV, Radio, Print (General Election)		$ 125,000.00
	Public Transportation Ads (General Election)		$ 40,000.00
		SUB-TOTAL	**$ 260,000.00**
	Voter Registration Deadline		
	TV, Radio, Print (Primary Election)		$ 45,000.00
	TV, Radio, Print (General Election)		$ 75,000.00
		SUB-TOTAL	**$ 120,000.00**
	General Election Information		
	TV, Radio, Print (Primary Election)		$ 45,000.00
	TV, Radio, Print (General Election)		$ 75,000.00
		SUB-TOTAL	**$ 120,000.00**
	TOTAL FUNDING NEEDED		**$ 646,000.00**
Strategic Reserve	**Reserve**		$ 96,594.00
		TOTAL	**$ 96,594.00**

* Super responsible county budget is subject to provisions set forth on page 29 of the Plan.

[FR Doc. E9–24538 Filed 10–13–09; 8:45 am]
BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

Adjusted Indemnification Amount

AGENCY: Department of Energy.

ACTION: Notice of adjusted indemnification amount.

SUMMARY: The Department of Energy (DOE) is announcing the adjusted amount of indemnification provided under subsection 170d. of the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2210d., commonly known as the Price-Anderson Act, consistent with section 607 of the Energy Policy Act of 2005, Public Law 109–58 (EPAct 2005). Section 607 (''Inflation Adjustment'') of EPAct 2005 amended subsection 170t. of the AEA by requiring the adjustment of the indemnification amount not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index (CPI) since that date. This notice announces $11.961 billion as the inflation-adjusted amount based on the aggregate percentage change in the CPI during the initial 5-year period.

DATES: This action is effective October 14, 2009.

FOR FURTHER INFORMATION CONTACT: John S. Boulden III, Acting Director (HS–40), Office of Enforcement, Office of Health, Safety and Security, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874, (301) 903–2178; or Sophia Angelini, Attorney Advisor (GC–52), Office of the General Counsel, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–6975.

SUPPLEMENTARY INFORMATION:

The Price-Anderson Act, section 170 of the AEA (42 U.S.C. 2210), establishes a system of financial protection for persons who may be liable for and persons who may be injured by a ''nuclear incident,'' as defined at section 11q. of the AEA (42 U.S.C. 2014q.). The Price-Anderson Act is administered by DOE with respect to the nuclear activities of DOE contractors acting on its behalf. Subsection 170d. provides that the Secretary of Energy shall enter into agreements of indemnification with any person who may conduct activities under a contract with DOE that involve the risk of public liability and that are not subject to the financial protection requirements of the Nuclear Regulatory Commission. DOE's Price-Anderson Act indemnification contract provisions are codified in the Department of Energy Acquisition Regulation (DEAR), which sets forth a standard nuclear indemnification clause, the Nuclear Hazard Indemnity Agreement at 48 CFR 952.250–70, that is incorporated into all DOE contracts and subcontracts involving source, special nuclear, or by-product material.

The Price-Anderson Amendments Act of 2005 (PAAA 2005), enacted as part of EPAct 2005, sections 601 through 610, altered the indemnity provisions in several ways. Specifically, the PAAA 2005 altered the amount of the indemnification by: (1) Specifying $10 billion as the amount of the indemnification for nuclear incidents within the United States resulting from contractual activities on behalf of DOE (section 604); (2) directing the adjustment of this indemnification amount not less than once during each five-year period in accordance with the aggregate percentage change in the CPI (section 607); and (3) increasing the indemnification amount for nuclear incidents outside the United States from $100 million to $500 million (section 605).

With regard to the inflation adjustment for indemnification, the AEA subsection 170t. was amended by adding a new provision requiring the adjustment of ''the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—(A) that date, in the case of the first adjustment under this paragraph; or (B) the previous adjustment under this paragraph.'' Under the AEA subsection 170t.(3), the term ''Consumer Price Index'' is defined to mean the CPI for all urban consumers published by the Secretary of Labor. The CPI in July 2003 was 183.9. In July 2008, the CPI was 219.964. This represents an increase of approximately 19.61%. Application of this increase to the initial $10 billion DOE indemnification amount results in an inflation-adjusted indemnification amount of $11.961 billion.

The inflation adjustment under AEA subsection 170t. applies only to a nuclear incident within the United States. Accordingly, the indemnification amount for a nuclear incident outside the United States continues to be $500 million.

The next inflation adjustment will be based on the incremental change in the CPI between July 1, 2008 and the date of the adjustment, which will be no later than July 1, 2013.

This notice of indemnification inflation adjustment is a ''rule'' as defined in the Administrative Procedure Act (APA) (5 U.S.C. 551(4)). However, the APA (5 USC 553(b)(B)) does not require an agency to use the public notice and comment process ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' In this instance, DOE has concluded that solicitation of public comment is unnecessary. Congress has required DOE to adjust the amount of indemnification provided under an agreement of indemnification under section 170d. to reflect inflation in the initial and each subsequent 5-year period following July 1, 2003, and provided no discretion regarding the substance of the adjustment process. DOE is required only to perform a ministerial computation to determine the relevant inflation adjustment. On the same basis, DOE finds good cause, pursuant to 5 USC 553(d)(3) to waive the requirement for a 30-day delay in the effective date for this rule. As such, this rule is effective October 14, 2009.

DOE has determined that this notice of indemnification inflation adjustment is the type of action that does not individually or cumulatively have a significant impact on the human environment as set forth in DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

Dated: Issued in Washington, DC, on September 22, 2009.

Steven Chu,

Secretary of Energy.

[FR Doc. E9–24718 Filed 10–13–09; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Guidance on Energy-Efficiency Enforcement Regulations

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice.

SUMMARY: This notice sets forth the Department of Energy's (DOE's) interpretation of its energy efficiency

enforcement regulations. These regulations provide for manufacturer submission of compliance statements and certification reports to DOE, maintenance of compliance records by manufacturers, and the availability of enforcement actions for improper certification or upon a determination of noncompliance. DOE also announces its intent to randomly select and review manufacturer compliance with these requirements and initiate enforcement actions as appropriate.

DATES: This guidance is effective October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Weiner, Office of the General Counsel, U.S. Department of Energy, Forrestal Building, Room 6A–245, 1000 Independence Ave., SW., Washington, DC 20585; Telephone (202) 586–9648.

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act of 1975, as amended, (EPCA or the ''Act'') authorizes the Department of Energy (DOE or the ''Department'') to enforce compliance with the energy conservation standards established for certain consumer products and commercial equipment. 42 U.S.C. 6299–6305 (consumer products), 6316 (commercial and industrial equipment). To ensure that all covered products distributed in the United States comply with DOE's energy conservation standards, the Department has promulgated enforcement regulations, which include specific certification and compliance requirements. *See* 10 CFR part 430, subpart F; 10 CFR part 431, subparts B, K, U, and V.

The Department issues this guidance to make clear that under existing DOE regulations, a manufacturer's failure to properly certify a covered product and retain records in accordance with DOE regulations may be subject to enforcement action, including the assessment of civil penalties. In addition, DOE announces its intent to exercise this enforcement authority more rigorously, beginning this fall, with a program to randomly select and review manufacturers' compliance with these certification requirements.

The Department's rules require manufacturers of covered consumer products to ''certify by means of a compliance statement and a certification report that each basic model(s) meets the applicable energy conservation standard,'' before distributing it in commerce within the United States. 10 CFR 430.62. Appendix A to Subpart F of Part 430 sets forth templates for these filings. For each basic model, the certification report must include certain identifying information, including the product type, product class, manufacturer's name and model number, as well as a product-specific energy efficiency levels. *Id.* Section 430.62(a)(4). The accompanying compliance report must certify that ''the basic model(s) complies with the applicable energy conservation standard'' and that ''[a]ll required testing has been conducted in conformance'' with applicable DOE test procedures. *Id.* Section 430.62(a)(3)(i)–(ii). Importantly, the manufacturer must also certify that all reported certification information is ''true, accurate, and complete,'' and that he or she is ''aware of the penalties associated with violations of the Act, the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.'' *Id.* Section 430.62(a)(3)(iii)–(iv).

In connection with these filings, the Department's rules also require manufacturers to ''establish, maintain, and retain the records of the underlying test data for all certification testing.'' 10 CFR 430.62(d). Further, the records must be ''organized and indexed in a fashion which makes them readily accessible for review by DOE'' and ''shall include the supporting test data associated with tests performed on any test units to satisfy'' the certification and compliance requirements. *Id.*

Under EPCA, the Secretary may take enforcement action for violations of these certification requirements. As relevant here, EPCA makes it unlawful ''for any manufacturer to fail to permit access to, or copying of, records required to be supplied under this part, or fail to make reports or provide other information required to be supplied under [the Act].'' 42 U.S.C. 6302(a)(3). Implementing that provision, the Department's rules prohibit both the ''[f]ailure to permit access to, or copying of records required to be supplied under the Act and this rule'' and the ''failure to make reports or provide information required to be supplied under this Act and this rule.'' 10 CFR 430.61(a)(1). The Secretary may bring an injunctive action for the failure to properly certify covered products, 42 U.S.C. 6304, or may assess penalties for knowing violations of the certification reporting requirements, *id.* Section 6303(a). DOE's rules establish that, for consumer products:

> If a basic model is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.

10 CFR 430.71(b).

To eliminate uncertainty among manufacturers subject to these requirements, the Department hereby provides its interpretation of the scope of these rules. Specifically, the Department clarifies that a failure to certify covered products in accordance with the DOE's rules is an independent violation of EPCA and DOE's implementing regulations that may be subject to enforcement action. The Department reads 42 U.S.C. 6302(a)(3) and 10 CFR 430.61(a)(1) to require not only that manufacturers make reports and provide the information required by the certification regulations, but also that such submissions be both accurate and provided in accordance with those regulations. A failure to do so is a prohibited act under EPCA and DOE rules and subject to enforcement action. A contrary reading would substantially undermine the purpose of the certification and compliance requirements in the first place—to ensure that all covered products distributed in commerce comply with applicable energy-efficiency standards and have been tested as prescribed by the rules.

Under a plain reading of section 430.71(b), moreover, improperly certifying a covered product is itself a violation subject to enforcement action. The Department need not test an improperly certified product or otherwise determine its noncompliance with the applicable standard before seeking an injunction or assessing civil penalties. Separate from these certification requirements, the Department's rules also establish both the process for testing covered consumer products' compliance, 10 CFR 430.70, and the Department's authority to take enforcement actions in the event that DOE determines that a covered product does not comply with an applicable standard, *id.* Sections 430.71(a), 430.73. But those regulations do not restrict the Department from seeking injunctive relief or civil penalties for prohibited acts that are not dependent upon testing or a determination of noncompliance. *See, e.g., id.* Section 430.61(b) (allowing DOE to seek penalties for acts other than standards violations). Thus, the Department has the authority to initiate enforcement action for improper certification, separate from any determination of whether a covered product does or does not comply with the applicable energy-conservation standard.

EPCA's enforcement provisions likewise apply to covered commercial and industrial equipment. *See* 42 U.S.C. 6316 (providing that the enforcement

provisions for consumer products apply ''to the same extent and in the same manner'' for covered commercial and industrial equipment). As with consumer products, the Department has promulgated certification and compliance regulations for certain equipment, including motors and transformers. *See* 10 CFR part 431, subparts B, K, U, and V; *See, e.g.*, 10 CFR 431.385(b) (''If a basic model [of electric motor] is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.'')[1] The Department interprets its certification regulations governing covered commercial and industrial equipment in the same way as its regulations governing consumer products. For the reasons set forth above, the failure to certify a covered piece of commercial or industrial equipment in accordance with DOE rules may be subject to enforcement action, including the imposition of civil penalties.

Today, the Department also announces its intent to exercise its enforcement authority more rigorously in the future. In order for DOE's efficiency standards to effectively promote the development and distribution of energy efficient products that will save energy and reduce costs for millions of Americans, DOE must ensure that these standards are aggressively and consistently enforced. Proper certification is a necessary prerequisite to achieving these goals. This fall, therefore, DOE will begin this effort by initiating a compliance review of certification reports for consumer products and commercial equipment covered by DOE regulations. Pursuant to its existing enforcement authority, the Department intends to randomly select previously filed certification reports for review, to request certification records from manufacturers as needed, and to hold manufacturers accountable for any failure to certify covered products in accordance with DOE rules.

This guidance represents the Department's interpretation of existing regulations and announcement of the agency's general policy with respect to exercising its existing enforcement authority. It is not intended to create or remove any rights or duties, nor is it intended to affect any other aspect of EPCA or DOE regulations.

Authority: 42 U.S.C. 6299–6305; 6316.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice.

Issued in Washington, DC, on October 7, 2009.

Scott Harris,

General Counsel.

[FR Doc. E9–24666 Filed 10–13–09; 8:45 am]

BILLING CODE 6450–01–P

[1] Additionally, the Department is developing a final rule to adopt similar certification and compliance regulations for the remaining types of covered commercial and industrial equipment covered by statute. *See* 64 FR 69598 (December 13, 1999); 71 FR 25104 (April 28, 2006); 71 FR 42193 (July 25, 2006); 71 FR 71341–42 (December 8, 2006).

DEPARTMENT OF ENERGY

Guidance on Ex Parte Communications

AGENCY: Office of the General Counsel, Department of Energy (DOE).

ACTION: Notice of guidance on ex parte communications.

SUMMARY: The Department of Energy sets forth guidance on ex parte communications during informal rulemaking proceedings. The guidance is intended to encourage the public to provide DOE with all information necessary to develop rules that advance the public interest, while ensuring that rulemaking proceedings are not subject to improper influence from off-the-record communications. As President Obama stated in a January 21, 2009 memorandum, ''Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information.'' (74 FR 4685) DOE intends this guidance to provide both increased public participation in the rulemaking process and additional transparency during that process.

DATES: This guidance on ex parte communications is effective on October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Assistant General Counsel for Legislation and Regulatory Law, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, e-mail: *expartecommunications@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: The following guidance, provided in the form of answers to ''Frequently Asked Questions'', is intended to encourage stakeholders to meet with, and provide information and advice to, DOE officials during the rulemaking process by setting forth simple and clear procedures governing meetings, or telephone or electronic contact, with DOE officials to discuss a pending rulemaking action. Informal stakeholder communications other than written comments on the proposed rule or presentations at a public hearing that occur during the public comment period are generally lawful under section 501 of the Department of Energy Organization Act and the Administrative Procedure Act (5 U.S.C. 553). Informal communications, however, must be disclosed properly to ensure fairness for all stakeholders, the integrity of the rulemaking process, and the adequacy of the record in support of the final rule.

Frequently Asked Questions on Ex Parte Communications With DOE Employees

(1) *What is the purpose of DOE's Ex Parte Guidance?*

The ex parte guidance governs the manner in which interested parties may communicate with DOE during its informal rulemaking proceedings, termed ''permit-but disclose'' proceedings for purposes of this guidance. It is designed to encourage additional public participation in the rulemaking process, while ensuring that all such participation is open and transparent.

(2) *What types of proceedings are considered ''permit-but-disclose'' proceedings?*

Permit-but-disclose proceedings are comprised of: (i) Proceedings in response to petitions for rulemaking; (ii) informal rulemaking proceedings upon release of an advanced notice of proposed rulemaking, a notice of public meeting or, if neither of those documents are utilized, the notice of proposed rulemaking; (iii) proceedings involving an interim final rule.

(3) *Does the ex parte guidance apply to me?*

The ex parte guidance applies to anyone who engages in the kind of communications covered by the guidance.

(4) *What types of communications are covered by the ex parte guidance?*

The guidance governs ex parte presentations to DOE decision makers during its ''permit-but-disclose'' proceedings.

(5) *What is an ex parte presentation?*

An ex parte presentation is a communication directed to the merits or outcome of a proceeding that, if written (including e-mail), is not provided to all interested parties or, if oral, is made without advance notice to all interested parties and without opportunity for such parties to be present.

(6) *Who are DOE decision making personnel?*

Decision-making personnel are those DOE employees who are or may reasonably be expected to be involved in formulating a rulemaking.

(7) *What are the disclosure requirements applicable in ''permit-but-disclose'' proceedings?*

For the proceedings listed above, in-person meetings or telephone calls between DOE and an interested party or parties will require a memorandum memorializing the meeting to be placed in the public docket. The memorandum should include a summary of the issues discussed as well as a list of attendees and date of the meeting. The interested party or parties must complete the memorandum and submit it to DOE for inclusion in the public docket within one week of the meeting. The DOE reserves the right to supplement these public filings with additional information as necessary or to demand that the party making the filing do so (*i.e.*, if DOE believes that important information was omitted or characterized incorrectly).

If outside parties bring documents to give DOE employees, the employees should inform the outside parties that those documents will be put in the record. If the outside parties do not want DOE employees to put their documents in the record, they should not, except as specified in this response, provide the documents to or leave the documents with DOE. Interested parties may submit documents under a request for confidential treatment; however, a public version of these documents must be provided for the record for DOE to rely on the information as part of a rulemaking. In addition, DOE will make its own determination on whether documents should be released in response to a request for the documents under the Freedom of Information Act.

(8) *What communications are not covered by the ex parte guidance?*

Phone calls that DOE employees or contractors initiate to gather information as part of the rulemaking process need not be memorialized. If new data is obtained as a result of such contacts after issuance of the notice of proposed rulemaking, it may be necessary to seek public comment on the data for DOE to rely on the data in the final rule.

(9) *What is DOE's role in ex parte communications?*

To safeguard the integrity of DOE's rulemaking process, the primary goal of DOE employees in ex parte communications is to listen and ask clarifying questions. The DOE will not engage in negotiation or reveal substantive aspects of the forthcoming rulemakings. The DOE is the receiver of information. If meetings are held with an outside party while the rulemaking is pending, every reasonable effort will be made to meet with any other outside party who requests a similar opportunity.

(10) *Where should memoranda memorializing ex parte communications be sent?*

Memorandums memorializing ex parte communications should be provided to the e-mail address listed above, *expartecommunications@hq.doe.gov*.

(11) *How does DOE give notice of ex parte communications?*

DOE is currently developing a link on the homepage of the Office of the General Counsel where ex parte communications will be posted. Further information on the Web site will be provided in a future **Federal Register** notice.

Issued in Washington, DC, on October 7, 2009.

Scott Blake Harris,

General Counsel.

[FR Doc. E9–24717 Filed 10–13–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10–729–000]

Commission Information Collection Activities (FERC–729); Comment Request; Extension

October 6, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due December 15, 2009.

ADDRESSES: Comments may be filed either electronically or in paper format, and should refer to Docket No. IC10–729–000. Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.*

Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. First time users will have to establish a user name and password (*http://www.ferc.gov/docs-filing/eregistration.asp*) before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments through eFiling.

Commenters filing electronically should not make a paper filing. Commenters that are not able to file electronically must send an original and two (2) copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription (at *http://www.ferc.gov/docs-filing/esubscription.asp*). In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's Web site using the ''eLibrary'' link and searching on Docket Number IC10–729. For user assistance, contact FERC Online Support (e-mail at *ferconlinesupport@ferc.gov,* or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659).

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: FERC–729 (''Electric Transmission Facilities,'' OMB Control No. 1902–0238) covers the reporting requirements [1] of 18 CFR part 50, and, as relates to transmission facilities, 18 CFR 380.3(c)(3), 380.5(b)(14), 380.6(a)(5), 380.15(d), and 380.16.

The purpose of these regulations is to implement the Commission's mandates under EPAct 2005 section 1221 which authorizes the Commission to issue permits under FPA section 216(b) for electric transmission facilities and the Commission's delegated responsibility to coordinate all other Federal authorizations under FPA section 216(h). The related FERC regulations

[1] These requirements were promulgated by Order 689, issued November 16, 2006, in Docket No. RM06–12, in accordance with section 1221 of the Energy Policy Act of 2005: (a) To establish filing requirements and procedures for entities seeking to construct or to modify electric transmission facilities, and (b) to coordinate the processing of Federal authorizations and the environmental review of electric transmission facilities in designated national interest electric transmission corridors. (Order 689 is available in FERC's eLibrary at *http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=4455911.*)

seek to develop a timely review process for siting of proposed electric transmission facilities. The regulations provide for, among other things, an extensive pre-application process that will facilitate maximum participation from all interested entities and individuals to provide them with a reasonable opportunity to present their views and recommendations, with respect to the need for and impact of the facilities, early in the planning stages of the proposed facilities as required under FPA section 216(d).

Additionally, under FPA section 216(b)(1)(C), FERC has the authority to issue a permit to construct electric transmission facilities if a state has withheld approval for more than a year or has conditioned its approval in such a manner that it will not significantly reduce transmission congestion or is not economically feasible. FERC envisions that, under certain circumstances, the Commission's review of the proposed facilities may take place after one year of the state's review. Accordingly, under section 50.6(e)(3) the Commission will not accept applications until one year after the state's review and then from applicants who can demonstrate that a state may withhold or condition approval of proposed facilities to such an extent that the facilities will not be constructed.[2] In cases where FERC's jurisdiction rests on FPA section 216(b)(1)(C),[3] the pre-filing process should not commence until one year after the relevant State applications have been filed. This will give the States one full year to process an application without any intervening Federal proceedings, including both the pre-filing and application processes. Once that year is complete, an applicant may seek to commence FERC's pre-filing process. Thereafter, once the pre-filing process is complete, the applicant may submit its application for a construction permit.

The environmental report includes information on areas such as: aquatic life, wildlife, and vegetation and the expected impacts on them; cultural resources; socioeconomics; geological resources; soils, land use, recreation, and aesthetics; alternatives; buildings; and reliability and safety.

Without the information collection, FERC would not be able to fulfill its statutory mandates to review requests for permits for transmission facilities, and to coordinate related Federal authorizations.

Action: FERC is requesting a three-year extension of the current FERC–729 reporting requirements, with no change.

Burden Statement: The estimated, annual public reporting burden for FERC–729 follows.

FERC information collection	Annual No. of respondents (1)	Average No. of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FERC–729	10	1	9,600	96,000

The total estimated annual cost burden[4] to respondents is $7,680,000 (96,000 hours × $80 per hour[4]).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24575 Filed 10–13–09; 8:45 am]

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[2] However, the Commission will not issue a permit authorizing construction of the proposed facilities until, among other things, it finds that the state has, in fact, withheld approval for more than a year or had so conditioned its approval.

[3] In all other instances (*i.e.*, where the state does not have jurisdiction to act or otherwise to consider interstate benefits, or the applicant does not qualify to apply for a permit with the State because it does not serve end use customers in the State), the pre-filing process may be commenced at any time.

[4] Based on the Bureau of Labor Statistics ''Occupational Outlook Handbook (OOH), 2008–09 Edition,'' Occupational Employment Statistics (Occupational Employment and Wages, for May 2008, for Lawyers (23–1011), posted at *http://www.bls.gov/oes/current/oes231011.htm*), FERC is using $80 per hour. Other professions (such as engineers and administrators) are involved in preparing the filing. We are using $80 per hour as a high-end figure to include all of the professions involved with preparation of the filing.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER09–408–000; ER09–408–001]

Notice of Amended Filing; PacifiCorp

October 6, 2009.

Take notice that on October 5, 2009, PacifiCorp submitted a filing consisting of 12 unexecuted transmission service agreements between PacifiCorp and CEP Funding, LLC. This filing modifies PacifiCorp's December 12, 2008 filing in this proceeding.

Any person desiring to intervene or to protest either of these filings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. 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 26, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24578 Filed 10–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 6, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–938–002.
Applicants: Central Maine Power Company.
Description: Central Maine Power Company's Compliance Filing.
Filed Date: 10/06/2009.
Accession Number: 20091006–5082.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 27, 2009.

Docket Numbers: ER09–1540–001.
Applicants: Pacific Gas and Electric Company.
Description: Compliance Refund Report Twenty-Sixth Quarterly Filing of Facilities Agreements between PG&E and CCSF.
Filed Date: 10/05/2009.
Accession Number: 20091005–5075.
Comment Date: 5 p.m. Eastern Time on Monday, October 26, 2009.

Docket Numbers: ER09–1715–002.
Applicants: Employers' Energy Alliance of Pennsylvan.
Description: Employers' Energy Alliance of Pennsylvania, Inc submits a Notice of Succession.
Filed Date: 10/05/2009.
Accession Number: 20091005–0088.
Comment Date: 5 p.m. Eastern Time on Monday, October 26, 2009.

Docket Numbers: ER09–1747–001.
Applicants: Fox Islands Electric Cooperative Inc.
Description: Fox Islands Electric Cooperative, Inc submits application for authorization to engage in sales at market based rates and associated requests for waivers etc.
Filed Date: 10/05/2009.
Accession Number: 20091006–0001.
Comment Date: 5 p.m. Eastern Time on Monday, October 26, 2009.

Docket Numbers: ER10–27–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits Original Sheet 3816 *et al* to FERC Electric Tariff, Fourth Revised Volume 1 to be effective 1/1/10.
Filed Date: 10/02/2009.
Accession Number: 20091005–0080.
Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Docket Numbers: ER10–28–000.
Applicants: California Independent System Operator Corporation.
Description: The California Independent System Operator submits Third Revised Sheet 590 *et al* to FERC Electric Tariff, Fourth Replacement Volume 1 to be effective 12/2/09.
Filed Date: 10/02/2009.
Accession Number: 20091005–0079.
Comment Date: 5 p.m. Eastern Time on Friday, October 23, 2009.

Docket Numbers: ER10–29–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits revised pages to its Open Access Transmission Tariff or to implement rate changes for Lincoln Electric System and Omaha Public Power District etc.
Filed Date: 10/05/2009.
Accession Number: 20091005–0089.
Comment Date: 5 p.m. Eastern Time on Monday, October 26, 2009.

Docket Numbers: ER10–30–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits nine executed Wholesale Market Participation Agreements with Allegheny Electric Cooperative, Inc *et al.*
Filed Date: 10/05/2009.
Accession Number: 20091005–0090.
Comment Date: 5 p.m. Eastern Time on Monday, October 26, 2009.

Docket Numbers: ER10–31–000.
Applicants: Black Hills Power, Inc.
Description: Black Hills Power, Inc submits Agreement for Interconnection Service between Black Hills Power and Black Hills Wyoming LLC.
Filed Date: 10/05/2009.
Accession Number: 20091006–0015.
Comment Date: 5 p.m. Eastern Time on Monday, October 26, 2009.

Docket Numbers: ER10–32–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits petition for limited waiver of tariff provisions and request for expedited Commission Order.
Filed Date: 10/05/2009.
Accession Number: 20091006–0016.
Comment Date: 5 p.m. Eastern Time on Monday, October 26, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be

listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24572 Filed 10–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

October 6, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP02–361–078.
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: Gulfstream Natural Gas System, LLC submits Fifth Revised Sheet No. 8.01p *et al.,* to its FERC Gas Tariff, Original Volume No. 1.
Filed Date: 09/30/2009.
Accession Number: 20091001–0074.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 13, 2009.

Docket Numbers: RP02–534–016.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits Second Revised Sheet 9 to its FERC Gas Tariff, Original Volume 1.
Filed Date: 09/30/2009.
Accession Number: 20090930–0085.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 13, 2009.

Docket Numbers: RP99–480–025.
Applicants: Texas Eastern Transmission LP.
Description: Texas Eastern Transmission, LP submits Original Sheet No. 121B *et al.,* to its FERC Gas Tariff, Seventh Revised Volume No. 1.
Filed Date: 09/30/2009.
Accession Number: 20091001–0073.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 13, 2009.

Docket Numbers: RP09–880–001.
Applicants: Northern Border Pipeline Company.
Description: Northern Border Pipeline Company submits tariff sheet in compliance with Commission's Letter Order dated 9/9/09.
Filed Date: 09/16/2009.
Accession Number: 20090916–0089.
Comment Date: 5 p.m. Eastern Time on Friday, October 9, 2009.

Docket Numbers: RP09–1043–002.
Applicants: Equitrans, L.P.
Description: Equitrans submits response to data request issued 9/25/09.
Filed Date: 10/01/2009.
Accession Number: 20091002–0178.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 13, 2009.

Docket Numbers: RP09–1055–001.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transcontinental Gas Pipe Line Company, LLC submits Sub. First Revised Sheet 466 to its FERC Gas Tariff, Fourth Revised Volume 1, to be effective 10/22/09.
Filed Date: 10/02/2009.
Accession Number: 20091002–0209.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern Time on the specified comment dates. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24581 Filed 10–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 5, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–17–000.
Applicants: Millennium Pipeline Company, L.L.C.
Description: Millennium Pipeline Company, LLC submits Second Revised Sheet 1 *et al.* of its FERC Gas Tariff, Original Volume 1, to be effective 11/1/09.
Filed Date: 10/01/2009.
Accession Number: 20091002–0145.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 13, 2009.

Docket Numbers: RP10–18–000.
Applicants: Hardy Storage Company, LLC.
Description: Hardy Storage Company, LLC submits Fourth Revised Sheet 10 in its FERC Gas Tariff, Original Volume 1, to be effective 11/1/09.
Filed Date: 10/02/2009.
Accession Number: 20091002–0143.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: RP10–19–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits Eighth Revised Sheet 28 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to be effective 11/1/09.
Filed Date: 10/01/2009.
Accession Number: 20091002–0142.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 13, 2009.

Docket Numbers: RP10–20–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Maritimes & Northeast Pipeline LLC submits First Revised Twelfth Sheet 11 to FERC Gas Tariff, First Revised Volume 1, to be effective 11/1/09.
Filed Date: 10/01/2009.
Accession Number: 20091002–0144.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 13, 2009.

Docket Numbers: RP10–21–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC submits revised tariff sheets to its FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective 11/1/09.

Filed Date: 10/01/2009.

Accession Number: 20091002–0161.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 13, 2009.

Docket Numbers: RP10–22–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Eleventh Revised Sheet No. 210 to FERC Gas Tariff, Second Revised Volume No. 1A, to be effective 11/1/09.

Filed Date: 10/01/2009.

Accession Number: 20091002–0177.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 13, 2009.

Docket Numbers: RP10–23–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits Third Revised Sheet No. 1301 for FERC Gas Tariff, Third Revised Volume No. 1, to be effective 11/1/09.

Filed Date: 10/02/2009.

Accession Number: 20091002–0175.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: RP10–24–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: Transwestern Pipeline Company, LLC submits Second Revised Sheet 38 *et al.* of its FERC Gas Tariff, Third Revised Volume 1, to be effective 11/2/09.

Filed Date: 10/02/2009.

Accession Number: 20091002–0174.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: RP10–25–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits Tenth Revised Sheet No. 36 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 11/1/09.

Filed Date: 10/02/2009.

Accession Number: 20091002–0173.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: RP10–26–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits Sixth Revised Sheet No. 12 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1A, to be effective 11/1/09.

Filed Date: 10/02/2009.

Accession Number: 20091002–0176.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: RP10–27–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company, LLC submits Fifth Revised Sheet 21 *et al.* to its FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective 10/1/09.

Filed Date: 10/02/2009.

Accession Number: 20091002–0210.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: CP09–470–000.

Applicants: Corning Natural Gas Corporation.

Description: Corning Natural Gas Corporation submits application for a blanket certificate of public convenience and necessity.

Filed Date: 09/25/2009.

Accession Number: 20090930–0068.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 13, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24583 Filed 10–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

October 6, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–28–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits negotiated rate agreement to a Capacity Release Agreement executed by Gulf South and Sequent Energy Management, LP.

Filed Date: 10/02/2009.

Accession Number: 20091005–0072.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: RP10–29–000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits amended negotiated rate agreement between CEGT and Arkansas Electric Cooperative Corporation.

Filed Date: 10/02/2009.

Accession Number: 20091005–0073.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Docket Numbers: RP10–30–000.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Seventh Revised Sheet No 503 *et al.* to FERC Gas Tariff, Seventh Revised Volume No 1.

Filed Date: 10/02/2009.

Accession Number: 20091005–0074.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 14, 2009.

Any person desiring to intervene or to protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24582 Filed 10–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ10–1–000]

Western Area Power Administration; Notice of Filing

October 6, 2009.

Take notice that on October 1, 2009, Western Area Power Administration filed proposed revisions to the terms of it's non-jurisdictional Open Access Transmission Tariff, pursuant to the Federal Energy Regulatory Commission's Order Nos. 890, 890–A, 890–B, and 890–C,[1] and sections 35.28(e) and (f)(iv)(2) of the Commission's Regulations.[2]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 2, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24576 Filed 10–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Independent Coordinator of Transmission (ICT) Stakeholder Policy Committee Meeting

October 6, 2009.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

ICT Stakeholder Policy Committee Meeting

October 21, 2009 (8 a.m.–3 p.m.), Sheraton North Houston, 15700 John F. Kennedy Blvd., Houston, TX 77032, 281–442–5100.

The discussions may address matters at issue in the following proceedings:

Docket No. OA08–59	Entergy Services, Inc.
Docket No. OA08–61	Entergy Services, Inc.
Docket No. OA08–149	Entergy Services, Inc.
Docket No. OA09–27	Entergy Services, Inc.
Docket No. EL00–66	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL01–88	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL05–15	Arkansas Electric Cooperative Corp. v. Entergy Arkansas, Inc.
Docket No. EL07–52	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–51	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–59	ConocoPhillips v. Entergy Services, Inc.
Docket No. EL09–43	Arkansas Public Service Commission v. Entergy Services, Inc.

[1] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890–A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890–B, 73 FR 39,092 (Jul. 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890–C, 74 FR 12,540 (March 25, 2009), 126 FERC ¶ 61,228 (2009) (collectively, Order No. 890).

[2] 18 CFR 35.28(e) and (f) (2008).

Docket No. EL09–61	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–78	South Mississippi Electric Power Association v. Entergy Services, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER08–767	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER08–1057	Entergy Services, Inc.
Docket No. ER09–636	Entergy Services, Inc.
Docket No. ER09–659	Entergy Services, Inc.
Docket No. ER09–833	Entergy Services, Inc.
Docket No. ER09–877	Entergy Services, Inc.
Docket No. ER09–882	Entergy Services, Inc.
Docket No. ER09–1180	Entergy Services, Inc.
Docket No. ER09–1214	Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Amy Demetry, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6090 or *amy.demetry@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24577 Filed 10–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Entergy Regional State Committee Meeting

October 6, 2009.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

Entergy Regional State Committee Meeting

October 12, 2009 (12 p.m.–5 p.m.), Astor Crown Plaza Hotel, 739 Canal St., New Orleans, LA 70130, 504–962–0500.

The discussions may address matters at issue in the following proceedings:

Docket No. OA08–59	Entergy Services, Inc.
Docket No. OA08–61	Entergy Services, Inc.
Docket No. OA08–149	Entergy Services, Inc.
Docket No. OA09–27	Entergy Services, Inc.
Docket No. EL00–66	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL01–88	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL05–15	Arkansas Electric Cooperative Corp. v. Entergy Arkansas, Inc.
Docket No. EL07–52	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–51	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–59	ConocoPhillips v. Entergy Services, Inc.
Docket No. EL09–43	Arkansas Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–61	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–78	South Mississippi Electric Power Association v. Entergy Services, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER08–767	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER08–1057	Entergy Services, Inc.
Docket No. ER09–636	Entergy Services, Inc.
Docket No. ER09–659	Entergy Services, Inc.
Docket No. ER09–833	Entergy Services, Inc.
Docket No. ER09–877	Entergy Services, Inc.
Docket No. ER09–882	Entergy Services, Inc.
Docket No. ER09–1180	Entergy Services, Inc.
Docket No. ER09–1214	Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24574 Filed 10–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

October 8, 2009.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 15, 2009, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.*

Note —Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message

listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

952nd—Meeting

REGULAR MEETING [OCTOBER 15, 2009, 10 A.M.]

Item No	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters—FERC Strategic Plan.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Winter Energy Market Assessment.
	Electric	
E–1	OA08–52–004	New York Independent System Operator, Inc.
	OA08–52–006	New York Transmission Owners.
E–2	OA08–52–005	New York Independent System Operator, Inc.
E–3	RR09–9–000	North American Electric Reliability Corporation.
	RR08–6–004.	
	RR07–14–004.	
E–4	NP09–26–000	North American Electric Reliability Corporation.
E–5	Omitted.	
E–6	RM08–12–001	Western Electricity Coordinating Council Regional Reliability Standard Regarding Automatic Time Error Correction.
E–7	RM09–23–000	Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility.
E–8	RM09–24–000	Interest Rates for Refunds.
E–9	ER06–456–006	PJM Interconnection, L.L.C.
	ER06–954–002.	
	ER06–1271–001.	
	ER07–424–000.	
	EL07–57–000.	
E–10	ER08–15–002	Midwest ISO Transmission Owners.
E–11	Omitted.	
E–12	Omitted.	
E–13	ER02–2560–009	Louisville Gas & Electric Company
		Kentucky Utilities Company.
	Miscellaneous	
M–1	RM07–1–001	Standards of Conduct for Transmission Providers.
	Gas	
G–1	RP99–480–024	Texas Eastern Transmission, LP.
	RP09–143–000.	
G–2	RP09–70–000	Texas Eastern Transmission LP.
	RP09–71–000	Saltville Gas Storage Company L.L.C.
	RP09–76–000	East Tennessee Natural Gas, L.L.C.
	RP09–77–000	Egan Hub Storage, L.L.C.
	RP09–222–000	ANR Pipeline Co.
	RP09–227–000	Northwest Pipeline GP.
	RP09–240–000	Natural Gas Pipeline Co. of America.
	RP09–245–000	Transcontinental Gas Pipeline Co., L.L.C.
	RP09–256–000	Panhandle Eastern Pipeline Co., LP.
	RP09–258–000	Quest Pipelines (KPC).
	RP09–260–000	Tres Palacios Gas Storage, LLC.
	RP09–261–000	CenterPoint Energy Gas Transmission Co.
	RP09–262–000	CenterPoint Energy-Mississippi River Transmission Co.
	RP09–265–000	Kinder Morgan Interstate Gas Transmission LLC.
	RP09–266–000	Rockies Express Pipeline LLC.
	RP09–269–000	National Fuel Supply Corp.
	RP09–270–000	Questar Pipeline Co.
	RP09–275–000	Columbia Gulf Transmission Co.
	RP09–277–000	Dominion Transmission, Inc.
	RP09–282–000	Tennessee Gas Pipeline Co.
	RP09–284–000	El Paso Natural Gas Co.
	RP09–288–000	Southern Natural Gas Co.
	RP09–294–000	Columbia Gas Transmission, LLC.
	RP09–295–000	Colorado Interstate Gas Co.
	RP09–299–000	Wyoming Interstate Co., Ltd.
	RP09–300–000	Cheyenne Plains Gas Pipeline Co., LLC.

REGULAR MEETING [OCTOBER 15, 2009, 10 A.M.]—Continued

Item No	Docket No.	Company
G–3	RP09–301–000 RP09–304–000 RP09–332–000 RP09–792–000 RP09–792–001.	Gulf South Pipeline Co., LP. Texas Gas Transmission, LLC. Enbridge Pipelines (Midla), LLC. Columbia Gas Transmission, LLC.
Hydro		
H–1	P–2130–038	Pacific Gas and Electric Company.
H–2	Omitted.	
H–3	P–459–282	AmerenUE.
H–4	P–2197–096	Alcoa Power Generating Inc.
Certificates		
C–1	CP09–65–000	Columbia Gas Transmission, LLC. Jefferson Gas, LLC.
C–2	CP09–454–000	BCR Holdings, Inc.
C–3	CP08–431–001	Columbia Gas Transmission LLC

Kimberly D. Bose,
Secretary.

A free Web cast of this event is available through http://*www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to http://*www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Web cast. The Capitol Connection provides technical support for the free Web casts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit http://*www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E9–24780 Filed 10–9–09; 4:15 pm]
BILLING CODE 0717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–337; FRL–8793–1]

Pesticides; Availability of Pesticide Registration Notice Announcing Establishment of the Antimicrobial Exposure Assessment Task Force II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Agency is announcing the availability of a Pesticide Registration Notice (PR Notice) regarding the formation of the Antimicrobial Exposure Assessment Task Force II (AEATF II). PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular PR Notice provides information concerning the formation of an industry-wide task force to jointly develop mixer, loader, applicator and post-application exposure data for antimicrobial pesticides used in commercial, institutional, occupational, and consumer settings.

FOR FURTHER INFORMATION CONTACT: Timothy Leighton, Antimicrobials Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-7435; fax number: (703) 308-6467; e-mail: *leighton.timothy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to manufacturers, producers, formulators and registrants of antimicrobial 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 questions regarding the information in this notice, 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–2009–0337. 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 Guidance Dose this PR Notice Provide

The Agency is announcing the issuance of a Pesticide Registration Notice [PR–209–0337] that announces the formation of the Antimicrobial Exposure Assessment Task Force II (AEATF II), an industry-wide task force to jointly develop mixer, loader, applicator, and post-application exposure data for antimicrobial pesticides used in commercial, institutional, occupational, and consumer settings. This Notice discusses why these data are being developed and how registrants may participate in the AEATF II's

development of these data. Any applicant or registrant may choose among other ways of supplying such data as it becomes required, including generation and submission of its own data. The PR Notice is not intended to define or restrict the terms of or subsequent amendments to the joint data development agreement and its operation, nor is it intended to compel any registrant or applicant to participate or rely upon the Task Force's data generation and submission.

III. Do PR Notices Contain Binding Requirements

The PR Notice discussed in this notice is intended to provide information to EPA personnel and decision makers and to pesticide registrants. This is not a regulatory action and does not require regulatory authority.

List of Subjects

Environmental protection, Administrative practice and procedure, Antimicrobial, Pesticides and pests.

Dated: September 30, 2009.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E9–24442 Filed 10–13–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8968–6]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board (SAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Chartered SAB to: Discuss EPA's updated long range strategic research directions, conduct one or more quality reviews of draft SAB panel reports, and plan for future SAB activities.

DATES: The public meeting will be held on Monday, November 9, 2009 from 8 a.m. to 5:30 p.m. (Eastern Time) and Tuesday, November 10, 2009 from 8 a.m. to 2:30 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 201 Harrison Oaks Blvd., Cary, NC 27513; telephone (919) 677–1840.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the meeting may contact Mr. Thomas Miller, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9982; fax (202) 233–0643; or e-mail at *miller.tom@epa.gov.* General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the EPA Science Advisory Board will hold a public meeting to evaluate, and discuss with EPA representatives, the updated EPA strategic research directions; to conduct a quality review of the draft SAB Drinking Water Committee (DWC) advisory on EPA's Total Coliform Rule, and to discuss its Fiscal Year 2010 plans. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: (a) Strategic Research Vision: The purpose of this meeting will be to allow the Chartered SAB to discuss the strategic research directions of EPA's Office of Research and Development (ORD) with Agency representatives. These discussions will allow consideration of the overall strategic directions of the research program in relation to EPA's overall mission, the evaluation of smaller components of the research and development program as they fit into the total program, and how ORD's Integrated Multidisciplinary Research is intended to transform EPA research in support of the Agency's mission.

(b) SAB Quality Review of the Draft SAB Advisory on EPA's Total Coliform Rule: EPA's Office of Water is planning to propose a revised Total Coliform Rule and requested that the SAB review a draft analysis supporting the rule. The SAB Drinking Water Committee's draft advisory focused on (1) Data sources used to estimate baseline total coliform and *E. coli* occurrence, public water system profile, and sensitive subpopulations in the United States, (2) the occurrence analysis used to inform benefits calculations, (3) benefits analysis—the qualitative analysis used to estimate the reduction in risk due to implementation of the rule requirements and (4) analysis of the engineering costs and costs to States resulting from implementation of the revisions. The draft advisory from this effort will undergo an SAB Quality Review. The purpose of a Quality Review is to ensure that the original charge questions to the committee were answered, that the report is clear and logical, and that the Drinking Water Committee's conclusions and recommendations are supported in the draft report.

(c) SAB Planning: Members will be briefed upon and discuss the proposed SAB operating plan for Fiscal Year 2010. Members' feedback on the plan will be used in developing the SAB's Fiscal Year 2010 operating plan.

Availability of Meeting Materials: A meeting agenda, charge questions and other materials for the meeting will be placed on the SAB Web site at *http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/BOARD.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the November 9–10, 2009 meeting, interested parties should notify Mr. Thomas Miller, DFO, by e-mail no later than November 2, 2009. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements:* Written statements for the November 9–10, 2009 meeting should be received in the SAB Staff Office by November 2, 2009, so that the information may be made available to the SAB for its consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide electronic versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Miller at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 6, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–24683 Filed 10–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8968–5]

Proposed CERCLA Administrative Cashout Settlement; Le Roi Smelter Site, Northport, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs incurred at the Le Roi Smelter Site in Northport, Washington, with settling parties: The Cecil A. Frazier Exemption Equivalent Trust and the Estate of Marie M. Frazier. The settlement requires the settling parties to pay One Hundred Thousand Dollars ($100,000) to the Hazardous Substance Superfund, to implement certain institutional controls, and to execute an option to sell the Site to the town of Northport. The settlement includes a covenant not to sue or take administrative action against the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a) for recovery of past response costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Region 10 offices, located at 1200 Sixth Avenue, Seattle, Washington 98101.

DATES: Comments must be submitted on or before November 13, 2009.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Region 10 offices, located at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Carol Kennedy, Regional Hearing Clerk, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; (206) 553–0242. Comments should reference the Le Roi Smelter Site in Northport, Washington, EPA Docket No. CERCLA–10–2009–0095 and should be addressed to Alexander Fidis, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Alexander Fidis, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; (206) 553–4710.

SUPPLEMENTARY INFORMATION: The Le Roi Smelter Site is located in Northport, Stevens County, Washington (Site). Site operations conducted between 1898 and 1921 involved the smelting and processing or ore. Between 1953 and 1998, the Site was operated as a lumber mill. Site smelting operations produced slag that contained hazardous substances including the heavy metals lead and arsenic. Slag was disposed of at the Site and discharged to the Columbia River through a series of flumes. The smelter smokestack emitted ore constituents, including lead and arsenic, which were dispersed and deposited at the Site and on nearby properties. In 2004, the Agency selected and implemented a removal action to address public health and environmental threats from the presence of lead and arsenic contaminated soil at concentrations above applicable cleanup standards. The removal action involved the demolition of historic smelter structures and the excavation of contaminated soil from the Site and twenty-nine residential and common use properties. The smelter structure and excavated soil was consolidated at the Site beneath a protective cap.

The Site is currently owned by the Cecil A. Frazier exemption equivalent trust. The Agency is proposing to enter into an administrative settlement with the Cecil A. Frazier Exemption Equivalent Trust and the Estate of Marie M. Frazier. The settlement would require the settling parties to pay $100,000 to the Hazardous Substance Superfund and to implement institutional controls developed to ensure the removal action remains protective of human health and the environment. The institutional controls would be implemented by recording an environmental covenant pursuant to Washington's Uniform Environmental Covenant Act that would impose certain restrictions on the use of the property and obligations to maintain components of the removal action such as the protective cap. The settlement agreement would also require the settling parties to provide the town of Northport with an option to purchase the Site for the purpose of placing the Site back in productive use that is consistent with the imposed institutional controls. The proposed settlement will provide the settling parties with a release of liability subject to certain rights reserved by the Agency.

Dated: October 2, 2009.

Lori Cohen,

Acting Director, Office of Environmental Cleanup.

[FR Doc. E9–24707 Filed 10–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0209; FRL–8794–8]

Registration Review; Dichlorvos Docket Reopened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is opening an additional 30–day public comment period for the registration review of dichlorvos (DDVP). EPA established a registration review docket for DDVP (EPA–HQ–OPP–2009–0209) and opened a 60–day public comment period for its registration review in the **Federal Register** issue of June 24, 2009 (74 FR 30077) (FRL–8422–4). However, during this public comment period, the DDVP registration review docket was missing supporting documents listed in the ''Reader's Guide to Dichlorvos (DDVP) Docket EPA–HQ–OPP–2009–0209.'' The Agency has since included these supporting documents in the docket and has chosen to open an additional 30–day comment period for the public to review and comment on the registration review of DDVP. 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 before November 13, 2009.

ADDRESSES: Submit your comments identified by docket identification (ID) number EPA–HQ–OPP–2009–0209, 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–2009–0209. 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 specific information on DDVP contact*: Joy Schnackenbeck, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8072; fax number: (703) 308–8090; e-mail address: *schnackenbeck.joy@epa.gov*.

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 appropriate 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. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iii. Describe any assumptions and provide any technical information and/or data that you used.

iv. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

v. Provide specific examples to illustrate your concerns and suggest alternatives.

vi. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

vii. 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 DDVP, compared to the general population.

II. Authority

EPA is initiating its review of DDVP 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 DDVP pesticide registration to assure that it continues to satisfy the FIFRA standard for registration—that is, it can still be used without unreasonable adverse effects on human health or the environment. DDVP's registration review began on June 24, 2009, when the Agency opened the DDVP registration review docket for public review and comment. At present, EPA is opening an additional 30–day comment period for the DDVP registration review docket.

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. On June 24, 2009, the DDVP registration review docket contained a document summarizing what the Agency currently knows about DDVP and a preliminary work plan for anticipated data and assessment needs. However, the docket was missing supporting documents, which provide more detailed information on what the Agency knows about DDVP's environmental fate, ecological effects, human health effects, use, and usage. Therefore, the Agency is opening an additional public comment for 30 days so the public can review and comment on the following documents now available in the DDVP registration review docket:

• Registration Review – Preliminary Problem Formulation for the Ecological Risk Assessment of Dichlorvos (DDVP), May 14, 2009.

• Dichlorvos (DDVP). Human Health Assessment Scoping Document in Support of Registration Review, May 6, 2009.

• Appendix A: Food/Feed and Non-Food/Non-Feed Uses Considered for Registration Review, May 23, 2008.

• DDVP (084001) California Department of Agriculture Usage Data, November 7, 2008.

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 review of DDVP. In the DDVP summary document, the Agency has identified the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on the registration review of DDVP 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 DDVP'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 DDVP 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: October 7, 2009.

Peter Caulkins,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. E9–24685 Filed 10–13–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 5, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on November 13, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send then to: *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to *PRA@fcc.gov* or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0149.

Title: Part 63, Application and Supplemental Information Requirements.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents: 90 respondents; 90 responses.

Estimated Time Per Response: 5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 214 and 402.

Total Annual Burden: 450 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Information filed in section 214 applications has generally been non–confidential. Requests from parties seeking confidentiality are considered by Commission staff pursuant to agency rules. See 47 CFR 0.459 of the Commission's rules.

Need and Uses: Section 214 of the Communications Act of 1934, as amended, requires that a carrier must first obtain FCC authorization either to: 1) construct, operate, or engage in transmission over a line of communications, or 2) discontinue, reduce, or impair service over a line of communications. Part 63 of Title 47 of the Code of Federal Regulations implements Section 214. Part 63 also implements provisions of the Cable Communications Policy Act of 1984 pertaining to video which was approved under OMB control number 3060–0149.

In this submission to the OMB, the Commission is revising this IC. In the Report and Order , FCC 09–40, WC Docket No. 04–36, the Commission modified Part 63 to extend to providers of interconnected Voice over Internet Protocol (VoIP) service the discontinuance obligations that apply to domestic non–dominant telecommunications carriers under Section 214 of the Communications Act of 1934, as amended. Accordingly, the Commission found that before an interconnected VoIP provider may discontinue, reduce, or impair service, it must comply with the streamlined discontinuance requirements for non–dominant providers under Part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application with the Commission for authorization of the planned action. In general, providers of facilities–based interconnected VoIP services and ''over–the–top'' interconnected VoIP services are subject to the rules in the VoIP Discontinuance Order. However, the Commission found that it made more sense to treat providers of interconnected VoIP services that are mobile in the same way as Commercial Mobile Radio Service (CMRS) providers, which are not subject to the Commission's Section 214 discontinuance obligations.

OMB Control No: 3060–XXXX.

Title: Implementation of the NET 911 Improvement Act of 2008; Location Information from Owners and Controllers of 911 and E911 Capabilities.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for–profit.

Number of Respondents: 60 respondents; 60 responses.

Estimated Time Per Response: .0833 hours (5 minutes).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act), Public Law 110–283, Stat. 2620 (2008) (to be codified at 47 CFR Section 615a–1), and section 222 of the Communications Act of 1934, as amended.

Total Annual Burden: 5 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: To implement section 222 of the Communications Act of 1934, as amended, the Commission's rules impose a general duty on carriers to protect the privacy of customer proprietary network information and carrier proprietary information from unauthorized disclosure. See 47 CFR 64.2001 et seq. In the Order, the Commission additionally has clarified that the Commission's rules contemplate that incumbent LECs and other owners or controllers of 911 or E911 infrastructure will acquire information regarding interconnected VoIP providers and their customers for use in the provision of emergency services. We fully expect that these entities will use the information only for the provision of E911 services. To be clear, no entity may use customer information obtained as a result of the provision of 911 or E911 services for marketing purposes.

Need and Uses: The Commission will submit this new information collection to the Office of Management and Budget (OMB) during this 30 day comment period in order to obtain the full three year clearance from them. The Commission is reporting a program change increase of 60 respondents/responses and therefore, the total annual burden is estimated to be 5 total annual burden hours.

In a Report and Order, FCC 08–249, WC Docket No. 08–171, the FCC requires an owner or controller of a 911 or enhanced 911 (E911) capability to make that capability available to a requesting interconnected Voice over Internet Protocol (VoIP) provider in certain circumstances. This requirement involves the collection and disclosure to emergency services personnel of customers' location information. In a previous action, the Commission required interconnected VoIP providers to collect certain location information from their customers and disclose it to the entities that owner or control an Automatic Location Information (ALI) database. That OMB–approved required is under OMB Control Number 3060–1085. All the relevant costs of the entities that own or control an ALI database were previously described in 3060–1085. The Commission has calculated the paperwork burdens of this present item in such a way as to

prevent double counting for OMB's inventory. For more information regarding this new information collection, see 74 Fed. Reg. 31860 (July 6, 2009) available at <*http://frwebtgate5.access.gpo.gov/cgi–bin/PDFgate.cgi*>?WAISdocID=594374209894+10+2+0&WAISaction=retrieve.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–24569 Filed 10–13–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 27, 2009.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Patriot Financial Partners, GP, L.P.; Patriot Financial Partners, L.P.; Patriot Financial Partners Parallel, L.P.; Patriot Financial Partners, GP, LLC; Patriot Financial Managers, L.P.; and Messrs. Ira M. Lubert; W. Kirk Wycoff; and James J. Lynch, all of Philadelphia, Pennsylvania; to acquire voting shares of Heritage Oakes Bancorp, and thereby indirectly acquire voting shares of Heritage Bank, both in Paso Robles, California.

Board of Governors of the Federal Reserve System, October 7, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–24614 Filed 10–13–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 2009.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Community First Bancshares, Inc., Harrison, Arkansas, and White River Bancshares Company, Fayetteville, Arkansas, to engage directly in lending activities, pursuant to section 225.28(b)(1)of Regulation Y.

Board of Governors of the Federal Reserve System, October 7, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–24613 Filed 10–13–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council Meeting; Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), October 19, 2009.

PLACE: 2nd Floor Training Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the September 24, 2009 Board member meeting.
2. Approval of the Minutes of the April 22, 2009 ETAC meeting.
3. Thrift Savings Plan activity report by the Executive Director.
   a. Participant Activity Report.
   b. Quarterly Investment Policy Report.
4. Mid-Year Financial Audit Report.
5. Quarterly Vendor Financial Report.
6. Legislative Report.
   a. Thrift Savings Plan Enhancement Act Review;
   b. Report on Making Retirement Contributions from Unused Leave.
7. Web site Demonstration.
8. TSP Modernization Update.

Parts Closed to the Public

9. Proprietary Information.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 8, 2009.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. E9–24737 Filed 10–9–09; 11:15 am]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0121]

General Services Administration Acquisition Regulation; Information Collection; Industrial Funding Fee and Sales Reporting

AGENCY: Office of the Acquisition Policy, GSA.

ACTION: Notice of request for reinstatement of an information collection requirement for an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement regarding industrial funding fee and sales reporting.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it

will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: December 14, 2009.

FOR FURTHER INFORMATION CONTACT: Warren Blankenship, Procurement Analyst, Acquisition Policy Division, at telephone (202) 501–1900 or via e-mail to *warren.blankenship@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat, General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0121, Industrial Funding Fee and Sales Reporting, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause requires the contractor to report a quarterly dollar value of all sales under the contract by calendar quarter. A separate report is required for each National Stock Number (NSN) or sub-item. The report is made electronically in accordance with the program office requirements. It is also used primarily by contracting officers to estimate requirements for the subsequent year, evaluate the effectiveness of a FSS contract, negotiate better prices based on volume and for special reports. The information is used primarily by contracting officers to estimate requirements for the subsequent year, evaluate the effectiveness of a schedule, negotiate better prices based on volume and for special reports.

B. Annual Reporting Burden

Respondents: 17,000.

Responses per Respondent: 20.

Total Responses: 340,000.

Hours per Response: .0833.

Total Burden Hours: 28,322.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0121, Industrial Funding Fee and Sales Reporting, in all correspondence.

Dated: September 29, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–24688 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0086]

General Services Administration Acquisition Regulation; Information Collection; GSA Form 1364, Proposal To Lease Space

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for comments regarding a reinstatement of an information collection requirement for an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a revision to the reinstatement of a previously approved information collection requirement regarding GSA Forms 1364/1364A, Proposal to Lease Space (Not Required by Regulation). This form is used to obtain information about property being offered for lease to house Federal agencies. In the past, GSA also used a 1364A which requested information regarding how tenant improvements were financed by a prospective lessor. The new version of form combines the former 1364 and 1364A, and it also collects other financial aspects contained in an offer for analysis and negotiation into lease contracts (*e.g.,* real estate taxes, adjustments for vacant space, offerors' design and construction fees).

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: December 14, 2009.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Procurement Analyst, Acquisition Policy Division, at telephone (202) 501–1448 or via e-mail to *Beverly.cromer@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat, General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0086, GSA Form 1364/1364A, Proposal to Lease Space (Not Required by Regulation), in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of leasing contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 5733.

Responses Per Respondent: 1.

Hours Per Response: 5.0205.

Total Burden Hours: 28,783.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0086, GSA Form 1364, Proposal to Lease Space, in all correspondence.

Dated: October 6, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–24690 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0246]

General Services Administration Regulation; Information Collection; Packing List Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for reinstatement of an information collection requirement for an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement regarding packing list clause.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: December 14, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat, General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0246, Packing List Clause, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Michael O. Jackson, Procurement Analyst, Contract Policy Division, by telephone (202) 208–4949 or via e-mail at *michaelo.jackson@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clause 552.211–77 requires a contractor to include a packing list that verifies placement of an order and identifies the items shipped. In addition to information contractors would normally include on packing lists, the identification of cardholder name, telephone number and the term ''Credit Card'' is required.

B. Annual Reporting Burden

Respondents: 4,000.
Responses per Respondent: 233.
Hours per Response: .00833.
Total Burden Hours: 7,757.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0246, Packing List Clause, in all correspondence.

Dated: September 17, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–24689 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0048]

Federal Acquisition Regulation; Submission for OMB Review; Authorized Negotiators

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

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

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Authorized Negotiators.

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

DATES: Submit comments on or before November 13, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Suzanne Neurauter, Acquisition Policy Division, GSA, (202) 219–0310 or via e-mail to *Suzanne.neurauter@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

B. Annual Reporting Burden

Respondents: 65,660.
Responses per Respondent: 8.
Total Responses: 525,280.
Hours per Response: .017.
Total Burden Hours: 8,930.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0048, Authorized Negotiator, in all correspondence.

Dated: October 6, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–24659 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0150]

Federal Acquisition Regulation; Submission for OMB Review; Small Disadvantaged Business Procurement Credit Programs

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0150).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension and revision of a previously approved information collection requirement concerning small business procurement credit programs. A request for public comments was published in the **Federal Register** at 74 FR 27800 on June 11, 2009. No comments were received.

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

DATES: Submit comments on or before November 13, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Contract Policy Division, GSA, (202) 501–0044 or e-mail *Rhonda.cundiff@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement concerning small disadvantaged procurement credit programs implements the Department of Justice proposal to reform affirmative action in Federal procurement, which was designed to ensure compliance with the constitutional standards established by the Supreme Court. The credits include price evaluation factor targets and certifications.

B. Annual Reporting Burden

Number of Respondents: 1,500.

Responses per Respondent: 2.

Total Responses: 3,000.

Average Burden Hours per Response: 5.

Total Burden Hours: 15,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0150, Small Disadvantaged Business Procurement Credit Programs, in all correspondence.

Dated: October 6, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–24660 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0069]

Federal Acquisition Regulation; Submission for OMB Review; Information Collection; Indirect Cost Rates

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

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Indirect Cost Rates.

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

DATES: Submit comments on or before November 13, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0069, Indirect Cost Rates, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Cromer, Procurement Analyst, Contract Policy Division, GSA, (202) 501–1448.

A. Purpose

The contractor's proposal of final indirect cost rates is necessary for the establishment of rates used to reimburse the contractor for the costs of performing under the contract. The supporting cost data are the cost accounting information normally prepared by organizations under sound management and accounting practices.

The proposal and supporting data is used by the contracting official and auditor to verify and analyze the indirect costs and to determine the final indirect cost rates or to prepare the Government negotiating position if negotiation of the rates is required under the contract terms.

B. Annual Reporting Burden

Respondents: 3,000.

Responses per Respondent: 1.

Annual Responses: 3,000.

Hours per Response: 2,188.

Total Burden Hours: 6,564,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0069, Indirect Cost Rates, in all correspondence.

Dated: October 6, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–24664 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA)

publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Children's Hospitals Graduate Medical Education Payment Program (CHGME PP) (OMB No. 0915–0247)—Extension

The CHGME PP was enacted by Public Law 106–129 and reauthorized by Public Law 109–307 to provide Federal support for graduate medical education (GME) to freestanding children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

Data are collected on the number of full-time equivalent residents in applicant children's hospitals' training programs to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments will also be derived from a formula that requires the reporting of discharges, beds, and case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application. Hospitals will also be requested to submit data on the number of full-time equivalent residents a second time during the Federal fiscal year to participate in the reconciliation payment process.

The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
HRSA 99–1 (Initial Application)	60	1	60	26	1,560
HRSA 99–1 (Reconciliation Application)	60	1	60	8	480
HRSA 99–2 (Initial Application)	60	1	60	15	900
HRSA 99–2 (Reconciliation Application)	60	1	60	5	300
HRSA 99–3 (Initial Application)	60	1	60	.25	15
HRSA 99–3 (Reconciliation Application)	60	1	60	.25	15
HRSA 99–4 (Reconciliation Application)	60	1	60	14	840
HRSA 99–5 (Initial Application)	60	1	60	.25	15
HRSA 99–5 (Reconciliation Application)	60	1	60	.25	15
Total	60		60		4,140

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 6, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–24661 Filed 10–13–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors (BSC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC and NCEH/ATSDR announces the following meeting of the aforementioned committee:

Times and Dates: 8:30 a.m.–5 p.m., October 29, 2009.

8 a.m.–12:30 p.m., October 30, 2009.

Place: Sheraton Atlanta Hotel, 165 Courtland Street, NE., Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/

ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters to be Discussed: The agenda items for the BSC Meeting on October 29–30, 2009 will include, but are not limited to, an update on NCEH/ATSDR's Office of the Director; an overview of the Division of Emergency and Environmental Health Services (EEHS); a presentation by the BSC breakout groups of the key findings of EEHS programs and activity; and an overview of the Division of Laboratory Sciences.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: The public comment period is scheduled for Friday, October 30, 2009 from 9 a.m. until 9:15 a.m.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–61, Chamblee, Georgia 30345; telephone 770/488–0575, fax 770/488–3377; *E-mail: smalcom@cdc.gov*. The deadline for notification of attendance is October 19, 2009.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and NCEH/ATSDR.

Dated: October 5, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–24629 Filed 10–13–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Special Emphasis Panel; Review of Alcohol Resource and Center Grant Supplement Applications.

Date: November 19, 2009.

Time: 2 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, Fishers Lane, 5635 Fishers Lane, 3002, Rockville, MD 20748. (Telephone Conference Call).

Contact Person: Richard A Rippe, PhD, Scientific Review Officer, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2109, Rockville, MD 20852. 301–443–8599. *rippera@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: October 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24525 Filed 10–13–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environmental Health Sciences Review Committee.

Date: November 9–10, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Chapel Hill Hotel, One Europa Drive, Chapel Hill, NC 27514.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24711 Filed 10–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 DKUS F 02 M Member Conflict.

Date: November 4–5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell Biology and Molecular Imaging.

Date: November 10, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Denise Beusen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7806, Bethesda, MD 20892, (301) 435–1267, *beusend@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Diversity Program.

Date: November 12–13, 2009.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24710 Filed 10–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 73 FR 62506–07, dated October 21, 2008) is amended to reflect the reorganization of the Division of Healthcare Quality Promotion within the National Center for Preparedness, Detection, and Control of Infectious Diseases, Coordinating Center for Infectious Diseases, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: After item (5) of the functional statement for the Division of Healthcare Quality Promotion (CVKD), insert the following and renumber the remaining items accordingly: (6) monitors vaccine safety and conducts scientific research to evaluate the safety of all currently available and new vaccines;

After item (13) of the functional statement for the Office of the Director (CVKD1), insert the following and renumber the remaining items accordingly: (14) coordinates vaccine safety activities at CDC; (15) leads CDC activities to monitor vaccine safety; (16) leads CDC's scientific research to evaluate the safety of all currently available and new vaccines.

Dated: October 5, 2009.

William P. Nichols,

Acting Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–24672 Filed 10–13–09; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Published Privacy Impact Assessments on the Web

AGENCY: Privacy Office, DHS.

ACTION: Notice of publication of Privacy Impact Assessments.

SUMMARY: The Privacy Office of the Department of Homeland Security is making available twelve Privacy Impact Assessments on various programs and systems in the Department. These assessments were approved and published on the Privacy Office's Web site between April 1, 2009, and June 30, 2009.

DATES: The Privacy Impact Assessments will be available on the DHS Web site until December 14, 2009, after which they may be obtained by contacting the DHS Privacy Office (contact information below).

FOR FURTHER INFORMATION CONTACT: Mary Ellen Callahan, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, or e-mail: *pia@dhs.gov.*

SUPPLEMENTARY INFORMATION: Between April 1, 2009, and June 30, 2009, the Chief Privacy Officer of the Department of Homeland Security (DHS) approved and published twelve Privacy Impact Assessments (PIAs) on the DHS Privacy Office web site, *www.dhs.gov/privacy*, under the link for ''Privacy Impact Assessments.'' These PIAs cover twelve separate DHS programs. Below is a short summary of those programs, indicating the DHS component responsible for the system, and the date on which the PIA was approved. Additional information can be found on the Web site or by contacting the Privacy Office.

System: FireGround Compass.

Component: Science and Technology.

Date of approval: April 1, 2009.

The DHS Science and Technology Directorate (S&T) TechSolutions Program contracted with G&H International Services, Inc. to perform operational testing and evaluations on the FireGround Compass for first responder firefighter applications. Halcyon Products designed the FireGround Compass, a navigational device that helps firefighters reestablish their orientation within a burning or smoke-filled building should they become lost or disoriented. The purpose of this project is to test the features, functions, and operational readiness of the FireGround Compass through human testing of the equipment. S&T conducted a PIA for this project because G&H International collected the personally identifiable information (PII) of firefighter volunteers during the testing of the device.

System: Security and Video Quality for the Public Safety Statement of Requirements Project.

Component: Science and Technology.

Date of approval: April 1, 2009.

The Security and Video Quality for the Public Safety Statement of Requirements project is a research and development effort funded by the DHS S&T. S&T is funding Noblis Inc., a nonprofit science and technology organization, through a cooperative agreement to conduct several research efforts, one of which is to examine facial recognition requirements in emergency response operations. S&T is conducting a PIA because research staff will use images collected from individuals during this research project. This PIA will only cover the research and testing activities conducted during this project.

System: Comprehensive Exit Program: Air Exit Pilot.

Component: US–VISIT.

Date of approval: May 20, 2009.

The United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program is implementing a new pilot phase of a comprehensive exit program for integrating non-U.S. citizen departure with existing arrival information. The Exit Program requires the collection of minimal biometric and biographic data from covered aliens, enabling US–VISIT Entry/Exit matching, identity verification, and cross-checking against a list of subjects of interest. This PIA is conducted because US–VISIT collects PII on non-U.S. citizens.

System: Compliance Tracking and Management System.

Component: U.S. Citizenship and Immigration Services.

Date of approval: May 22, 2009.

The Verification Division of the United States Citizenship and Immigration Services (USCIS) operates the Compliance Tracking and Management System (CTMS). CTMS collects and uses information necessary to support monitoring and compliance activities for researching and managing misuse, abuse, discrimination, breach of privacy, and fraudulent use of USCIS Verification Division's verification programs, the Systematic Alien Verification for Entitlements and E-Verify. This is a new system that requires publication of a PIA and System of Records Notice.

System: PRISM.

Component: Management Directorate.

Date of approval: June 4, 2009.

The DHS Management Directorate, Office of the Chief Procurement Officer is the owner of the PRISM contract writing management system. PRISM provides comprehensive, Federal Acquisition Regulation based acquisition support for all DHS headquarters entities. The purpose of this PIA is to document how PRISM collects, uses, disseminates, and maintains PII.

System: Vessel Requirements for Notices of Arrival and Departure and Automatic Identification System to add the Notice of Arrival on the Outer Continental Shelf Update.

Component: U.S. Coast Guard.

Date of approval: June 4, 2009.

This is a PIA update to the previous ''Vessel Requirements for Notice of Arrival and Departure and Automatic Identification System Notice of Proposed Rulemaking'' (NOA/D and AIS) PIA dated November 19, 2008. The United States Coast Guard (USCG) is publishing a Notice of Proposed Rulemaking entitled ''Notice of Arrival on the Outer Continental Shelf.'' The USCG conducted this update because portions of this rulemaking will require an expansion of an existing collection of PII and because the system, Ship Arrival Notification System, which maintains the NOA information, will maintain this new collection of PII.

System: Chemical Facility Anti-Terrorism Standards.

Component: National Protection and Programs Directorate.

Date of approval: June 5, 2009.

This PIA update for the Chemical Facility Anti-Terrorism Standards (CFATS), formally the Chemical Security Assessment Tool (CSAT), describes the new PII collected though the CFATS Site Security Plan, the potential to collect PII through the CFATS Tipline, DHS's intention to share on a ''need to know'' basis the business contact information of high-risk chemical facility personnel with public officials who have responsibilities related to chemical security and/or infrastructure security, and the ability for Chemical-terrorism Vulnerability Information (CVI) Authorized Users to update their PII.

System: Chemical Facility Anti-Terrorism Standards Update.

Component: National Protection and Programs Directorate.

Date of approval: June 11, 2009.

This PIA update for the CFATS covers the new collection of PII received from high-risk Chemical Facilities. NPPD will now collect PII from federal employees and contractors for the purpose of providing access to Chemical Facility Management System (CHEMS). CHEMS will transfer and secure the information from Chemical Security Assessment Tool (CSAT) to allow Federal employees and contractors the ability to contact an appropriate representative of high-risk chemical facilities, and to very an individual's status as a CVI Authorized User.

System: Department of Homeland Security Web Portals.

Component: DHS-Wide.

Date of approval: June 15, 2009.

Many DHS operations and projects require collaboration and communication amongst affected stakeholders including employees, contractors, Federal, State, local and tribal officials, as well as members of the public. One method of effectuating such collaboration is the establishment of an online ''portal'' allowing authorized users to obtain, post and exchange information, access common resources, and generally communicate with similarly situated and interested individuals. DHS has written this general PIA to document these informational and collaboration-based portals in operation at DHS and its components which collect, use, maintain, and share limited PII about individuals who are ''members'' of the portal or who seek to gain access to the portal ''potential members.''

System: National Pollution Funds Center—Pollution Response Funding, Liability, and Compensation System.

Component: U.S. Coast Guard.

Date of approval: June 17, 2009.

The USCG National Pollution Funds Center's (NPFC) Pollution Response Funding, Liability, and Compensation System (PRFLACS) support the command's mission to administer the financial responsibility provisions in Title I of the Oil Pollution Act. The purpose of this PIA is to ensure that adequate privacy considerations and protections continue to be applied to the PII maintained in the NPFC PRFLACS system.

System: Personal Identity Verification.

Component: DHS-Wide.

Date of approval: June 18, 2009.

DHS is updating the Personal Identity Verification (PIV) PIA issued on October 13, 2006, to reflect changes in Departmental requirements identified through increased collaboration with the components during implementation planning and to include bringing the components online. Additionally, this update discusses the use of the Integrated Security Management System (ISMS) and a more robust, second-generation Identity Management System, which replaces the PIV ISMS discussed in the previous PIA.

System: Department of Homeland Security General Contact List.

Component: DHS-Wide.

Date of approval: April 14, 2009.

Many DHS operations and projects collect a minimal amount of contact information in order to distribute information and perform various other administrative tasks. Department Headquarters conducted this PIA because contact lists contain PII. The Department added the following systems to this PIA:

- National Protection and Programs Directorate Meridian Conference Web site 2009;
- Transportation Security Administration Pipeline Security Guidelines.

Dated: October 7, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–24712 Filed 10–13–09; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000–L14200000–BJ0000]

Notice of Filing of Plats

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats.

SUMMARY: The BLM is publishing this notice to inform the public of the intent to file the land survey plats listed below, and to afford all affected parties a proper period of time to protest this action, prior to the plat filing.

DATES: Unless there are protests of this action, the filing of the plats described in this notice will happen on November 13, 2009.

ADDRESSES: Colorado State Office (CO–956), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Paul Lukacovic, Acting Chief Cadastral Surveyor for Colorado, (303) 239–3818.

SUPPLEMENTARY INFORMATION: The plat and field notes, of the dependent resurveys and surveys in Township 5 North, Range 92 West, Sixth Principal Meridian, Colorado, were accepted on January 27, 2009.

The plat and field notes, of the dependent resurvey of certain mineral surveys in Township 42 North, Range 7 West, New Mexico Principal Meridian, Colorado, were accepted on February 24, 2009.

The plat and field notes, of the dependent resurvey, in Township 2 North, Range 72 West, Sixth Principal Meridian, Colorado, were accepted on March 11, 2009.

The plat and field notes, of the dependent resurvey, in Townships 39 North, Ranges 6 and 7 East, New Mexico Principal Meridian, Colorado, were accepted on March 26, 2009.

The plat and field notes, of the dependent resurvey, in Township 37 North, Range 10 West, New Mexico Principal Meridian, Colorado, were accepted on March 31, 2009.

The plat and field notes, of the dependent resurvey and surveys, in Township 51 North, Range 7 West, New Mexico Principal Meridian, Colorado, were accepted on May 7, 2009.

The plat and field notes, of the dependent resurvey, in Townships 1 and 2 North, Range 72 West, Sixth Principal Meridian, Colorado, were accepted on May 20, 2009.

The plat and field notes, of the dependent resurvey, in Townships 14 and 15 South, Range 83 West, Sixth Principal Meridian, Colorado, were accepted on June 4, 2009.

The plat and field notes, of the dependent resurvey, in Township 16 South, Range 71 West, Sixth Principal Meridian, Colorado, were accepted on June 9, 2009.

The supplemental plat of Sections 15 in Township 3 South, Range 73 West, Sixth Principal Meridian, Colorado, was accepted on July 20, 2009.

The supplemental plat of Section 3 in Township 18 South, Range 70 West, Sixth Principal Meridian, Colorado, was accepted on August 31, 2009.

The plat and field notes, of the dependent resurvey of a portion of the Colorado-New Mexico State Line (S. bdy.), a portion of the Colorado-Utah State Line (W. bdy.) and the subdivisional lines of Township 32 North, Range 20 West, of the New Mexico Principal Meridian, Colorado, were accepted on September 24, 2009.

The plat and field notes, of the dependent resurvey and survey in Township 41 North, Range 7 West, New Mexico Principal Meridian, Colorado, were accepted on September 30, 2009.

The plat and field notes, of the dependent resurvey of certain mineral surveys in Township 3 South, Range 73 West, Sixth Principal Meridian, Colorado, were accepted on September 30, 2009.

If a protest of any of these projects is received prior to the date of the official filing, the official filing of that project will be stayed pending consideration of the merits of the protest.

Dated: October 7, 2009.

Paul Lukacovic,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. E9–24658 Filed 10–13–09; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L13200000–EL0000]

Powder River Regional Coal Team Activities: Notice of Public Meeting in Gillette, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) has scheduled a public meeting for November 17, 2009, to review coal management activities in the Powder River Coal Region.

DATES: The RCT meeting will begin at 9 a.m. MST on November 17, 2009. The meeting is open to the public.

ADDRESSES: The meeting will be held at the City of Gillette Community Meeting Room, 201 East 5th Street, Gillette, Wyoming.

FOR FURTHER INFORMATION CONTACT: Brenda Neuman, Solid Minerals Branch Chief, BLM Wyoming State Office, Division of Minerals and Lands, 5353 Yellowstone Road, Cheyenne, Wyoming 82009: telephone 307–775–6179 or Phil Perlewitz, Solid Minerals Branch Chief, BLM Montana State Office, Division of Resources, 5001 Southgate Drive, Billings, Montana 59101: telephone 406–896–5159.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss progress in processing pending coal lease by applications (LBAs) in the Powder River Basin Region as well as other Federal coal-related actions in the region. Specific coal-related topics planned for the RCT meeting include:

1. Update on progress in processing existing coal LBAs in Wyoming.

2. The BLM is conducting a coal review study in the Powder River Basin Region. The results of this study will be used in the preparation of coal-related National Environmental Policy Act documents in the Powder River Basin Region. The RCT will be updated on the progress and results of this study.

3. Update on U.S. Geological Survey coal inventory work.

4. Update on BLM land use planning efforts in the Powder River Basin of Wyoming and Montana.

5. Any coal lease applications and/or other coal-related issues that may arise prior to the meeting.

During the public meeting the RCT may generate recommendation(s) for any or all of these topics and other topics that may arise prior to the meeting date.

The meeting will serve as a forum for public discussion on Federal coal management issues of concern in the Powder River Basin Region. Any party interested in providing comments or data related to existing pending applications, or any party proposing other issues to be considered by the RCT, may either do so in writing to the State Director (922), BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82009, no later than November 3, 2009, or by addressing the RCT with his/her concerns at the meeting on November 17, 2009.

Following is the draft agenda for the meeting:

1. Introduction of RCT members and guests.

2. Approval of the minutes of the December 6, 2007, RCT meeting held in Casper, Wyoming.

3. Coal activity since the last RCT meeting including an update on pending LBAs.

4. BLM presentation on Powder River Basin coal review study.

5. U.S. Geological Survey presentation on coal inventory.

6. BLM land use planning efforts.

7. Other pending coal actions and other discussion items that may arise.

8. Discussion of the next meeting.

9. Adjourn.

Dated: October 2, 2009.

Donald A. Simpson,

State Director.

[FR Doc. E9–24401 Filed 10–13–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 22, 2009, and published in the **Federal Register** on June 26, 2009, (74 FR 30620), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Chattem Chemicals, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Chattem Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: October 2, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–24714 Filed 10–13–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 6, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: New collection (Request for new OMB Control Number).

Title of Collection: Access Points Evaluation.

OMB Control Number: 1205–XXXX.

Agency Form Numbers: ETA–9150; ETA–9151; and ETA–9152.

Affected Public: Private Sector and State, Local and Tribal Governments.

Total Estimated Number of Respondents: 458.

Total Estimated Annual Burden Hours: 98.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: Access Points are employment information centers and satellites to One-Stop career centers that are operated with donated labor and facilities by Community and Faith-Based Organizations. The Department of Labor's funded SHARE Network Coordinators train and support Access Points. The Access Points evaluation will assess the merits of three training and technical assistance delivery types to ensure that DOL's replication of the Access Points model uses the most cost-effective technical assistance approach. The evaluation is designed to survey SHARE Network Coordinators, Access Point Points of Contact, and One-Stop Directors. For additional information, see related notice published at Volume 74 FR 32648 on July 8, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–24573 Filed 10–13–09; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–090)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council. The agenda topics for the meeting will include:

- NASA Administrator Update.
- NASA Ames Research Center Update.
- Review of U.S. Human Space Flight Plans Committee.
- Scientific Update from LCROSS and KEPLER Missions.
- Green Building Initiative at ARC.

DATES: Thursday, October 29, 2009, 1 p.m.–4 p.m. (Western).

ADDRESSES: NASA Ames Conference Center (Building 3), Room: Ballroom, 500 Severyns Avenue, NASA Research Park, NASA Ames Research Center (ARC), Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, 202/358–1148.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as driver's license to enter into the NASA Research Park, and must state they are attending the NASA Advisory Council meeting in the NASA Ames Research Center Conference Center. All non-U.S. citizens must submit their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), Permanent Resident Alien card number and expiration date (if applicable), place and date of entry into the U.S., and passport information to include country of issue, number, and expiration date to Ms. Rho Christensen, Protocol Specialist, Office of the Center Director, NASA Ames Research Center, Moffett Field, CA, by October 22, 2009. For questions, please call Ms. Rho Christensen at (650) 604–2476.

Dated: October 8, 2009.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–24792 Filed 10–13–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda; Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, October 27, 2009.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The TWO item are open to the public.

MATTERS TO BE CONSIDERED:

8067A—Aircraft Accident Report—Crash During Approach to Landing of Maryland State Police Aerospatiale SA365N1, N92MD, District Heights, Maryland, September 27, 2008.

8078A—Highway Accident Report—Motorcoach Run-off-the-Bridge and Rollover, Sherman, Texas, August 8, 2008.

NEWS MEDIA CONTACT: TELEPHONE: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, October 23, 2009.

The public may view the meeting via a live or archived Web cast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov*.

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403.

Dated: October 9, 2009.

Candi R. Bing,

Alternate Federal Register Liaison Officer.

[FR Doc. E9–24819 Filed 10–9–09; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2009–0422]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* ''10 CFR part 71, Packaging and Transportation of Radioactive Material.''

2. *Current OMB approval number:* 3150–0008.

3. *How often the collection is required:* On occasion. Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

4. *Who is required or asked to report:* All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

5. *The number of annual respondents:* 250.

6. *The number of hours needed annually to complete the requirement or request:* 59,782 hours (54,208 reporting + 5,574 hours recordkeeping).

7. *Abstract:* NRC regulations in 10 CFR part 71 establish requirements for packing, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities.

Submit, by December 14, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2009–0422. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0422. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 5th day of October 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–24720 Filed 10–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2009–0394]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 5, ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.''

2. *Current OMB approval number:* 3150–XXXX.

3. *How often the collection is required:* 10 CFR 5 follows provisions covered in 10 CFR 4, Section 4.331 Compliance Reviews, which indicates NRC may conduct compliance reviews and Pre-Award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the act and these regulations. NRC may conduct these reviews even in absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

4. *Who is required or asked to report:* Recipients of Federal Financial Assistance provided by the NRC (including Educational Institutions, Other Nonprofit Organizations receiving Federal Assistance, and Agreement States.

5. *The number of annual respondents:* 200.

6. *The number of hours needed annually to complete the requirement or request:* 3,600 hours (3,000 hrs for reporting (5 hrs per respondent) and 600 hrs for recordkeeping (3 hrs per recordkeeper)).

7. *Abstract:* The regulations under 10 CFR part 5 implements the provisions of title IX of the Education Amendments of 1972, as amended (except Section 904 and 906 of these amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations.

Submit, by December 14, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2008–0394. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0394. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 2nd day of October 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–24724 Filed 10–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0449; Docket No. 50–244]

R.E. Ginna Nuclear Power Plant, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of R.E. Ginna Nuclear Power Plant, LLC (the licensee) to withdraw its October 7, 2008, application for proposed amendment to Facility Operating License No. 18 for the R.E. Ginna Nuclear Power Plant located in Wayne County, New York.

The proposed amendment would have revised the operating license by introducing a new license condition requiring the reporting of reactor vessel inservice inspection information and analyses as specified in a **Federal Register** Notice dated October 3, 2007 (72 FR 56275), ''Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 16, 2008 (73 FR 76413). However, by letter dated September 28, 2009, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 7, 2008, and the licensee's letter dated September 28, 2009, which withdrew the application for license amendment. Documents may

be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 6th day of October 2009.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–24726 Filed 10–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0453]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1199, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors.''

FOR FURTHER INFORMATION CONTACT: Mark Blumberg, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–1083 or e-mail *Mark.Blumberg@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), titled, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' is temporarily identified by its task number, DG–1199, which should be mentioned in all related correspondence. DG–1199 is proposed Revision 1 of Regulatory Guide 1.183, dated July 2000. This regulatory guide describes a method that the staff of the NRC considers acceptable in complying with alternative source term (AST) regulations for design basis accident dose consequence analysis. This guidance for light-water reactor designs includes the scope, nature, and documentation of associated analyses, evaluations; consideration of impacts on analyzed risk; and content of submittals. This guide establishes the AST based on NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' and identifies significant attributes of other accident source terms that may be acceptable. This guide also identifies acceptable radiological analysis assumptions for use in conjunction with the AST. In some cases, unusual site characteristics, plant design features, or other factors may require different assumptions, which will be considered on an individual case basis.

The draft guide references Regulatory Guide 1.89, ''Environmental Qualification of Certain Electric Equipment Important to Safety for Nuclear Power Plants,'' regarding environmental qualification analyses that may be affected by implementing alternate source terms. This guidance will be available in the forthcoming revision of Regulatory Guide 1.89 and is currently available in Appendix I of Regulatory Guide 1.183, Revision 0.

II. Further Information

The Commission invites advice and recommendations on the content of DG–1199. Specifically, comments are solicited for the following questions. Each comment should include supporting basis or rationale to enable the staff to fully understand the point of view being provided.

1. The alternative source term methodology described in the draft regulatory guide permits the assumption that the release of radioactive effluent to the environment occurs at some time period following the onset of the accident within the plant facility. Section 5.3, Meteorology Assumptions, provides guidance on pairing atmospheric dispersion factors (χ/Q values) with the periods of maximum postulated release of radioactive effluent to the environment.

a. Is it equally or more appropriate to include consideration of engineering factors such as time of control room isolation and initiation of filtration, in addition to the time sequence release of radiological effluent to the environment, when assessing the limiting dose to control room operators?

2. Table 3 of DG–1199 provides revised non-loss of coolant accident fission product gap inventories applicable to all current fuel designs. The purpose of revising Table 3 was to expand its applicability by replacing the prior footnote 11 limitation (*i.e.,* 6.3 kw/ft beyond 54 GWd/MTU) with bounding fuel rod power envelopes.

a. Does the bounding fuel rod power envelopes depicted in Figure 1 of DG–1199 provide sufficient fuel management flexibility such that current and anticipated fuel loading patterns will be able to utilize the Table 3 fission product gap fractions?

b. Fission gas release and the resulting fission product gap inventory are sensitive to fuel rod design and rod power history. To maintain consistency with current regulatory guidance, the revised Table 3 remains applicable to all current pressurized water reactor (PWR) and boiling water reactor (BWR) fuel rod designs (limited only by the bounding power envelope). Significant reductions in fission product gap inventories are achievable with specific fuel rod design calculations (*e.g.,* PWR 17×17 versus PWR 14×14) and/or less bounding rod power histories. Should RG 1.183 provide alternate versions of Table 3, each with its own set of applicability criteria?

3. Reference 18 of DG–1199 documents the expanded fission gas release empirical database and methods used to calculate the revised Table 3 and Table 4 fission product gap inventories. Are any further fission gas measurements available which would help enhance the gap inventories listed in Table 3 and 4?

Comments should mention DG–1199 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from the comments. Comments may be submitted by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Division of Administrative Services, Mail Stop: TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0453]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

3. *Fax comments to:* Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1199 may be directed to Mark Blumberg at (301) 415–1083 or e-mail to *Mark.Blumberg@nrc.gov*.

Comments would be most helpful if received by December 11, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1199 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading

Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML090960464. In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 6th day of October 2009.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–24719 Filed 10–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0452; Docket Nos. 50–413 and 50–414]

Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License No. NPF–35 and Facility Operating License No. NPF–52, issued to Duke Energy Carolinas, LLC (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2 (Catawba 1 and 2), located in York County, South Carolina, in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) part 50. Therefore, as required by 10 CFR part 51, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Technical Specifications (TSs) by removing and updating portions of the TSs which are outdated or are obsolete including footnotes and references. The proposed changes are editorial or administrative in nature as they update the current TSs to reflect changes previously approved by the NRC.

The proposed action is in accordance with the licensee's application dated October 8, 2008, as supplemented by letter dated May 5, 2009.

The Need for the Proposed Action

The proposed action is needed to update the TSs and remove out of date and obsolete information.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that there are no environmental impacts associated with granting the subject license amendment updating the TSs to remove outdated or obsolete information. The details of the NRC staff's safety evaluation will be provided in a letter to the licensee upon approval of the license amendment.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are also no known socioeconomic or environmental justice impacts associated with such proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action *(i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Catawba Nuclear Station, Units 1 and 2, NUREG–0921, dated January 1983 and Final Supplemental Environmental Impact Statement (NUREG–1437, Supplement 9) dated December 2002.

Agencies and Persons Consulted

On September 23, 2009, the NRC staff consulted with the South Carolina State official, Mr. Michael Gandy, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. No substantial changes to the facility or its operation are associated with the proposed license amendment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 8, 2008, as supplemented

by letter dated May 5, 2009. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of October 2009.

For the Nuclear Regulatory Commission.

Jon Thompson,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–24722 Filed 10–13–09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2009–0451; Docket No. 50–220]

Nine Mile Point Nuclear Station, Unit No. 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–63 issued to Nine Mile Point Nuclear Station, LLC (the licensee) for operation of Nine Mile Point, Unit No. 1 (NMP1) located in Oswego, NY.

The proposed amendment would modify Technical Specification (TS) sections 3.2.7.1 and 4.2.7.1, ''Primary Coolant System Pressure Isolation Valves,'' to incorporate requirements that are consistent with section 3.4.5 of the Improved Standard TSs, NUREG–1433, Revision 3. The proposed TS changes include the addition of applicable reactor operating conditions, addition of actions to be taken when pressure isolation valve (PIV) leakage is not within limit, relocation of the PIV leakage limit criterion from TS Table 3.2.7.1 to Specification 4.2.7.1.a, replacement of the existing PIV leakage test frequencies with a reference to the Inservice Testing Program, and deletion of TS Table 3.2.7.1, ''Primary Coolant System Pressure Isolation Valves.'' The list of PIVs would be relocated from TS Table 3.2.7.1 to the NMP1 Updated Final Safety Analysis Report, consistent with the guidance in Generic Letter (GL) 91–08, ''Removal of Component Lists from Technical Specifications.''

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment involves changes to the TS requirements that apply to reactor coolant system (RCS) PIVs. No physical plant changes are involved. PIVs isolate the boundary between the high pressure RCS and connected low pressure piping systems. The TS requirements are intended to detect PIV degradation that has the potential to cause a loss of coolant accident (LOCA) outside of containment due to the failure of low pressure portions of systems connected to the RCS.

The proposed changes to the TS requirements are consistent with NUREG–1433, ''Standard Technical Specifications, General Electric Plants, BWR/4,'' and will continue to ensure that excessive leakage through these valves is properly identified and resolved. Testing in accordance with the IST [Inservice Testing] Program will continue to detect PIV leakage in excess of the established limits, which are not being changed. When these limits are exceeded, required actions will initiate appropriate activities to minimize the impact of the leakage. These actions will not adversely impact nuclear safety because the flow paths will be sufficiently isolated, the period of time without redundant isolation capability will be appropriately limited, and the probability of a second valve failing during this time period is low. Thus, the proposed amendment does not result in operation that would make an accident more likely to occur, and does not alter assumptions relative to mitigation of a previously evaluated accident.

Relocation of the list of PIVs from the TS to a licensee-controlled document (the UFSAR) in accordance with the guidance in GL 91–08 is an administrative change that does not alter the TS requirements that are applicable to the PIVs. Based on the above discussion, it is concluded that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment involves changes to the TS requirements that apply to RCS PIVs. These changes to the TS requirements are consistent with NUREG–1433. The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The changes also do not alter the design function of the PIVs and do not adversely affect the ability of the PIVs to perform their design function.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment involves changes to the TS requirements that apply to RCS PIVs. No physical plant changes are involved. PIVs isolate the boundary between the high pressure RCS and connected low pressure piping systems. The revised TS PIV requirements will continue to ensure that excessive leakage through these valves is properly identified and resolved, such that a LOCA outside of containment due to the failure of low pressure portions of systems connected to the RCS will be no more likely to occur. Thus, the proposed amendment will not result in a design basis or safety limit being exceeded or altered.

Based on the above discussion, it is concluded that the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms ViewerJ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.*

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated September 18, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092640681), which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

Dated at Rockville, Maryland, this 6th day of October 2009.

For the Nuclear Regulatory Commission.

Richard V. Guzman,

Senior Project Manager, Plant Licensing Branch 1–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–24721 Filed 10–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220; NRC–2009–0450]

Nine Mile Point Nuclear Station, Unit No. 1 Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–63 issued to Nine Mile Point Nuclear Station, LLC (the licensee) for operation of Nine Mile Point, Unit No. 1 (NMP1) located in Oswego, NY.

The proposed amendment would remove position indication for the relief valves and safety relief valves from NMP1 Technical Specifications (TSs) 3.6.11, ''Accident Monitoring Instrumentation.'' The licensee's justification for the proposed amendment is that position indication for the relief valves and safety relief valves do not meet any of the criteria for inclusion in the TSs provided in the NRC ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' 58 FR 39132, dated July 22, 1993. The proposed amendment would also correct an editorial error in the title of Table 4.6.11.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10

CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Reponse: No. The failure of the safety/relief valve (SRV) position instrumentation is not assumed to be an initiator or any analyzed event in the Updated Final Safety Analysis Report (UFSAR). The proposed changes do not alter the physical design of the SRVs or any other plant structure, system, or component. The changes would remove the SRV position indicator and surveillance requirements from the NMP1 TS, but would not involve any physical changes to the instrumentation.

The proposed change of the word ''Requirement'' to ''Requirements'' in the title of Table 4.6.11 is editorial and therefore has no impact on accident probability or consequence.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind accident for any accident previously evaluated?

Reponse: No. The proposed changes do not alter the physical design, safety limits, or safety analysis assumptions, associated with the operations of the plant. Accordingly, the proposed changes do not introduce any new accident initiators, nor do they reduce or adversely affect the capabilities of any plant structure or system in the performance of their safety function.

The proposed change of the word ''Requirement'' to ''Requirements'' in the title of Table 4.6.11 is editorial and therefore does not create the possibility of a new or different kind accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind accident for any accident previously evaluated

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Reponse: No. This instrumentation is not needed for manual operator actions necessary for safety systems to accomplish their safety function for the design basis accident events. The instrumentation provides only alarm and SRV position indication, and does not provide an input to any automatic trip function. Several diverse means are available to monitor SRV position.

The proposed change of the word ''Requirement'' to ''Requirements'' in the title of Table 4.6.11 is editorial and therefore has no impact margin of safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System-s (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must

also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is 1–866–672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include

copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated July 2, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML091950415), which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

Dated at Rockville, Maryland, this 2nd day of October 2009.

For The Nuclear Regulatory Commission.

Richard V. Guzman,

Senior Project Manager. Plant Licensing Branch 1–1. Division of Operating Reactor Licensing. Office of Nuclear Reactor Regulation.

[FR Doc. E9–24723 Filed 10–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the U.S. Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Full Committee Meetings

An agenda will be published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another day of the same meeting. Persons planning to attend the meeting may contact the Designated Federal Officer (DFO) specified in the **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons who plan to submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting, but wish to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the DFO 5 days prior to the meeting to allow time for reproduction and distribution.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO; if possible, the request should be made 5 days before the meeting, identifying the topic(s) on which oral statements will be made and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the use of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript will be kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. A copy of the certified minutes of the meeting will be available at the same location 3 months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges. ACRS meeting agenda, transcripts, and letter reports are available through the PDR at *PDR.Resource@nrc.gov,* by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs/.*

(f) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Specialist, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the

Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, has chosen to conduct its Subcommittee meetings in accordance with the procedures noted above for ACRS full Committee meetings, as appropriate, to facilitate public participation, and to provide a forum for stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 50 copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least 5 working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Meeting Dates for Calendar Year 2010

The ACRS meeting dates for Calendar Year 2010 are provided below:

Meeting number	Dates	Days
(No Meeting)	January 2010	(No Meeting).
569	February 4–6, 2010	Thursday-Saturday.
570	March 4–6, 2010	Thursday-Saturday.
571	April 8–10, 2010	Thursday-Saturday.
572	May 6–8, 2010	Thursday-Saturday.
573	June 9–11, 2010	Wednesday-Friday.
574	July 14–16, 2010	Wednesday-Friday.
(No Meeting)	August 2010	(No Meeting).
575	September 9–11, 2010	Thursday-Saturday.
576	October 7–9, 2010	Thursday-Saturday.
577	November 4–6, 2010	Thursday-Saturday.
578	December 2–4, 2010	Thursday-Saturday.

Dated: October 7, 2009.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E9–24725 Filed 10–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of October 12, 19, 26, November 2, 9, 16, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 12, 2009

Tuesday, October 13, 2009:

9:15 a.m. Affirmation Session (Public Meeting) (Tentative); Calvert Cliffs 3 Nuclear Project LLC & UniStar Nuclear Operating Services LLC (Combined License App. Calvert Cliffs, Unit 3) Docket Nos. 52–016–COL, Calvert Cliffs 3 Nuclear Project LLC & UniStar Nuclear Operating Services, LLC, Appeal from LBP–09–4 (Tentative)

9:30 a.m. Discussion of Security Issues (Closed—Ex. 3)

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.

Week of November 2, 2009—Tentative

Tuesday, November 3, 2009

9:30 a.m. Briefing on Fire Protection Lessons Learned from Shearon Harris (Public Meeting) (Contact: Alex Klein, 301–415–2822)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of November 9, 2009—Tentative

Tuesday, November 10, 2009

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson, 301 415–0202)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of November 16, 2009—Tentative

Tuesday, November 17, 2009:

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting) (Contact: Elva Bowden Berry, 301 415–1536)

This meeting will be webcast live at the Web address—http://www.nrc.gov.

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*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 email to *darlene.wright@nrc.gov.*

Dated: October 8, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–24770 Filed 10–9–09; 4:15 pm]

BILLING CODE 7590–01–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:

Form T–1; OMB Control No. 3235–0110; SEC File No. 270–121.

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 (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form T–1 (17 CFR 269.1) is a statement of eligibility and qualification under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) of a corporation designated to act as a trustee. The information is used to determine whether the trustee is qualified to serve under the indenture. Form T–1 is filed on occasion. The information required by Form T–1 is mandatory. This information is publicly available on EDGAR. Form T–1 takes approximately 15 hours per response to prepare and is filed by approximately 13 respondents. We estimate that 25% of the 15 hours (4 hours) is prepared by the company for a total annual reporting burden of 52 hours (4 hours per response × 13 responses).

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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: October 7, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24630 Filed 10–13–09; 8:45 am]

BILLING CODE 8011–01–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: Form T–2; OMB Control No. 3235–0111; SEC File No. 270–122.

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 (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form T–2 (17 CFR 269.2) is a statement of eligibility of an individual designated to act as a trustee. The information is used to determine whether the trustee is qualified to serve under the indenture. Form T–2 is filed on occasion. The information required by Form T–2 is mandatory. This information is publicly available on EDGAR. Form T–2 takes approximately 9 hours per response to prepare and is filed by approximately 36 respondents. We estimate that 25% of the 9 hours per response (2 hours) is prepared by the filer for a total annual reporting burden of 72 hours (2 hours per response × 36 responses).

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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: October 7, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24631 Filed 10–13–09; 8:45 am]

BILLING CODE 8011–01–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:

Form T–4; OMB Control No. 3235–0107 ; SEC File No. 270–124.

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 (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collections of information discussed below.

Form T–4 (17 CFR 269.4) is used to apply for an exemption under Section 304(c) (15 U.S.C. 77ddd(c)) of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). Form T–4 is filed on occasion. The information required by Form T–4 is mandatory. This information is publicly available on EDGAR. Form T–4 takes approximately 5 hours per response to prepare and is filed by approximately 3 respondents. We estimate that 25% of the 5 hours per response (1 hour) is prepared by the filer for a total annual reporting burden of 3 hours (1 hour per response × 3 responses).

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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox @sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: October 7, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24633 Filed 10–13–09; 8:45 am]

BILLING CODE 8011–01–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:

Form T–3; OMB Control No. 3235–0105; SEC File No. 270–123.

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 (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collections of information discussed below.

Form T–3 (17 CFR 269.3) is an application for qualification of an indenture under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). The information provided by Form T–3 is used by the staff to decide whether to qualify an indenture relating to securities offered to the public in an offering registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form T–3 is filed on occasion. The information required by Form T–3 is mandatory. This information is publicly available on EDGAR. Form T–3 takes approximately 43 hours per response to prepare and is filed by approximately 78 respondents. We estimate that 25% of the 43 hours per response (11 hours) is prepared by the filer for a total annual reporting burden of 858 hours (11 hours per response × 78 responses).

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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: October 6, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24632 Filed 10–13–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60793; File No. SR–BX–2009–059]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Potential Payment Amounts Available Under Rule 4626

October 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to modify potential payment amounts available under Rule 4626. BX will implement the proposed rule change effective November 1, 2009. The text of the proposed rule change is below. Proposed new language is italicized and proposed deletions are in brackets.

* * * * *

4626. Limitation of Liability

(a) No Change.

(b) The Exchange, subject to the express limits set forth below, may compensate users of the NASDAQ OMX BX Equities Market for losses directly resulting from the System's actual failure to correctly process an order, Quote/Order, message, or other data, provided the NASDAQ OMX BX Equities Market has acknowledged receipt of the order, Quote/Order, message, or data.

[(1) For one or more claims made by a single market participant related to the use of the NASDAQ OMX BX Equities Market on a single trading day, the Exchange's liability shall not exceed the larger of $100,000, or the amount of any recovery obtained by the Exchange under any applicable insurance policy.]

[(2) For the aggregate of all claims made by all market participants related to the use of the NASDAQ OMX BX Equities Market on a single trading day, the Exchange's liability shall not exceed the larger of $250,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.]

[(3)] *(1)* For the aggregate of all claims made by all market participants related to the use of the NASDAQ OMX BX Equities Market during a single calendar month, the Exchange's liability shall not exceed the larger of $500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.

[(4)] *(2)* In the event all of the claims arising out of the use of the NASDAQ OMX BX Equities Market cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum amount will be proportionally allocated among all such claims arising [on a single trading day, or] during a single calendar month [, as applicable].

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

(5) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than [the opening of trading] *12:00 p.m. ET* on the next business day following the day on which the use of the NASDAQ OMX BX Equities Market gave rise to such claims. Nothing in this rule shall obligate the Exchange to seek recovery under any applicable insurance policy.

* * * * *

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

Currently, BX provides a limited exception to its general limitation of liability rules that allows for the payment of claims to users for order processing failures in the NASDAQ OMX BX Equities Market. BX proposes to modify its process for allocating such payments and extend the time period for users to submit such claims. Under the proposal, BX will eliminate the $100,000 and $250,000 daily caps on liability and consider all such claims on a monthly basis subject to the already existing $500,000 monthly liability cap. If the total amount of all claims from all users in calendar month exceeds the $500,000 monthly liability cap, the $500,000 maximum monthly dollar amount will be proportionally allocated among all such claims as set forth in the current rule.

BX is also proposing to extend, until 12 noon ET on the next business day following the day on which the use of the Nasdaq OMX BX Equities Market gives rise to a claim, the time period during which claims seeking compensation must be submitted.

As BX analyzes total eligible liability claims on a per-month look-back basis, the proposal, in effect, would allow BX an increased capability to compensate a market participant(s) up to the monthly cap of $500,000 even though the losses occurred on a single day or were across multiple days for a single participant. The expansion of time to make such compensation claims likewise increases the ability of market participants to submit claims in a timely manner. Finally, BX notes that other market centers have rules in place to provide limited compensation for system malfunctions.[4]

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. As BX analyzes total eligible liability claims on a per-month look-back basis, the proposal, in effect, would allow BX an increased capability to compensate a market participant(s) up to the monthly cap of $500,000 even though the losses occurred on a single day or were across multiple days for a single participant. The expansion of time to make such compensation claims likewise increases the ability of market participants to submit claims in a timely manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2009–059 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BX–2009–059. 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

[4] *See* NYSE Arca Equities Rule 13.2. and ISE Rule 705.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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. BX has satisfied this requirement.

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2009–059 and should be submitted on or before November 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24615 Filed 10–13–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–60796; File No. SR–CBOE–2009–072]

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

October 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 30, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status (''Temporary Members'') pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02'') and (ii) the monthly access fee for Interim Trading Permit (''ITP'') holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, 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, CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02[2] and the current access fee for ITP holders under Rule 3.27[3] are both $11,287 per month. Both access fees are currently set at the indicative lease rate (as defined below) for September 2009. The Exchange proposes to adjust both access fees effective at the beginning of October 2009 to be equal to the indicative lease rate for October 2009 (which is $11,900). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be $11,900 per month commencing on October 1, 2009.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate[4] of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.[5] The Exchange determined the indicative lease rate for October 2009 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of October 2009 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of September 2009 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of October 2009.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 with respect to the original Temporary Member access fee.[6] Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–77 with respect to the original ITP access fee.[7]

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] to modify the applicable access fee or the applicable status (*i.e.*, the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[3] *See* Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–40) for a description of the Interim Trading Permits under Rule 3.27.

[4] Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

[5] The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

[6] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

[7] *See* Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR–CBOE–2008–77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder. 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–CBOE–2009–072 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2009–072. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2009–072 and should be submitted on or before November 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24616 Filed 10–13–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6785]

Culturally Significant Object Imported for Exhibition Determinations: ''Raphael: The Woman with the Veil''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''Raphael: The Woman with the Veil,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Portland Art Museum, Portland, OR, from on or about October 23, 2009, until on or about January 3, 2010; at the Nevada Museum of Art, Reno, NV, from on or about January 8, 2010, until on or about March 21, 2010; at the Milwaukee Art Museum, Milwaukee, WI, from on or about March 26, 2010, until on or about June 6, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: October 1, 2009.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9–24692 Filed 10–13–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6712]

Notice of Meeting of a Study Group of the U.S. Department of State Advisory Committee on Private International Law

A Study Group of the Department of State Advisory Committee on Private International Law (ACPIL) will be holding a public meeting to continue the discussion of the treatment of IP-secured financing practices in the United Nations Commission on International Trade (UNCITRAL) Draft Legislative Guide on Secured Transactions (Guide). At the 40th Session of the UNCITRAL in December 2007, it adopted a legislative guide on secured transactions, including recommendations dealing with the scope of the Guide as it relates to IP law and secured financing, as well as the inclusion in the commentary to the Guide of explanatory statements on the treatment of IP as secured financing. UNCITRAL also approved a work project on IP law matters as they relate to secured financing law. Earlier sessions for that work project were held in May and October of 2008 and April and May 2009. A fourth session of the IP work project is scheduled in November 2009 in Vienna.

The Study Group will use this public meeting to continue to exchange thoughts on the relationship between secured finance and IP and how this matter should be addressed in the new draft IP annex to the Guide. The report of the first two sessions of the working group and the papers prepared by the Secretariat for the next session of the UNCITRAL working group can be obtained at *http://www.uncitral.org/uncitral/en/commission/working_groups/6Security_Interests.html*.

Time: The public meeting will take place at the Department of State, Office of Private International Law, 2430 E Street, NW., Washington, DC on Wednesday, October 21, from 9:30 a.m. to 11:30 a.m. EST.

Public Participation: This Study Group meeting is open to the public, subject to the capacity of the meeting room. Access to the meeting building is controlled; persons wishing to attend should contact Tricia Smeltzer or Niesha Toms of the Department of State Legal Adviser's Office at *SmeltzerTK@state.gov* or *TomsNN@state.gov* and provide your name, e-mail address, and mailing address to get admission into the meeting or to get directions to the office. Persons who cannot attend but who wish to comment are welcome to do so by e-mail to Michael Dennis at *DennisMJ@state.gov*. A member of the public needing reasonable accommodation should advise those same contacts not later than October 12th. Requests made after that date will be considered, but might not be able to be fulfilled. If you are unable to attend the public meeting and you would like to participate by teleconferencing, please contact Tricia Smeltzer or Niesha Toms at 202–776–8420 to receive the conference call-in number and the relevant information.

Dated: October 6, 2009.

Michael J. Dennis,

Attorney-Adviser, Office of Private International Law, U.S. Department of State.

[FR Doc. E9–24694 Filed 10–13–09; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35303]

David Gavrich—Continuance in Control Exemption—San Francisco Bay Railroad-Mare Island

David Gavrich (Gavrich) has filed a verified notice of exemption to continue in control of San Francisco Bay Railroad-Mare Island (SF Bay-Mare Is.), upon SF Bay-Mare Is.'s becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption for SF Bay-Mare Is. to operate about 8 miles of unmarked rail line owned by the City of Vallejo (the City) and Lennar Mare Island, LLC in Vallejo, CA. *See San Francisco Bay Railroad-Mare Island—Operation Exemption—California Northern Railroad,* STB Finance Docket No. 35304.

SF Bay-Mare Is. is currently negotiating an operating agreement with the City. Gavrich states that it intends to commence operations over the line as soon as the agreement has been finalized, a locomotive obtained and operating authority is granted.

In addition to wholly owning SF Bay-Mare Is., Gavrich is also the sole owner of San Francisco Bay Railroad (SF Bay).[1] SF Bay operates approximately 4.3 miles of track owned by the Port of San Francisco.

Gavrich states that the proposed transaction will restore common carrier freight service to Mare Island at the request of the City to meet the demand of a shipper. Further, the operation will increase employment opportunities in the region, as Mare Island has significant industry and commercial space with potential for increased commercial activity. Gavrich also states that his experience operating safely on city streets will reduce the cost of providing service.

Gavrich represents that the rail line to be operated by SF Bay-Mare Is. does not connect with track operated by SF Bay; the two railroads will serve shippers on opposite sides of San Francisco and San Pablo Bays. No Class I carrier is involved in the transaction. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because the carrier involved is a Class III carrier and the entity seeking to become a carrier would be a Class III carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than October 21, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35303, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John F. McHugh, 6 Water St., New York, NY 10004.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 8, 2009.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–24691 Filed 10–13–09; 8:45 am]

BILLING CODE 4915–01–P

[1] SF Bay was originally formed as LB Railco, Inc. on January 8, 2001; the railroad's name was changed in 2007.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting of the National Parks Overflights Advisory Group Aviation Rulemaking Committee

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) and the National Park Service (NPS), in accordance with the National Parks Air Tour Management Act of 2000, announce the next meeting of the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). This notification provides the dates, location, and agenda for the meeting.

DATES AND LOCATION: The NPOAG ARC will meet on November 4–5, 2009. The meeting will take place at the Dayton Aviation Heritage National Historic Park, Dayton, OH. The meeting will be held at the Wright-Dunbar Interpretive Center's conference room located at 16 South Williams Street, Dayton, OH 45402. The phone number is (937) 225–7705. The meetings will be held from 8:30 a.m. to 5 p.m. on November 4th and from 8:30 a.m. to 5 p.m. on November 5th. This NPOAG meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, AWP–1SP, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3800, e-mail: *Barry.Brayer@faa.gov,* or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 100, Fort Collins, CO 80525, telephone: (970) 225–3563, e-mail: *Karen_Trevino@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (NPATMA), enacted on April 5, 2000, as Public Law 106–181, required the establishment of the NPOAG within one year after its enactment. The Act requires that the NPOAG be a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The duties of the NPOAG include providing advice, information, and recommendations to the FAA Administrator and the NPS Director on: implementation of Public Law 106–181; quiet aircraft technology; other measures that might accommodate interests to visitors of national parks; and at the request of the Administrator and the Director, on safety, environmental, and other issues related to commercial air tour operations over national parks or tribal lands.

Agenda for the November 4–5, 2009 NPOAG Meeting

The agenda for the meeting will include, but is not limited to, final adoption of a Strategic Plan, update on ongoing Air Tour Management Program projects; and a discussion on the competitive bidding process.

Attendance at the Meetings

Although these are not public meetings, interested persons may attend. Because seating is limited, if you plan to attend please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT** so that meeting space may be made to accommodate all attendees.

Record of the Meetings

If you cannot attend the NPOAG meeting, a summary record of the meeting will be made available under the NPOAG section of the FAA ATMP Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/parks_overflights_group/minutes.cfm* or through the Special Programs Staff, Western-Pacific Region, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3808.

Issued in Hawthorne, CA, on October 5, 2009.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. E9–24671 Filed 10–13–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35304]

San Francisco Bay Railroad-Mare Island—Operation Exemption—California Northern Railroad

San Francisco Bay Railroad-Mare Island (SF Bay-Mare Is.), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 8 miles of unmarked rail line (the line) owned by the City of Vallejo (the City) and Lennar Mare Island, LLC (LMI), in Vallejo, CA. There are no mileposts on the line; however, the track is described as extending from a junction located on the California Northern Railroad approximately 800 feet north of Sereno Drive in Vallejo, CA, to the end of track just south of Detoro Way on Mare Island in the City of Vallejo, CA, and branching at A Street on Mare Island to the end of track at approximately L Street on Mare Island in the City of Vallejo, CA. SF Bay-Mare Is. states that it intends to interchange traffic with the California Northern Railroad at Flosden Acres, in Vallejo, CA.

This transaction is related to a concurrently filed notice of exemption for David Gavrich to continue in control of SF Bay-Mare Is. upon SF Bay-Mare Is.'s becoming a Class III rail carrier. *See David Gavrich—Continuance in Control Exemption—San Francisco Bay Railroad-Mare Island*, STB Finance Docket No. 35303.

SF Bay-Mare Is. is currently negotiating an operating agreement with the City. SF Bay-Mare Is. states that it intends to commence operations over the line as soon as authority is granted.

SF Bay-Mare Is. certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 21, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35304, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John F. McHugh, 6 Water St., New York, NY 10004.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 8, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–24693 Filed 10–13–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Order Limiting Scheduled Operations at John F. Kennedy International

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of temporary waiver of the minimum usage requirement.

SUMMARY: This action announces a temporary waiver of the usage requirements necessary to hold Operating Authorizations at John F. Kennedy International Airport (JFK). This policy is effective from March 1 through November 14, 2010.

DATES: *Effective Date:* March 1, 2010.

FOR FURTHER INFORMATION CONTACT: James Tegtmeier, Associate Chief Counsel for the Air Traffic Organization, AGC–40, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number (202) 267–8323; e-mail *james.tegtmeier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Beginning in March 2010, there will be runway and airfield construction at JFK that will temporarily affect operations at the airport. Runway 13R/31L is the airport's most frequently used and longest runway. The Port Authority of New York and New Jersey (Port Authority) indicates the runway historically accommodates a significant percentage of the annual air traffic operations at JFK, particularly departures. The Port Authority plans to resurface the runway with concrete and widen it to accommodate new large aircraft and to help prevent ice ingestion. In addition, the Port Authority will install new runway lighting, electrical infrastructure, and a new electrical feeder system to the runway. The Port Authority opted for a more extensive rehabilitation project to provide for a 40-year design life by surfacing with concrete instead of an 8-year design life with asphalt; however, the project will render Runway 13R/31L unavailable from March 1 until June 30, 2010. The western two-thirds of the runway will reopen July 1, but its use will be limited under some weather and operating conditions, primarily because some high-speed runway turnoffs and navigational aids (NAVAIDS) will be unavailable until later in the construction period. On September 15, Runway 4L/22R will close until September 30 to resurface its intersection with Runway 13R/31L. The entire Runway 13R/31L and its associated NAVAIDS will be fully functional on November 15, 2010.

The FAA, the Port Authority, JFK operators, and other stakeholders have been meeting regularly to identify ways to mitigate congestion and delay in light of the runway and airfield construction. Surface management of aircraft requires further study, as some runway configurations may increase ground congestion, but we will continue to work to maximize the available infrastructure. In addition, we have identified preferred alternative runway configurations.

The FAA worked with MITRE's Center for Advanced Aviation System Development (CAASD) to estimate the capacity and potential delay impacts of the loss of Runway 13R/31L. MITRE CAASD and the FAA looked at historic runway configurations and operating conditions and the likely runway configurations that would substitute for Runway 13R/31L. Modeling compared the March, April, May, and June 2009 flight schedules by month against historic capacity and then against projected capacity in the same months for 2010, when Runway 13R/31L is closed. In each month, delays would increase over the corresponding month in 2009. The modeled peak afternoon and evening departure delays would increase significantly with the April–June schedules, adding about an average of ten minutes per aircraft. The modeled peak delays using March 2009 schedules and the construction capacity would remain within the levels accepted for the 2008 scheduling limits.

The FAA initiated discussions with the largest carriers at the airport, and they have agreed to keep their schedules at March 2009 levels from March 1 until at least July 1. In addition, those carriers and others have expressed concern about the operations for the remaining months of the construction and have agreed to cancel some flights even after Runway 13R/31L returns to partial service after June 30. This will assist in mitigating delays throughout the construction period.

Under the FAA's order limiting scheduled operations at JFK, Operating Authorizations must be used at least 80 percent of the time they are allocated or they will be withdrawn. Historic precedence is given for the next scheduling season only for Operating Authorizations that meet the minimum usage threshold for the corresponding period during the prior scheduling season. The FAA may grant a waiver from the minimum usage requirements in highly unusual and unpredictable conditions that are beyond the control of the carrier and affect carrier operations for a period of five consecutive days or more.

Statement of Policy

The FAA has determined that the projected operational, congestion, and delay impacts of the 2010 runway and airfield construction program meet the requirements for a temporary waiver of the minimum usage rule at JFK. Absent a waiver, carriers would be required to operate flights in order to meet the minimum usage rules or to find another carrier to operate them. With the capacity impacts during the construction, the public interest supports a reduction in operations in order to minimize delays and improve on-time performance. Under the circumstances, carriers that temporarily reduce flights or elect to temporarily return Operating Authorizations to the FAA rather than transfer them for another carrier's use should not be penalized by permanently losing the authority to operate. The FAA appreciates that some carriers have already agreed voluntarily to postpone traditional summer flight increases. In light of this minimum usage waiver, we expect that other carriers may also temporarily limit their summer 2010 operations.

This minimum usage waiver applies only to Operating Authorizations at JFK. Carriers generally must provide advance notice of cancellations to the FAA Slot Administration Office in order to obtain a waiver. However, there may be times when delays are excessive and carriers elect to cancel flights shortly before their scheduled operation. The operational cancellation of a scheduled flight under these circumstances may still qualify for a usage waiver, provided that it is reported as a delay-related cancellation on the usage report submitted to the FAA by the carrier. Information on the use of Operating Authorizations should be provided to the Slot Administration Office by e-mail at *7-awa-slotadmin@faa.gov* or by facsimile at (202) 267–7277.

In consideration of the above, the FAA is waiving the minimum usage requirement for Operating

Authorizations at JFK from March 1 through November 14, 2010.

Issued in Washington, DC, on October 6, 2009.

J. David Grizzle,

Chief Counsel.

[FR Doc. E9–24663 Filed 10–13–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on November 3, 2009 at 10:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Karthik Ramanathan, Acting Assistant Secretary for Financial Markets (202) 622–2042.

Dated: October 5, 2009.

Karthik Ramanathan,

Acting Assistant Secretary for Financial Markets.

[FR Doc. E9–24524 Filed 10–13–09; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (Call Center)]

Agency Information Collection (Call Center Satisfaction Survey) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), 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 it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 13, 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 (Call Center)'' in any correspondence.

For Further Information or a Copy of the Submission 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 (Call Center).''

SUPPLEMENTARY INFORMATION:

Title: VBA Call Center Satisfaction Survey.

OMB Control Number: 2900—New (Call Center).

Type of Review: New collection.

Abstract: VBA maintains a commitment to improve the overall quality of service for Veterans. Feedback from Veterans regarding their recent experience to the VA call centers will provide VBA with three key benefits to: (1) Identify what is most important to Veterans; (2) determine what to do to improve the call center experience; and (3) serve to guide training and/or operational activities aimed at enhancing the quality of service provided to Veterans and active duty personnel.

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 31, 2009, at pages 38262–38263.

Affected Public: Individuals or households.

Estimated Annual Burden: 675 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,700.

Dated: October 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–24635 Filed 10–13–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0518]

Proposed Information Collection (Income Verification) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's entitlement to income-dependent benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 14, 2009.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0518'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Income Verification, VA Form 21–0161a.

OMB Control Number: 2900–0518.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0161a is completed by employers of VA beneficiaries who have been identified as having inaccurately reported their income to VA. VA uses the data collected to determine the beneficiary's entitlement to income dependent benefits.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 15,000 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30 minutes.

Estimated Annual Responses: 30,000.

Dated: October 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–24636 Filed 10–13–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0572]

Proposed Information Collection (Application for Benefits for Certain Children With Disabilities Born of Vietnam and Certain Korea Service Veterans) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the monetary allowance for children of Vietnam and certain Korea service veterans born with spina bifida or birth defects.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 14, 2009.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0572'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Benefits for Certain Children with Disabilities Born of Vietnam and Certain Korea Service Veterans, VA Form 21–0304.

OMB Control Number: 2900–0572.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0304 is used to gather the necessary information to determine a claimant's eligibility for a monetary allowance and appropriate level of payment. Under title 38 U.S.C 1815, Children of Women Vietnam Veterans Born with Certain Birth Defects, authorizes payment of monetary benefits to, or on behalf of, certain children of female veterans who served in Republic of Vietnam. To be eligible, the child must be the biological child; conceived after the date the veteran first served in Vietnam during the period February 28, 1961 to May 7, 1975; and have certain birth defects resulting in permanent physical or mental disability.

Under title 38 U.S.C. 1805, Spina Bifida Benefits Eligibility, authorizes payment to a spina bifida child-claimant of parent(s) who performed active military, naval, or air service during the Vietnam era during the period January 9, 1962 to May 7, 1975 or after the date the veteran first served in or near the demilitarized zone in Korea during the period September 1, 1967 to August 31, 1971. The child must be the natural child of a Vietnam veteran, regardless of age or marital status, who was conceived after the date on which the veteran first entered the Republic of Vietnam during the Vietnam era. Spina Bifida benefits are payable for all types of spina bifida except spina bifida occulta. The law does not allow payment of both benefits at the same time. If entitlement exists under both laws, benefits will be paid under 38 U.S.C. 1815.

Affected Public: Individuals or households.

Estimated Annual Burden: 72 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 430.

Dated: October 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–24637 Filed 10–13–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0577]

Proposed Information Collection (Spina Bifida Award Attachment Important Information) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a spina bifida child of Vietnam veterans' eligibility for ancillary benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 14, 2009.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0577'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Spina Bifida Award Attachment Important Information, VA Form 21–0307.

OMB Control Number: 2900–0577.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0307 is used to provide children of Vietnam veterans who have spina bifida with information about VA health care and vocational training and the steps they must take to apply for such benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 19 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 75.

Dated: October 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–24638 Filed 10–13–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0704]

Proposed Information Collection (VA/DOD Joint Disability Evaluation Board Claim) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to the notice. This

notice solicits comments on information needed to determine an injured or ill service member's eligibility for participation in a joint DOD/VA Disability Evaluation Board and VA compensation after separation from service.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 14, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS), *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0704'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA/DOD Joint Disability Evaluation Board Claim, VA Form 21–0819.

OMB Control Number: 2900–0704.

Type of Review: Revision of a currently approved collection.

Abstract: As a result of President Bush's Interagency Task Force on Returning Global War on Terror Heroes, VA and the Department of Defense (DOD) have agreed to develop a joint process in which Global War on Terror (GWOT) service member's are evaluated to assign disability ratings, which will be used to determine military retention, level of disability for retirement, and VA disability compensation. VA Form 21–0819 will be used to gather the necessary information to determine the service member's eligibility.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 14,000.

Dated: October 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–24639 Filed 10–13–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0736]

Proposed Information Collection (Authorization To Disclose Personal Beneficiary/Claimant Information to a Third Party) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to allow VA to share claims information with the family members or designee of severely injured service members or beneficiary who are unable to communicate with VA due to their injuries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 14, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS), *http://www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0736'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Authorization to Disclose Personal Beneficiary/Claimant Information to a Third Party, VA Form 21–0845.

OMB Control Number: 2900–0736.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0845 is completed by severely injured service members or beneficiary who are unable to communicate with VA due to their injuries, to authorize release of certain claims information to an agent or person(s) whom they designate. The form will aid family member(s) in making well-informed decisions regarding a seriously ill or injured claimant or beneficiary and also allow the designee to receive updated information on certain decisions made regarding claims and payments.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,667 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,000.

Dated: October 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–24640 Filed 10–13–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0465]

Proposed Information Collection (Student Verification of Enrollment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine an individual's continued entitlement to VA benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 14, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–00465'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Student Verification of Enrollment, VA Form 22–8979.

OMB Control Number: 2900–0465.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–8979 contains a student's certification of actual attendance and verification of the student's continued enrollment in courses leading to a standard college degree or in non-college degree programs. VA uses the data collected to determine the student's continued entitlement to benefits. Students are required to submit verification on a monthly basis to allow for a frequent, periodic release of payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 17,024 hours.

Estimated Average Burden per Respondent: 1 minute.

Frequency of Response: 4 times per year.

Estimated Number of Respondents: 255,354.

Estimated Number of Responses: 1,021,416.

Dated: October 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–24641 Filed 10–13–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
October 14, 2009

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, Parts 2, 4, 5, et al.

Federal Acquisition Regulation; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009–0001, Sequence 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–37; Introduction

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

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–37. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–37 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–37

Item	Subject	FAR case	Analyst
I	Registry of Disaster Response Contractors (Interim)	2008–035	Loeb.
II	Limiting Length of Noncompetitive Contracts in "Unusual and Compelling Urgency" Circumstances.	2007–008	Woodson.
III	GAO Access to Contractor Employees	2008–026	Loeb.
IV	Use of Commercial Services Item Authority (Interim)	2008–034	Chambers.
V	Limitations on Pass-Through Charges (Interim)	2008–031	Chambers.
VI	Award Fee Language Revision (Interim)	2008–008	Chambers.
VII	National Response Framework	2009–003	Loeb.
VIII	Technical Amendments		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–37 amends the FAR as specified below:

Item I—Registry of Disaster Response Contractors (FAR Case 2008–035) (Interim)

This interim rule amends the FAR at parts 2, 4, 7, 10, 13, 18, 26, and 52 to implement the Registry of Disaster Response Contractors provision, section 697 of the Department of Homeland Security (DHS) Appropriations Act, 2007 (6 U.S.C. 796).

The Act requires that the Federal Emergency Management Agency (FEMA) establish and maintain this registry. It also requires that the registry include business information consistent with the data that is currently required in the Central Contractor Registration (CCR) with two additional categories added to reflect the area served by the business, and the bonding level of the business concern. The CCR has been updated to include these changes. In addition, the FEMA website has been updated with a link to the CCR search feature which provides access to the disaster response registry. Contracting officers will be required to consult this registry during market research and acquisition planning.

Item II—Limiting Length of Noncompetitive Contracts in "Unusual and Compelling Urgency" Circumstances (FAR Case 2007–008)

This final rule amends the FAR to require that contracts awarded under the authority of FAR 6.302–2, Unusual and compelling urgency, may not exceed the time necessary to meet the unusual and compelling requirements, may not exceed the time for the agency to enter into another contract for the required goods and services through the use of competitive procedures, and may not exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply. The determination may be made after contract award when making the determination prior to award would unnecessarily delay the award. The rule applies to any contract in an amount greater than the simplified acquisition threshold. The rule implements the requirements of section 862 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110–417). The rule is intended to strengthen Federal acquisition competition policies.

Item III—GAO Access to Contractor Employees (FAR Case 2008–026)

This final rule converts the interim rule published in the **Federal Register** at 74 FR 14649, March 31, 2009, to a final rule without change. The interim rule amended FAR 52.215–2, Audits and Records—Negotiation, and FAR 52.214–26, Audit and Records—Sealed Bidding, to allow the Government Accountability Office to interview current contractor employees when conducting audits. The rule does not apply to the acquisition of commercial items; therefore, FAR 12.503 was amended to add the exemption of this rule. This change implemented section 871 of the Duncan Hunter NDAA for Fiscal Year 2009 (Pub. L. 110–417).

Item IV—Use of Commercial Services Item Authority (FAR Case 2008–034) (Interim)

This interim rule amends the FAR to implement section 868 of the Duncan Hunter NDAA for Fiscal Year 2009 (Pub. L. 110–417). Section 868 provides that the FAR shall be amended with respect to the procurement of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. Such services may be considered commercial items

only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for these services.

The rule details the information the contracting officer may consider in order to make this determination. The rule further details, when this determination cannot be made, the information which may be requested to determine price reasonableness.

Item V—Limitations on Pass-Through Charges (FAR Case 2008–031) (Interim)

This interim rule implements section 866 of the Duncan Hunter NDAA for Fiscal Year 2009 (Pub. L. 110–417) and section 852 of the John Warner NDAA for Fiscal Year 2007 (Pub. L. 109–364). Section 866 requires the Councils to amend the FAR to minimize excessive pass-through charges by contractors from subcontractors, or of tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, this interim rule includes a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work.

Item VI—Award Fee Language Revision (FAR Case 2008–008) (Interim)

This interim rule amends the FAR to implement section 814 of the John Warner NDAA of Fiscal Year 2007 (Pub. L. 109–364) and section 867 of the Duncan Hunter NDAA of Fiscal Year 2009 (Pub. L. 110–417). This rule requires agencies to—

(1) Link award fees to acquisition objectives in the areas of cost, schedule, and technical performance;

(2) Clarify that a base fee amount greater than zero may be included in a cost plus award fee type contract at the discretion of the contracting officer;

(3) Prescribe narrative ratings that will be utilized in award fee evaluations;

(4) Prohibit the issuance of award fees for a rating period if the contractor's performance is judged to be below satisfactory;

(5) Conduct a risk and cost benefit analysis and consider the results of the analysis when determining whether to use an award-fee type contract or not;

(6) Include specific content in the award-fee plans; and

(7) Prohibit the rolling over of unearned award fees to subsequent rating periods.

This FAR change will integrate where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts.

Item VII—National Response Framework (FAR Case 2009–003)

This final rule amends the FAR part 18 to remove all references to the National Response Plan (NRP) and Incidents of National Significance. In January 2008, FEMA, a component within the DHS, reissued the NRP as the National Response Framework (NRF). With the reissuance, the term ''Incidents of National Significance'' was eliminated. The changes became effective on March 22, 2008. Both the NRP and the term ''Incidents of National Significance'' are now obsolete.

This rule is informational and represents minor updates for consistency with FEMA references.

FEMA provides a link at their website for Frequently Asked Questions that explain the rationale for and the changes to the NRF.

This rule does not have a significant impact on Government or any automated systems.

Item VIII—Technical Amendments

Editorial changes are made at FAR 5.102, 52.213–4, and 52.244–6.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-37 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-37 is effective October 14, 2009, except for Item VII, which is effective November 13, 2009.

Dated: October 5, 2009.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: October 2, 2009.

David A. Drabkin,

Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: October 6, 2009.

Leigh Pomponio,

Procurement Analyst, National Aeronautics and Space Administration.

[FR Doc. E9–24551 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 7, 10, 13, 18, 26, and 52

[FAC 2005–37; FAR Case 2008–035; Item I; Docket 2009–0033, Sequence 1]

RIN 9000–AL30

Federal Acquisition Regulation; FAR Case 2008–035, Registry of Disaster Response Contractors

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 697, Registry of Disaster Response Contractors (Pub. L. 109–295), the Department of Homeland Security (DHS) Appropriations Act, 2007 (6 U.S.C. 796). The Act requires that the Administrator of the Federal Emergency Management Agency (FEMA), a component of DHS, establish and maintain a registry of contractors, which are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. In addition, the Act requires contracting officers to consult the Registry during market research and acquisition planning.

DATES: *Effective Date*: October 14, 2009.

Comment Date: Interested parties should submit written comments to the

Regulatory Secretariat on or before December 14, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–37, FAR case 2008–035, by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2008–035'' into the field ''Keyword''. Select the link that corresponds with FAR Case 2008–035. Follow the instructions provided to submit your comment. Please include your name, company name (if any), and ''FAR Case 2008–035'' on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–37, FAR case 2008–035, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward Loeb, Director, Contract Policy Division at (202) 501–0650. For more information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR Case 2008–035.

SUPPLEMENTARY INFORMATION:

A. Background

The Disaster Response Registry includes business information consistent with the data that is currently required in the Central Contractor Registration (CCR) with two additional categories added to reflect the area served by the business, and the bonding level of the business concern. The CCR has been updated to include these changes. In addition, the FEMA website has been updated with a link to the Registry search feature at the CCR website. Contracting officers will be required to consult this Registry during market research and acquisition planning. The Registry covers domestic projects. Foreign contractors may register.

The proposed FAR revisions include the following:

(1) Addition of language in FAR 2.101 to provide a definition of the term ''Disaster Response Registry''.

(2) Redesignating FAR section 4.1104 (Solicitation provision and contract clauses) as section 4.1105, and adding a new FAR section 4.1104 that requires contracting officers to consult the Registry at *www.ccr.gov*.

(3) Adding a paragraph (v) to FAR section 7.103 that requires agency heads or designees to prescribe procedures which ensure that contracting officers consult the Registry as a part of acquisition planning for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas (defined in FAR part 2).

(4) Including a reference to 6 U.S.C. 796 in FAR 10.000; making a technical correction of an editorial nature to FAR 10.001(a)(2)(v); and adding language to require agencies, in the conduct of their market research, to identify prospective contractors registered in the Registry when researching sources for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief supplies and services.

(5) Adding the requirement in FAR 18.102 for contracting officers to consult the Registry for the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas.

(6) Redesignating FAR 26.205 as 26.206 and adding a new FAR 26.205, which states that contracting officers shall consult the Registry. This section informs contracting officers how to locate vendors on the Registry.

(7) Making conforming amendments in FAR 13.201 and to the prefatory text in FAR 52.204–7 and in FAR 52.226–3 through 52.226–5.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any additional requirements on small businesses; registration in the Registry is voluntary. Two additional categories for the Registry content were added to the CCR to allow businesses to identify the area served by the business and the bonding level of the business concern.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR parts 2, 4, 7, 10, 13, 18, 26, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–37, FAR Case 2008–035), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Department of Homeland Security Appropriations Act, 2007 (6 U.S.C. 796), became effective upon enactment. The enactment date is October 4, 2006. However, pursuant to Pub. L. 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 4, 7, 10, 13, 18, 26, and 52

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 7, 10, 13, 18, 26, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 7, 10, 13, 18, 26, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition ''Disaster Response Registry'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Disaster Response Registry means a voluntary registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction,

and other disaster or emergency relief activities established in accordance with 6 U.S.C. 796, Registry of Disaster Response Contractors. The Registry contains information on contractors who are willing to perform disaster or emergency relief activities within the United States and its outlying areas. The Registry is located at *www.ccr.gov* and alternately through the FEMA website at *http://www.fema.gov/business/index.shtm*. (See 26.205).

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.1104 [Redesignated as 4.1105]

■ 3. Redesignate section ''4.1104'' as section ''4.1105'', and add a new section ''4.1104'' to read as follows:

4.1104 Disaster Response Registry.

Contracting officers shall consult the Disaster Response Registry at *www.ccr.gov* when contracting for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.103 by adding paragraph (v) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(v) Ensuring that contracting officers consult the Disaster Response Registry at *www.ccr.gov* as a part of acquisition planning for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

PART 10—MARKET RESEARCH

■ 5. Amend section 10.000 by revising the second sentence to read as follows:

10.000 Scope of part.

* * * This part implements the requirements of 41 U.S.C. 253a(a)(1), 41 U.S.C. 264b, 10 U.S.C. 2377, and 6 U.S.C. 796.

■ 6. Amend section 10.001 by revising paragraph (a)(2)(v) to read as follows:

10.001 Policy.

(a) * * *

(2) * * *

(v) On an ongoing basis, and to the maximum extent practicable, take advantage of commercially available market research methods in order to identify effectively the capabilities, of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. (See 26.205).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.201 [Amended]

■ 7. Amend section 13.201 by removing from paragraph (d) ''4.1104'' and adding ''4.1105'' in its place.

PART 18—EMERGENCY ACQUISITIONS

■ 8. Revise section 18.102 to read as follows:

18.102 Central contractor registration.

Contractors are not required to be registered in the Central Contractor Registration (CCR) for contracts awarded to support unusual and compelling needs or emergency acquisitions. (See 4.1102). However, contractors are required to register with CCR in order to gain access to the Disaster Response Registry. Contracting officers shall consult the Disaster Response Registry at *www.ccr.gov* to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See 26.205).

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.205 [Redesignated as 26.206]

■ 9. Redesignate section ''26.205'' as section ''26.206'' and add a new section ''26.205'' to read as follows:

26.205 Disaster Response Registry.

(a) Contracting officers shall consult the Disaster Response Registry at *www.ccr.gov* to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas.

(b) A list of prospective vendors voluntarily participating in the Disaster Response Registry can be retrieved using the CCR Search tool on the CCR webpage. These vendors may be identified by selecting the criteria for ''Disaster Response Contractors''. Contractors are required to register with CCR in order to gain access to the Disaster Response Registry.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–7 [Amended]

■ 10. Amend section 52.204–7 by removing from the introductory paragraph ''4.1104'' and adding ''4.1105'' in its place.

52.226–3 [Amended]

■ 11. Amend section 52.226–3 by removing from the introductory paragraph ''26.205(a)'' and adding ''26.206(a)'' in its place.

52.226–4 [Amended]

■ 12. Amend section 52.226–4 by removing from the introductory paragraph ''26.205(b)'' and adding ''26.206(b)'' in its place.

52.226–5 [Amended]

■ 13. Amend section 52.226–5 by removing from the introductory paragraph ''26.205(c)'' and adding ''26.206(c)'' in its place.

[FR Doc. E9–24554 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 6

[FAC 2005–37; FAR Case 2007–008; Item II; Docket 2007-0001, Sequence 14]

RIN 9000–AK90

Federal Acquisition Regulation; FAR Case 2007–008, Limiting Length of Noncompetitive Contracts in ''Unusual and Compelling Urgency'' Circumstances

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 862 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and Office of Federal Procurement Policy (OFPP)

Administrator's memorandum of May 31, 2007. The rule limits the length of contracts awarded noncompetitively under unusual and compelling urgency circumstances to the minimum contract period necessary to meet the requirements, and no longer than one year, unless the head of the agency determines that exceptional circumstances apply.

DATES: *Effective Date*: October 14, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–37, FAR case 2007–008.

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Federal Procurement Policy (OFPP) Administrator's memorandum of May 31, 2007, issued to Chief Acquisition Officers and Senior Procurement Executives, proposed several initiatives, including promoting competition in Federal acquisition, challenging any barriers to such competition, and reinvigorating the role of the competition advocate. Subsequent to issuance of the memorandum, OFPP submitted multiple business cases proposing FAR changes to strengthen Federal acquisition competition policies. These were established as individual FAR cases. This FAR case specifically addresses the OFPP initiative to limit the length of contracts awarded noncompetitively under the authorities for unusual and compelling urgency. DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 73 FR 5784, January 31, 2008. The 60-day comment period for the proposed rule ended March 31, 2008. Two respondents provided comments for a total of eight comments.

In October 2008 the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110–417, was enacted. Section 862 of this Act amended section 303(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(d) and 10 U.S.C 2304(d)) to require that contracts awarded under the authority of 41 U.S.C 252(c)(2) and 10 U.S.C. 2304(c) (FAR 6.302–2, Unusual and compelling urgency), (1) may not exceed the time necessary to meet the unusual and compelling requirements, may not exceed the time for the agency to enter into another contract for the required goods and services through the use of competitive procedures, and may not exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply; and (2) that the requirements in (1) of this paragraph apply to any contract in amount greater than the simplified acquisition threshold.

The public comments and requirements of the Act were considered by the Councils in the formation of this final rule.

Comment 1: One respondent recommended that the Councils should shorten the contract term to not exceed six months in lieu of the stated ''no longer than one year.''

Response: Non-concur. The time period is required by statute.

Comment 2 and 3: One respondent stated that the term ''head of the contracting activity'' requires clarification. The respondent urges the rule refer to the definition for the ''head of the contracting activity'' by including FAR subpart 2.101 in FAR 6.302–2(d). Another respondent suggested that the rule specifically state whether or not the head of the contracting activity's authority to approve a period of performance longer that one year is delegable.

Response: Non-concur. The National Defense Authorization Act requires that the head of the agency make the determination required by FAR 6.302–2(d). ''Head of the agency'' is defined in FAR subpart 2.101 and does not require defining in FAR 6.302–2(d).

The rule is silent on whether the authority may be delegated. However, FAR 1.108(b) provides that each authority is delegable unless specifically stated otherwise.

Comment 4: Both respondents asked whether the approval process will be governed by FAR 6.304, which requires approval by other government officials depending on the monetary value of the proposed contract? The respondents urged that the process be simplified and duplication of paperwork reduced to prevent the filing of multiple justifications and approvals.

Response: The approval process in 6.302–2(d)(2) for the exceptional circumstances determination is not governed by FAR 6.304. The approval levels are different. The requirement for determining exceptional circumstances apply is separate from the approval process at FAR 6.304. The rule requires the determination be obtained prior to the award of the contract; or may be obtained after award when making the determination prior to award would unnecessarily delay the acquisition.

Comment 5: The authority of FAR 6.302–2(c)(1) currently allows urgent and compelling justifications to be ''made and approved'' after contract award. A respondent suggested that the new FAR citation 6.302–2(d) be added to the 6.303 and 6.304 currently referenced in FAR 6.302–2(c)(1) to make it clear that this can still be done.

Response: Non-Concur. As stated in the prior response, the approval process is not governed by FAR 6.303 or FAR 6.304. The requirement for making the determination for a performance period greater than one year, by the head of the agency, for noncompetitive contracts in unusual urgency and compelling circumstances, is separate from the approval process at FAR 6.304. The rule provides for the determination for a performance period greater than one year to be obtained after contract award when making the determination prior to award would unreasonably delay the acquisition.

Comment 6: One respondent urged that there be discussion added on the public availability of approval records filed by the head of the contracting activity.

Response: Non-concur. FAR Case 2008–003, Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts-Section 844 of the National Defense Authorization Act for Fiscal Year 2008 (74 CFR 2731, January 15, 2009), requires the public disclosure of justification and approval documents for noncompetitive contracts which is a statutory requirement by 10 U.S.C. 2304 and 41 U.S.C. 253.

Comment 7: One respondent requested consideration of the impacts of subsequent changes to the contract awarded under the new rule (*e.g.*, an amendment, a modification, or a follow-on contract) to the one-year contract award restriction.

Response: Non-concur. This rule does not make changes to the existing regulations regarding use of non-competitive awards. The contracting activity must still comply with the justification requirements at FAR subpart 6.3 when awarding an out-of-scope modification to a contract, or a follow-on contract.

Comment 8: Consider a standing exception for certain multiple year non-severable services (*e.g.*, a major acquisition that requires a period of performance greater than one year in order to develop or manufacture an end product).

Response: Non-concur. The rule provides for any exception to the one-year limit by having the head of the agency make the determination for the longer performance contract period.

This is not a significant regulatory action and, therefore, was not subject to

review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses internal agency procedures and will benefit small entities by encouraging competition after a one year performance period, except when a longer performance period is properly approved. Therefore, a Final Regulatory Flexibility Analysis has not been performed.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Part 6

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 6 as set forth below:

PART 6—COMPETITION REQUIREMENTS

■ 1. The authority citation for 48 CFR part 6 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 6.302–2 by adding paragraph (d) to read as follows:

6.302–2 Unusual and compelling urgency.

* * * * *

(d) *Period of Performance*. The total period of performance of a contract awarded using this authority—

(1) May not exceed the time necessary:

(i) To meet the unusual and compelling requirements of the work to be performed under the contract; and

(ii) For the agency to enter into another contract for the required goods and services through the use of competitive procedures.

(2) May not exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply.

(3) The requirements in paragraphs (1) and (2) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

(4) The determination of exceptional circumstances is in addition to the approval of the justification in 6.304.

(5) The determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

[FR Doc. E9–24565 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

[FAC 2005–37; FAR Case 2008–026; Item III; Docket 2009–0013, Sequence 1]

RIN 9000–AL25

Federal Acquisition Regulation; FAR Case 2008–026, GAO Access to Contractor Employees

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) which allows the Government Accountability Office to interview current contractor employees during the audit of the contractor's records.

DATES: *Effective Date*: October 14, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward Loeb, Director, Contract Policy Division at (202) 501–0650. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–37, FAR case 2008–026.

SUPPLEMENTARY INFORMATION:

A. Background

Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110–417) added language allowing the Comptroller General to interview current employees regarding transactions being examined during an audit of contracting records. The Act revises 41 U.S.C. 254d(c)(1) and 10 U.S.C. 2313(c)(1) by inserting before the period: ''and to interview any current employee regarding such transactions''. To implement the Act, FAR clauses 52.215–2, Audit and Records—Negotiation, and 52.214–26, Audit and Records—Sealed Bidding, were amended to add the required statutory language. The statute did not specify that section 871 apply to commercial item contracts and therefore was not applied to FAR clause 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Order—Commercial Items. Section 34 of the Office of Federal Procurement Policy Act (OFPP), 41 U.S.C. 430, exempts commercial item acquisitions from new provisions of law, such as section 871, unless (1) the law provides criminal or civilian penalties, (2) the law expressly refers to 41 U.S.C. 430 and states that it applies to commercial item contracts, or (3) the FAR Council makes a written determination that it would not be in the best interest of the Federal Government to exempt commercial item contracts. Thus, this new provision was added to the list of inapplicable laws at FAR 12.503(a).

DoD, GSA, and NASA published an interim rule with a request for comments in the **Federal Register** at 74 FR 14649 on March 31, 2009. No comments were received. The interim rule is converted to a final rule without change.

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12886, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because only a small number of small businesses are audited by the Government Accountability Office (GAO). Currently

many GAO audits of small business contractors include contractor employee interviews. This Act is designed to cover those incidents in which the contractor does not voluntarily make the contractor employees available for interviews. Therefore, it is not anticipated that interviewing any current employee regarding such contract transactions will have a significant impact.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 12 and 52, which was published in the **Federal Register** at 74 FR 14649 on March 31, 2009, is adopted as a final rule without change.

[FR Doc. E9–24568 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2005–37; FAR Case 2008–034; Item IV; Docket 2009-0035, Sequence 1]

RIN 9000–AL44

Federal Acquisition Regulation; FAR Case 2008–034, Use of Commercial Services Item Authority

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. Section 868 provides that purchases of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace may only be considered commercial items for the purposes of the FAR if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.

DATES: *Effective Date*: October 14, 2009.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before December 14, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–37, FAR case 2008–034, by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2008–034'' into the field ''Keyword''. Select the link that corresponds with FAR Case 2008–034. Follow the instructions provided to submit your comment. Please include your name, company name (if any), and ''FAR Case 2008–034'' on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–37, FAR case 2008–034, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. Please cite FAC 2005–37, FAR case 2008–034. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) states that the FAR shall be amended with respect to the procurement of commercial services, specifically services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. These services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such services. The rule details the information the contracting officer may consider in order to make this determination.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this interim rule primarily impacts actions required on the part of the Government by requiring a new written determination by the contracting officer. Since the current 15.403–3(a)(1) provides for contracting officers to obtain the information necessary to evaluate price reasonableness, this interim rule places no additional requirements on contractors. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR part 15 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–37, FAR case 2008–034), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0013.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and

compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the rule implements section 868 of the Duncan Hunter National Defense Authorization Act (Pub. L. 110–417), which was signed on October 14, 2008, and requires amending the FAR not later than 180 days after the date of enactment of the Act. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 15.403–1 by redesignating paragraphs (c)(3)(ii) and (c)(3)(iii) as (c)(3)(iii) and (c)(3)(iv), respectively, and adding a new paragraph (c)(3)(ii) to read as follows:

15.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

(c) * * *

(3) * * *

(ii) In accordance with section 868 of Pub. L. 110–417:

(A) When purchasing services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, they may be considered commercial items (thus meeting the purpose of 41 U.S.C 254b and 10 U.S.C. 2306a for truth in negotiations) only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.

(B) In order to make this determination, the contracting officer may request the offeror to submit prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers; and

(C) If the contracting officer determines that the information described in paragraph (c)(3)(ii)(B) of this section is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs and overhead rates may be requested.

* * * * *

■ 3. Amend section 15.403–3 by adding paragraph (c)(3) to read as follows:

15.403–3 Requiring information other than cost or pricing data.

* * * * *

(c) * * *

(3) For services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, see 15.403–1(c)(3)(ii).

[FR Doc. E9–24570 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15, 31, and 52

[FAC 2005–37; FAR Case 2008–031; Item V; Docket 2009–0034, Sequence 1]

RIN 9000–AL27

Federal Acquisition Regulation; FAR Case 2008–031, Limitations on Pass-Through Charges

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 which applies to Executive Agencies other than DoD. The DoD is subject to section 852 of the John Warner NDAA for FY 2007 which is also being implemented in this interim rule. Section 866 requires the Councils to amend the FAR and section 852 requires the Secretary of Defense to prescribe regulations to minimize excessive pass-through charges by contractors from subcontractors, or of tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value. Since both statutory provisions address excessive pass-through charges and the multiple tiering of subcontracting, the Councils decided to combine both provisions in this FAR rule.

DATES: *Effective Date*: October 14, 2009.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before December 14, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–37, FAR case 2008–031, by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2008–031'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2008–031. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2008–031'' on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–37, FAR case 2008–031, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–37, FAR case 2008–031.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule is published to implement section 866 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) as well as section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 866 requires the Councils to amend the FAR to minimize excessive pass-through charges by contractors from subcontractors, or of tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, this interim rule includes a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work. Seventy percent was selected as the threshold for this information requirement, because it represents a substantial amount of subcontracting.

The rule is intended to protect the interests of the Government when there appears to be an agreement with a contractor to perform the contract scope of work, including managing subcontractors, then after award, the contractor subcontracts substantially all the effort without providing the required value-added subcontract management functions that were expected. There is no intent in this rule to disrupt the subcontracting process or other arrangements for firms that furnish supplies and services.

To ensure that the Government can make a determination as to whether or not pass-through charges are excessive, the rule incorporates a reporting threshold that affords the contracting officer the ability to understand what functions the contractor will perform (*e.g.*, consistent with the contractor's disclosed practice) and thus will provide added value, whether it be before award, or if the contractor subsequently decides to subcontract substantially all of the effort. The rule provides a recovery mechanism for those situations in which a contractor subcontracts all, or substantially all, of the performance of the contract, and does not perform the subcontract management functions, or other value-added functions, that were charged to the Government through indirect costs and related profit/fee.

The intent of the reporting threshold is for the contracting officer to make a determination that pass-through charges at the time of award are not excessive, when at least 70 percent of the work will be subcontracted, based on contractor demonstrated functions. It also incorporates a requirement for the contractor to notify the contracting officer, in writing, if the contractor decides after award to subcontract more than 70 percent of the total cost of the work to be performed, and to verify in that document that the contractor will add value consistent with the definition in the contract clause. If the contractor does not perform the demonstrated functions or does not add value, the rule makes the excessive pass-through charges unallowable and provides for recoupment of the excessive pass-through charges consistent with the legislation. A further intent of the reporting threshold is to avoid requiring the contracting officer to re-address this determination during contract performance. To that end, this interim rule includes an Alternate I to the clause at FAR 52.215–23 to address those instances in which the contracting officer has made a determination prior to contract award.

The rule is to be applied consistent with existing Cost Accounting Standard (CAS) and FAR rules related to subcontract management, indirect cost allocation, and profit analysis. While the definitions in the provisions are similar, the applicability differs.

For civilian agencies the rule applies to any cost-reimbursement type contract, task or delivery order in an amount greater than the simplified acquisition threshold (as defined by section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)).

For DoD, this rule applies to an amount greater than the threshold to obtain cost or pricing data in FAR 15.403–3 and cost-reimbursement type contracts as well as fixed-price contracts in accordance with section 852 of the FY 2007 NDAA.

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Councils do not expect a significant number of entities to propose excessive pass-through charges under contracts or subcontracts, and the information required from offerors and contractors regarding pass-through charges is minimal. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR parts 15, 31, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–37, FAR case 2008–031), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the interim rule contains information collection requirements. Accordingly, the Regulatory Secretariat has forwarded an emergency request for approval of a new information collection requirement concerning ''Limitations on Pass-Through Charges'' to the Office of Management and Budget (OMB) under 44 U.S.C. Chapter 35, *et seq.* The OMB has preapproved this information collection under OMB Control Number 9000–0173.

Annual Reporting Burden:

To enable contracting officers to verify that pass-through charges are not excessive, this FAR revision will include a requirement for an offeror submitting a proposal for a contract, task order, or delivery order to provide the following information with its proposals:

(1) The cost of work the offeror intends to perform and the cost of work expected to be performed by each subcontractor.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed—

(i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the value added by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract—

(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and

(ii) A description of the added value provided by the subcontractor as related

to the work to be performed by the lower-tier subcontractor(s).

In addition, if the amount of the effort to be subcontracted by the contractor or a subcontractor changes from the amount identified in the proposal such that it exceeds 70 percent of the total cost of work to be performed, the contractor must provide the revised cost of effort and verification that the contractor (or subcontractor) will provide added value.

The annual reporting burden is estimated as follows:

Respondents: 25,380.
Responses per respondent: 1.
Total annual responses: 25,760.
Preparation hours per response: .5.
Total response burden hours: 13,260.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than December 14, 2009 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

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

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0173 in all correspondence.

E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 866 of the FY 2009 NDAA, which was enacted October 14, 2008, requires that the FAR be revised to implement this provision no later than one year after the date of enactment. If this change is not implemented agencies will not be able to comply with section 866 of the FY 2009 NDAA. However, pursuant to Pub. L. 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 15, 31, and 52

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 15, 31, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 15, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

■ 2. Amend section 15.408 by adding paragraph (n) to read as follows:

15.408 Solicitation provisions and contract clauses.

* * * * *

(n) *Limitations on Pass-Through Charges.* (1) The contracting officer shall insert the provision at 52.215–22, Limitations on Pass-Through Charges—Identification of Subcontract Effort, in solicitations containing the clause at 52.215–23.

(2)(i) Except as provided in paragraph (n)(2)(ii) of this section, the contracting officer shall insert the clause 52.215–23, Limitations on Pass-Through Charges, in solicitations and contracts including task or delivery orders as follows:

(A) For civilian agencies, insert the clause when—

(*1*) The total estimated contract or order value exceeds the simplified acquisition threshold as defined in section 2.101 and

(*2*) The contemplated contract type is expected to be a cost-reimbursement type contract as defined in Subpart 16.3; or

(B) For DoD, insert the clause when—

(*1*) The total estimated contract or order value exceeds the threshold for obtaining cost or pricing data in 15.403–4; and

(*2*) The contemplated contract type is expected to be any contract type except—

(*i*) A firm-fixed-price contract awarded on the basis of adequate price competition;

(*ii*) A fixed-price contract with economic price adjustment awarded on the basis of adequate price competition;

(*iii*) A firm-fixed-price contract for the acquisition of a commercial item; or

(*iv*) A fixed-price contract with economic price adjustment, for the acquisition of a commercial item.

(ii) The clause may be used when the total estimated contract or order value is below the thresholds identified in 15.408(n)(2)(i) and for any contract type, when the contracting officer determines that inclusion of the clause is appropriate.

(iii) Use the clause 52.215–23 with its Alternate I when the contracting officer determines that the prospective contractor has demonstrated that its functions provide added value to the contracting effort and there are no excessive pass-through charges.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Amend section 31.203 by adding paragraph (i) to read as follows:

31.203 Indirect costs.

* * * * *

(i) Indirect costs that meet the definition of ''excessive pass-through charge'' in 52.215–23, are unallowable.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add sections 52.215–22 and 52.215–23 to read as follows:

52.215–22 Limitations on Pass-Through Charges—Identification of Subcontract Effort.

As prescribed in 15.408(n)(1), use the following provision:

LIMITATIONS ON PASS-THROUGH CHARGES—IDENTIFICATION OF SUBCONTRACT EFFORT (OCT 2009)

(a) *Definitions.* Added value, excessive pass-through charge, subcontract, and subcontractor, as used in this provision, are defined in the clause of this solicitation entitled ''Limitations on Pass-Through Charges'' (FAR 52.215–23).

(b) *General.* The offeror's proposal shall exclude excessive pass-through charges.

(c) *Performance of work by the Contractor or a subcontractor.* (1) The offeror shall identify in its proposal the total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor, under the contract, task order, or delivery order.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the offeror shall identify in its proposal—

(i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the added value provided by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor proposed under the contract, task order, or delivery order intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the offeror shall identify in its proposal—

(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and

(ii) A description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

(End of provision)

52.215–23 Limitations on Pass-Through Charges.

As prescribed in 15.408(n)(2), use the following clause:

LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)

(a) *Definitions*. As used in this clause—

Added value means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (*e.g.*, processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

Excessive pass-through charge, with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on such costs).

No or negligible value means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

Subcontract means any contract, as defined in FAR 2.101, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor, as defined in FAR 44.101, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(b) *General*. The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) *Reporting*. Required reporting of performance of work by the Contractor or a subcontractor. The Contractor shall notify the Contracting Officer in writing if—

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Recovery of excessive pass-through charges*. If the Contracting Officer determines that excessive pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart 31.2; and

(2) For applicable DoD fixed-price contracts, as identified in 15.408(n)(2)(i)(B), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(e) *Access to records*. (1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR 52.215–2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR 52.215–2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) Flowdown. The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.408(n)(2)(i)(B)(*2*), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403–4.

(End of clause)

Alternate I (OCT 2009). As prescribed in 15.408(n)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *General*. The Government will not pay excessive pass-through charges. The Contracting Officer has determined that there will be no excessive pass-through charges, provided the Contractor performs the disclosed value-added functions.

[FR Doc. E9–24586 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAC 2005–37; FAR Case 2008–008; Item VI; Docket 2009-0036, Sequence 1]

RIN 9000–AL42

Federal Acquisition Regulation; FAR Case 2008–008, Award Fee Language Revision

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007, section 867 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, and the Office of Federal Procurement Policy guidance memorandum dated December 4, 2007, entitled Appropriate Use of Incentive Contracts.

DATES: *Effective Date*: October 14, 2009.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before December 14, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–37, FAR case 2008–008, by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2008–008'' into the field ''Keyword''. Select the link that corresponds with FAR Case 2008–008. Follow the instructions provided to submit your comment. Please include your name, company name (if any), and ''FAR Case 2008–008'' on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–37, FAR case 2008–008, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. Please cite FAC 2005–37, FAR case 2008–008. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements the provisions of section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364), section 867 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417), and the Office of Federal Procurement Policy guidance memorandum dated December 4, 2007, entitled Appropriate Use of Incentive Contracts, which deal with award and incentive fee contract types, by amending and/or integrating where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts.

FAR part 16 has been amended to provide further guidance relative to: (1) Award fees being linked to acquisition objectives in the areas of cost, schedule, and technical performance, (2) The percentage of award fee available for prescribed narrative ratings, (3) Award fees not being earned if the contractor's overall performance is judged to be below satisfactory, (4) The analysis required in determining whether to use an award or incentive fee type contract or not, (5) Award-fee plan content, (6) The prohibition of the use of the award fee rollover concept, (7) The requirements relative to award and incentive fee data collection and performance measures to evaluate such data, and a reference to FAR 7.105 for consideration of this information in acquisition planning, and (8) The publishing of best practices.

The Councils are revising the following FAR provisions:

(1) FAR 16.001 is revised to add definitions for the terms ''Rollover of unearned award fee'', ''Award-Fee Board,'' and ''Fee-Determining Official (FDO)''. This change is made to ensure that all parties understand what is meant by these terms, which are used in the new FAR 16.401(e).

(2) FAR 16.404(a) and FAR 16.404(a)(1) have been combined into 16.404. FAR 16.404(a)(2) has been deleted from this section and is now covered in FAR 16.401(e)(3).

(3) FAR 16.401(d) was changed with the existing content of this section being moved to FAR 16.401(e) and new content being added. This new content requires that a determination and finding be made justifying the use of an incentive or award-fee type contract.

(4) FAR 16.401(e) has been added to require that award fees be linked to acquisition objectives in the areas of cost, schedule, and technical performance; that award fees not be earned if the contractor's overall performance is judged to be below satisfactory; that award-fee determinations be documented in the contract file; that the determination and methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government; and that all award-fee contracts have an award-fee plan that establishes the procedures and award-fee board for evaluating award-fee determinations. This new section also delineates what the required content shall be for all award-fee plans to include the use of adjectival ratings and associated descriptions as well as award-fee pool earned percentages now incorporated into the FAR in Table 16–1. This new paragraph also provides guidance relative to the use of the ''rollover'' concept. The ''rollover'' of unearned award fee from one evaluation period to another evaluation period is now prohibited. The Councils believe ''rollover'' diminishes the effectiveness of the award-fee rating given for a specific evaluation period, since the unearned award fee could be earned by the contractor in a subsequent evaluation period. Further, the ''rollover'' concept is used sparingly across the Federal Government and its limited use has been trending downward.

(5) FAR 16.404(b) was deleted and the core content of this section is now included in FAR 16.401(e). The revisions require that a determination and finding be made based upon the criteria in FAR 16.401(e)(1) before utilizing an award-fee type contract.

(6) FAR 16.405–2(a) is now FAR 16.405–2 and it was revised to clarify that base fee can be included in a cost-plus-award-fee (CPAF) type contract at the discretion of the contracting officer.

(7) FAR 16.405–2(b)(1) has been deleted in its entirety. The language relative to when an award-fee contract is suitable for use is in FAR 16.401(e)(1).

(8) FAR 16.405–2(b)(2) has been deleted in its entirety. The language relative to award-fee criteria motivating contractor performance has been revised and moved to FAR 16.401(e)(3)(ii).

(9) FAR 16.405–2(b)(3) has been deleted in its entirety. The language relative to award-fee evaluation intervals has been revised and moved to 16.401(e)(3)(vi).

(10) FAR 16.405–2(c) has been deleted and the intent of this section is now included in FAR 16.401(e)(5). The revision requires that no award-fee contract shall be awarded unless the limitations cited in this section are met. The limitations include compliance with FAR 16.301–3, FAR 16.401(e)(3), and a determination and finding that justifies the use of this contract type in accordance with the suitability items in FAR 16.401(e)(1).

(11) The references utilized in FAR 16.305 and FAR 16.402–1 were updated to accurately point to the correct FAR sections based upon the changes herein.

(12) FAR 16.401(f) was added to require the collection of incentive- and award-fee data within the Federal Government.

(13) FAR 16.401(g) was added to provide the Federal workforce with best practice type information relative to incentive- and award-fee contracting.

These changes will affect contracts newly awarded. Any changes to existing contracts would be handled in accordance with FAR 1.108(d).

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the guidance largely covers a broad range of aspects of award-fee contracting, whose upshot will be a more consistent use and administration of award fees Governmentwide which will provide a small benefit to all entities both large and small. In addition, the changes promulgated in this interim rule do not directly affect the current business processes of Federal contractors. In the matter of the rule's prohibition on the rollover of unearned award fee, the Councils believe this will have a negligible impact on small businesses for the following reasons. First, award-fee contracts are largely the province of large businesses with large dollar contracts. Second, the ability to rollover unearned award fee may have caused evaluators in the past to be more conservative in their ratings because of their awareness that contractors may have a second opportunity to earn unearned award fees.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR part 16 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–37, FAR case 2008–008), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 867 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417), enacted on October 14, 2008, requires that the FAR be revised to implement this provision by October 14, 2009. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 16 as set forth below:

PART 16—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 16 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Add section 16.001 to read as follows:

16.001 Definitions.

As used in this part—

Award-Fee Board means the team of individuals identified in the award-fee plan who have been designated to assist the Fee-Determining Official in making award-fee determinations.

Fee-Determining Official (FDO) means the designated Agency official(s) who reviews the recommendations of the Award-Fee Board in determining the amount of award fee to be earned by the contractor for each evaluation period.

Rollover of unearned award fee means the process of transferring unearned award fee, which the contractor had an opportunity to earn, from one evaluation period to a subsequent evaluation period, thus allowing the contractor an additional opportunity to earn that previously unearned award fee.

■ 3. Amend section 16.305 by revising the third and fourth sentences to read as follows:

16.305 Cost-plus-award-fee contracts.

* * * See 16.401(e) for a more complete description and discussion of the application of these contracts. See 16.301–3 and 16.401(e)(5) for limitations.

■ 4. Amend section 16.401 by revising paragraph (d); and adding paragraphs (e) through (g) to read as follows:

16.401 General.

* * * * *

(d) A determination and finding, signed by the head of the contracting activity, shall be completed for all incentive- and award-fee contracts justifying that the use of this type of contract is in the best interest of the Government. This determination shall be documented in the contract file and, for award-fee contracts, shall address all of the suitability items in 16.401(e)(1).

(e) Award-fee contracts are a type of incentive contract.

(1) *Application.* An award-fee contract is suitable for use when—

(i) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, schedule, and technical performance;

(ii) The likelihood of meeting acquisition objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and

(iii) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits as documented by a risk and cost benefit analysis to be included in the Determination and Findings referenced in 16.401(e)(5)(iii).

(2) *Award-fee amount.* The amount of award fee earned shall be commensurate with the contractor's overall cost, schedule, and technical performance as measured against contract requirements in accordance with the criteria stated in the award-fee plan. Award fee shall not be earned if the contractor's overall cost, schedule, and technical performance is below satisfactory. The basis for all award-fee determinations shall be documented in the contract file to include, at a minimum, a determination that overall cost, schedule and technical performance is or is not at a satisfactory level. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

(3) *Award-fee plan.* All contracts providing for award fees shall be supported by an award-fee plan that establishes the procedures for evaluating award fee and an Award-Fee Board for conducting the award-fee evaluation. Award-fee plans shall—

(i) Be approved by the FDO unless otherwise authorized by agency procedures;

(ii) Identify the award-fee evaluation criteria and how they are linked to acquisition objectives which shall be defined in terms of contract cost, schedule, and technical performance. Criteria should motivate the contractor to enhance performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas;

(iii) Describe how the contractor's performance will be measured against the award-fee evaluation criteria;

(iv) Utilize the adjectival rating and associated description as well as the award-fee pool earned percentages shown below in Table 16–1. Contracting officers may supplement the adjectival rating description. The method used to determine the adjectival rating must be documented in the award-fee plan;

TABLE 16–1

Award-Fee Adjectival Rating	Award-Fee Pool Available To Be Earned	Description
Excellent	91%—100%	Contractor has exceeded almost all of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Very Good	76%—90%	Contractor has exceeded many of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Good	51%—75%	Contractor has exceeded some of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Satisfactory	No Greater Than 50%	Contractor has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Unsatisfactory	0%	Contractor has failed to meet overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.

(v) Prohibit earning any award fee when a contractor's overall cost, schedule, and technical performance is below satisfactory;

(vi) Provide for evaluation period(s) to be conducted at stated intervals during the contract period of performance so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (*e.g.* six months, nine months, twelve months, or at specific milestones); and

(vii) Define the total award-fee pool amount and how this amount is allocated across each evaluation period.

(4) *Rollover of unearned award fee.* The use of rollover of unearned award fee is prohibited.

(5) *Limitations.* No award-fee contract shall be awarded unless—

(i) All of the limitations in 16.301–3, that are applicable to cost-reimbursement contracts only, are complied with;

(ii) An award-fee plan is completed in accordance with the requirements in 16.401(e)(3); and

(iii) A determination and finding is completed in accordance with 16.401(d) addressing all of the suitability items in 16.401(e)(1).

(f) *Incentive- and Award-Fee Data Collection and Analysis.* Each agency shall collect relevant data on award fee and incentive fees paid to contractors and include performance measures to evaluate such data on a regular basis to determine effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes. This information should be considered as part of the acquisition planning process (see 7.105) in determining the appropriate type of contract to be utilized for future acquisitions.

(g) *Incentive- and Award-Fee Best Practices.* Each agency head shall provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

16.402–1 [Amended]

■ 4. Amend section 16.402–1 by removing from paragraph (b) ''16.405–2'' and adding ''16.401(e)'' in its place.

■ 5. Revise section 16.404 to read as follows:

16.404 Fixed-price contracts with award fees.

Award-fee provisions may be used in fixed-price contracts when the Government wishes to motivate a contractor and other incentives cannot be used because contractor performance cannot be measured objectively. Such contracts shall establish a fixed price (including normal profit) for the effort. This price will be paid for satisfactory contract performance. Award fee earned (if any) will be paid in addition to that fixed price. See 16.401(e) for the requirements relative to utilizing this contract type.

■ 6. Revise section 16.405–2 to read as follows:

16.405–2 Cost-plus-award-fee contracts.

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of (1) a base amount fixed at inception of the contract, if applicable and at the discretion of the contracting officer, and (2) an award amount that the contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in the areas of cost, schedule, and technical performance. See 16.401(e) for the requirements relative to utilizing this contract type.

[FR Doc. E9–24579 Filed 10–13–09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 18

[FAC 2005–37; FAR Case 2009–003; Item VII; Docket 2009-0037; Sequence 1]

RIN 9000–AL37

Federal Acquisition Regulation; FAR Case 2009–003, National Response Framework

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to reflect reissuance of the Federal Emergency Management Agency's (FEMA) National Response Plan (NRP). On January 22, 2008, FEMA reissued the NRP as the National Response Framework (NRF). In addition, the term ''Incident of National Significance'' was eliminated. These changes became effective on March 22, 2008.

DATES: *Effective Date*: November 13, 2009

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ed Loeb, Director, Contract Policy Division at (202) 501–0650. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–37, FAR case 2009–003.

SUPPLEMENTARY INFORMATION:

A. Background

On January 22, 2008, FEMA, a component of the Department of Homeland Security, reissued the National Response Plan (NRP) as the National Response Framework (NRF). With the reissuance, the term ''Incidents of National Significance'' was eliminated. These changes became effective on March 22, 2008. Both the NRP and the term ''Incidents of National Significance'' are now obsolete.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities and other interested parties concerning the affected FAR part 18 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–37, FAR case 2009–003), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Part 18

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 18 as set forth below:

PART 18—EMERGENCY ACQUISITIONS

■ 1. The authority citation for 48 CFR part 18 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 18.001 by revising paragraph (c) to read as follows:

18.001 Definition.

* * * * *

(c) When the President issues an emergency declaration, or a major disaster declaration.

■ 3. Amend section 18.203 by revising the section heading to read as follows:

18.203 Emergency declaration or major disaster declaration.

* * * * *

■ 4. Amend section 18.204 by revising paragraph (a) to read as follows:

18.204 Resources.

(a) *National Response Framework.* The National Response Framework (NRF) is a guide to how the Nation conducts all-hazards response. This key document establishes a comprehensive, national, all-hazards approach to domestic incident response. The Framework identifies the key response principles, roles and structures that organize national response. It describes how communities, States, the Federal Government, the private-sector, and nongovernmental partners apply these principles for a coordinated, effective national response. It also describes special circumstances where the Federal Government exercises a larger role, including incidents where Federal interests are involved and catastrophic incidents where a State would require significant support. The NRF is available at *http://www.fema.gov/emergency/nrf/.*

* * * * *

[FR Doc. E9–24580 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5 and 52

[FAC 2005–37; Item VIII; Docket 2009–0009; Sequence 5]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

DATES: *Effective Date*: October 14, 2009.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–37, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

List of Subjects in 48 CFR Parts 5 and 52

Government procurement.

Dated: October 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 5 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

5.102 [Amended]

■ 2. Amend section 5.102 by removing from paragraph (a)(5)(ii) ''GPE;'' and adding ''GPE; or'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.213–4 by revising the date of the clause; and removing from paragraph (a)(1)(v) ''(Feb 2006)'' and adding ''(June 2008)'' in its place.

■ The revised text reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (OCT 2009)

* * * * *

52.244–6 [Amended]

■ 4. Amend section 52.244–6 by removing from the clause heading ''(August 11, 2009)'' and adding ''(Aug 2009)'' in its place.

[FR Doc. E9–24584 Filed 10–13–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009–0002, Sequence 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–37; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–37 which amend the FAR. Interested parties may obtain further information regarding these rules by referring to FAC 2005–37 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, FAR Secretariat, (202) 208–7282. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–37

Item	Subject	FAR case	Analyst
I	Registry of Disaster Response Contractors (Interim)	2008–035	Loeb.
II	Limiting Length of Noncompetitive Contracts in ''Unusual and Compelling Urgency'' Circumstances.	2007–008	Woodson.
III	GAO Access to Contractor Employees	2008–026	Loeb.
IV	Use of Commercial Services Item Authority (Interim)	2008–034	Chambers.
V	Limitations on Pass-Through Charges (Interim)	2008–031	Chambers.
VI	Award Fee Language Revision (Interim)	2008–008	Chambers.
VII	National Response Framework	2009–003	Loeb.
VIII	Technical Amendments		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–37 amends the FAR as specified below:

Item I—Registry of Disaster Response Contractors (FAR Case 2008–035) (Interim)

This interim rule amends the FAR at parts 2, 4, 7, 10, 13, 18, 26, and 52 to implement the Registry of Disaster Response Contractors provision, section 697 of the Department of Homeland Security (DHS) Appropriations Act, 2007 (6 U.S.C. 796).

The Act requires that the Federal Emergency Management Agency (FEMA) establish and maintain this registry. It also requires that the registry include business information consistent with the data that is currently required in the Central Contractor Registration (CCR) with two additional categories added to reflect the area served by the business, and the bonding level of the business concern. The CCR has been updated to include these changes. In addition, the FEMA website has been updated with a link to the CCR search feature which provides access to the disaster response registry. Contracting officers will be required to consult this registry during market research and acquisition planning.

Item II—Limiting Length of Noncompetitive Contracts in ''Unusual and Compelling Urgency'' Circumstances (FAR Case 2007–008)

This final rule amends the FAR to require that contracts awarded under the authority of FAR 6.302–2, Unusual and compelling urgency, may not exceed the time necessary to meet the unusual and compelling requirements, may not exceed the time for the agency to enter into another contract for the required goods and services through the use of competitive procedures, and may not exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply. The determination may be made after contract award when making the determination prior to award would unnecessarily delay the award. The rule applies to any contract in an amount greater than the simplified acquisition threshold. The rule implements the requirements of section 862 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110–417). The rule is intended to strengthen Federal acquisition competition policies.

Item III—GAO Access to Contractor Employees (FAR Case 2008–026)

This final rule converts the interim rule published in the **Federal Register** at 74 FR 14649, March 31, 2009, to a final rule without change. The interim rule amended FAR 52.215–2, Audits and Records—Negotiation, and FAR 52.214–26, Audit and Records—Sealed Bidding, to allow the Government Accountability Office to interview current contractor employees when conducting audits. The rule does not apply to the acquisition of commercial items; therefore, FAR 12.503 was amended to add the exemption of this rule. This change implemented section 871 of the Duncan Hunter NDAA for Fiscal Year 2009 (Pub. L. 110–417).

Item IV—Use of Commercial Services Item Authority (FAR Case 2008–034) (Interim)

This interim rule amends the FAR to implement section 868 of the Duncan Hunter NDAA for Fiscal Year 2009 (Pub. L. 110–417). Section 868 provides that the FAR shall be amended with respect to the procurement of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. Such services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for these services.

The rule details the information the contracting officer may consider in order to make this determination. The rule further details, when this determination cannot be made, the information which may be requested to determine price reasonableness.

Item V—Limitations on Pass-Through Charges (FAR Case 2008–031) (Interim)

This interim rule implements section 866 of the Duncan Hunter NDAA for Fiscal Year 2009 (Pub. L. 110–417) and section 852 of the John Warner NDAA for Fiscal Year 2007 (Pub. L. 109–364). Section 866 requires the Councils to amend the FAR to minimize excessive pass-through charges by contractors from subcontractors, or of tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, this interim rule includes a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work.

Item VI—Award Fee Language Revision (FAR Case 2008–008) (Interim)

This interim rule amends the FAR to implement section 814 of the John Warner NDAA of Fiscal Year 2007 (Pub. L. 109–364) and section 867 of the Duncan Hunter NDAA of Fiscal Year 2009 (Pub. L. 110–417). This rule requires agencies to—

(1) Link award fees to acquisition objectives in the areas of cost, schedule, and technical performance;

(2) Clarify that a base fee amount greater than zero may be included in a cost plus award fee type contract at the discretion of the contracting officer;

(3) Prescribe narrative ratings that will be utilized in award fee evaluations;

(4) Prohibit the issuance of award fees for a rating period if the contractor's performance is judged to be below satisfactory;

(5) Conduct a risk and cost benefit analysis and consider the results of the analysis when determining whether to use an award-fee type contract or not;

(6) Include specific content in the award-fee plans; and

(7) Prohibit the rolling over of unearned award fees to subsequent rating periods.

This FAR change will integrate where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts.

Item VII—National Response Framework (FAR Case 2009–003)

This final rule amends the FAR part 18 to remove all references to the National Response Plan (NRP) and Incidents of National Significance. In January 2008, FEMA, a component within the DHS, reissued the NRP as the National Response Framework (NRF). With the reissuance, the term ''Incidents of National Significance'' was eliminated. The changes became effective on March 22, 2008. Both the NRP and the term ''Incidents of National Significance'' are now obsolete.

This rule is informational and represents minor updates for consistency with FEMA references.

FEMA provides a link at their website for Frequently Asked Questions that explain the rationale for and the changes to the NRF.

This rule does not have a significant impact on Government or any automated systems.

Item VIII—Technical Amendments

Editorial changes are made at FAR 5.102, 52.213–4, and 52.244–6.

Dated: October 5, 2009

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–24585 Filed 10–13–09; 8:45 am]

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H.R. 2131/P.L. 111–70

To amend the Foreign Affairs Reform and Restructuring Act of 1998 to reauthorize the United States Advisory Commission on Public Diplomacy. (Oct. 9, 2009; 123 Stat. 2057)

H.R. 3593/P.L. 111–71

To amend the United States International Broadcasting Act of 1994 to extend by one year the operation of Radio Free Asia, and for other purposes. (Oct. 9, 2009; 123 Stat. 2058)

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