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WHEN: Tuesday, July 14, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–22 of July 1, 2009

Presidential Determination Under Section 402 (c)(2)(A) of the Trade Act of 1974—Republic of Belarus

Memorandum for the Secretary of State

Pursuant to section 402(c)(2)(A)of the Trade Act of 1974 (Public Law 93–618), as amended (the ''Act''), I determine that a waiver by Executive Order of the application of subsections (a) and (b) of section 402 of the Act with respect to Belarus will substantially promote the objectives of section 402.

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

THE WHITE HOUSE,
Washington, July 1, 2009.

[FR Doc. E9–16348
Filed 7–8–09; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 74, No. 130
Thursday, July 9, 2009

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

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

[Docket No. APHIS–2009–0039]

Rules of Practice for Certain Adjudicatory Proceedings; Possession, Use, and Transfer of Select Agents and Toxins

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: We are amending the administrative regulations of the Office of the Secretary of Agriculture to provide that the rules of practice contained in those regulations shall be applicable to adjudicatory proceedings under the Animal and Plant Health Inspection Service's regulations pertaining to the possession, use, and transfer of select agents and toxins. This final rule is necessary to clarify the rules of practice that will apply to the adjudication of a violation of regulations pertaining to the regulation of select agents and toxins.

DATES: *Effective Date:* July 9, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Steve O'Neill, Chief, Regulatory Analysis and Development, PPD, APHIS, 4700 River Road Unit 118, Riverdale, MD 20737–1238; (301) 734–8682.

SUPPLEMENTARY INFORMATION:

Background

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Title II, ''Enhancing Controls on Dangerous Biological Agents and Toxins'' (sections 201 through 231), provides for the regulation of certain biological agents and toxins by the Department of Health and Human Services (subtitle A, sections 201–204) and the Department of Agriculture (subtitle B, sections 211–213), and provides for interagency coordination between the two departments regarding overlap agents and toxins (subtitle C, section 221). For the Department of Health and Human Services, the Centers for Disease Control and Prevention (CDC) has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the Department of Agriculture.

In accordance with those statutory provisions, on August 12, 2002, APHIS published in the **Federal Register** (67 FR 52383–52389) an interim rule that established the initial lists of biological agents and toxins and set out the manner in which persons in possession of listed agents and toxins were to provide notice of such possession.

Section 212 of the Act also required the Secretary of Agriculture to provide by regulation for the establishment and enforcement of standards and procedures governing the possession, use, and transfer of listed biological agents and toxins in order to protect animal and plant health, and animal and plant products. Specifically, sections 212(b) and (c) required that the Secretary:

- Establish and enforce safety procedures for listed agents and toxins, including measures to ensure proper training and appropriate skills to handle agents and toxins, and proper laboratory facilities to contain and dispose of agents and toxins;
- Establish and enforce safeguard and security measures to prevent access to listed agents and toxins for use in domestic or international terrorism or for any other criminal purpose;
- Establish procedures to protect animal and plant health, and animal and plant products, in the event of a transfer or potential transfer of a listed agent or toxin in violation of the safety procedures and safeguard and security measures established by the Secretary; and
- Ensure appropriate availability of biological agents and toxins for research, education, and other legitimate purposes.

In an interim rule published in the **Federal Register** on December 13, 2002 (67 FR 76908–76938) and effective on February 11, 2003, APHIS established regulations in 7 CFR part 331 and 9 CFR part 121 governing the possession, use, and transfer of biological agents and toxins that have been determined to have the potential to pose a severe threat to both human and animal health, to animal health, to plant health, or to animal or plant products. APHIS adopted its December 2002 interim rule as a final rule in a document published in the **Federal Register** on March 18, 2005 (70 FR 13242–13292).

Section 212(i) of the Act provides that persons who violate the regulations are subject to civil penalties not to exceed $250,000 in the case of an individual and $500,000 in the case of any other person. APHIS is amending the administrative regulations of the Office of the Secretary in 7 CFR 1.31 to provide that the uniform rules of practice for the Department of Agriculture promulgated in 7 CFR part 1, subpart H, are applicable to adjudicatory, administrative proceedings to assess civil penalties for violations of APHIS' regulations governing the possession, use, and transfer of select agents and toxins.

This final rule also amends the regulations in 7 CFR 1.131 by removing references to statutory provisions that were repealed by the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*). Specifically, in paragraph (a) of that section we are removing the following references:

- Act of May 29, 1884, commonly known as the Animal Industry Act, section 7, as amended (21 U.S.C. 117),
- Act of August 30, 1890, section 6, as amended (21 U.S.C. 104),
- Act of February 2, 1903, commonly known as the Cattle Contagious Diseases Act of 1903, section 3, as amended (21 U.S.C. 122),
- Act of March 3, 1905, section 6, as amended (21 U.S.C. 127),
- Act of July 2, 1962, section 6(a), as amended (21 U.S.C. 134e), and
- Act of May 6, 1970, section 2, as amended (21 U.S.C. 135a).

Along those same lines, in paragraph (b) of § 1.131, we are replacing a reference to ''the Animal Quarantine and Related Laws (21 U.S.C. 111 *et seq.*)'' with a reference to the Animal Health Protection Act.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988. Moreover,

pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.,* the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Claims, Cooperatives, Courts, Equal access to justice, Fraud, Freedom of information, Government employees, Lawyers, Motion pictures, Penalties, Privacy.

■ Accordingly, we are amending 7 CFR part 1 as follows:

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 301, unless otherwise noted.

Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

§ 1.131 [Amended]

■ 2. Section 1.131 is amended as follows:

■ a. In paragraph (a), by removing the entries for ''Act of May 29, 1884, commonly known as the Animal Industry Act, section 7, as amended (21 U.S.C. 117).'', ''Act of August 30, 1890, section 6, as amended (21 U.S.C. 104).'', ''Act of February 2, 1903, commonly known as the Cattle Contagious Diseases Act of 1903, section 3, as amended (21 U.S.C. 122).'', ''Act of March 3, 1905, section 6, as amended (21 U.S.C. 127).'', ''Act of July 2, 1962, section 6(a), as amended (21 U.S.C. 134e).'', and ''Act of May 6, 1970, section 2, as amended (21 U.S.C. 135a).''.

■ b. In paragraph (a), by adding, in alphabetical order, an entry for ''Agricultural Bioterrorism Protection Act of 2002, section 212(i) (7 U.S.C. 8401(i)).''.

■ c. In paragraph (b)(2), by removing the words ''Animal Quarantine and Related Laws (21 U.S.C. 111 *et seq.*)'' and adding the words ''Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)'' in their place.

Dated: June 29, 2009.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. E9–16195 Filed 7–8–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3431

RIN 0524–AA43

Veterinary Medicine Loan Repayment Program (VMLRP)

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Interim final rule and request for comments.

SUMMARY: This interim final rule establishes the process and procedures for designating veterinarian shortage situations, specifically for the Veterinary Medicine Loan Repayment Program (VMLRP) authorized by the National Veterinary Medical Service Act (NVMSA) and administered by the Cooperative State Research, Education, and Extension Service (CSREES) of the U.S. Department of Agriculture. CSREES will designate geographic and practice areas that have a shortage of food supply veterinarians in order to carry out the VMLRP goals of strengthening the nation's animal health infrastructure and supplementing the Federal response during animal health emergencies. CSREES will carry out NVMSA by entering into educational loan repayment agreements with veterinarians who agree to provide veterinary services in veterinarian shortage situations for a determined period of time. CSREES is establishing Subpart A for the designation of the veterinarian shortage situations and Subpart B for the administration of the VMLRP.

DATES: This rule is effective July 9, 2009. The Agency must receive comments by September 8, 2009 for them to be considered in the final rule.

ADDRESSES: You may submit comments, identified by RIN 0524–AA43, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: vmlrp@csrees.usda.gov. Include Regulatory Information Number (RIN) number 0524–AA43 in the subject line of the message.

Fax: 202–401–7752.

Mail: Paper, disk or CD–ROM submissions should be submitted to Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture, STOP 2299, 1400 Independence Avenue, SW., Washington, DC 20250–2299.

Hand Delivery/Courier: Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 2258, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Gary Sherman, National Program Leader, Veterinary Science, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, 1400 Independence Avenue, SW., Washington, DC 20250–2220; Voice: 202–401–4952; Fax: 202–401–6156; e-mail: *gsherman@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law, adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997 (NARETPA). This law established a new Veterinary Medicine Loan Repayment Program (7 U.S.C. 3151a) authorizing the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. In November 2005, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97) appropriated $495,000 for CSREES to implement the Veterinary Medicine Loan Repayment Program and represented the first time funds had been appropriated for this program. In February 2007, the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5) appropriated an additional $495,000 to CSREES for support of the program, and in December 2007, the

Consolidated Appropriations Act, 2008 appropriated an additional $868,875 to CSREES for support of this program. On March 11, 2009, the Omnibus Appropriations Act, 2009 (Pub. L. 111–8) was enacted, providing an additional $2,950,000 for the VMLRP. Consequently, there is a cumulative total of approximately $4.8 million available for CSREES to administer this program. Funding for future years will be based on annual appropriations and balances from prior years, and will likely vary from year to year.

Section 7105 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246 (FCEA) amended section 1415A to revise the determination of veterinarian shortage situations to consider (1) geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

NARETPA section 1415A requires the Secretary, when determining the amount of repayment for a year of service by a veterinarian, to consider the ability of USDA to maximize the number of agreements from the amounts appropriated and to provide an incentive to serve in veterinary service shortage areas with the greatest need. This section also provides that loan repayments may consist of payments of the principal and interest on government and commercial loans received by the individual for the attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine or the equivalent. Please note that this program is not authorized to provide repayments for any government or commercial loans incurred during the pursuit of another degree, such as an associate or bachelor degree and, consequently, any consolidated loans (e.g., combined loans for bachelor and Doctor of Veterinary Medicine degrees). Loans eligible for repayment include educational loans made for one or more of the following: Loans for tuition expenses; other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and reasonable living expenses as determined by the Secretary. In addition, the Secretary is directed to make such additional payments to participants as the Secretary determines appropriate for the purpose of providing reimbursements to participants for individual tax liability resulting from participation in this program. Finally, this section requires USDA to promulgate regulations within 270 days of the enactment of FCEA (*i.e.,* June 18, 2008). The Secretary delegated the authority to carry out this program to CSREES.

Solicitation of Stakeholder Input

On August 29, 2008, CSREES published a **Federal Register** notice [73 FR 50928–50929] announcing a public meeting to be held on Monday, September 15, 2008, at the Waterfront Centre in Washington, DC, to solicit stakeholder input as well as the instructions on how to submit written comments by Tuesday, September 30, 2008, on the implementation of VMLRP.

CSREES received oral and written comments from the following veterinary professional associations and organizations: American Veterinary Medical Association (AVMA), Association of American Veterinary Medical Colleges (AAVMC), American College of Veterinary Microbiologists (ACVM), American Association of Veterinary Laboratory Diagnosticians (AAVLD), American College of Veterinary Pathologists (ACVP), National Cattlemen's Beef Association (NCBA), Texas Cattle Feeders Association (TCFA), and Ohio's Cattlemen Association (OCA) as well as a comprehensive joint statement from AVMA and the AAVMC. In addition, CSREES received 27 comments from individuals, most of whom were students at veterinary colleges. CSREES considered all comments received in the development of this interim rule.

As the trade association of America's cattle farmers and ranchers, the NCBA commented that the implementation of VMLRP would ''ease the shortage of veterinarians in rural areas, encourage more veterinarians to go into food animal practice, retain food animal veterinarians in rural practices, and help better protect our nation's livestock herds.'' The NCBA further commented that livestock producers rely on their local veterinarian for guidance to ensure herd management, disease control, and food product safety; and that the increased complexity of pharmaceutical and biological product use requires additional veterinarian supervision for producers. The NCBA believes that practicing food animal veterinarians is the veterinarian shortage situation with the greatest need. In addition, NCBA feels strongly that the program must be simple and uncomplicated and that administrative costs must be minimized to maximize the number of agreements executed. The TCFA submitted a comment stating that they agree with and support the NCBA comments.

The OCA urged USDA not to stray from the original intent of the legislation to increase the number of practicing food animal veterinarians in rural areas. OCA also stated that Ohio has a very significant shortage of food animal veterinarians and that this program would provide an incentive for veterinarians to practice in underserved rural areas. OCA encouraged flexibility in determining the veterinarian shortage situation as sometimes the lack of food animal veterinarians actually contributes to a reduced number of livestock in the area. Finally, OCA commented on the important role that food animal veterinarians play in the production of a safe and wholesome food supply.

The ACVM, the AAVLD, and the ACVP commented that there are acute shortages of trained veterinarians in disciplines such as pathology, microbiology, toxicology, and parasitology and that often these specialized disciplines require an additional three years of study which contributes to the student debt load, thus presenting a potential barrier to students wishing to pursue further study in these disciplines. These disciplines contribute to the animal, human, and environmental health and the economic well-being of society by engaging in some of the following objectives and activities: Diagnosing disease in food-producing and companion animals (*i.e.,* pets); ensuring safety in food, pharmaceuticals and biological products; and maintaining vigilance against outbreaks of new and emerging diseases. The AAVLD commented that it has recognized for a number of years a severe shortage of veterinarians to staff its diagnostic laboratories. AAVLD laboratories work with USDA in surveillance for, response to, and recovery from foreign animal diseases, and recognition of emerging diseases, primarily through the National Animal Health Laboratory Network (NAHLN). According to AAVLD, many of its laboratories work closely with the Center for Disease Control (CDC) in the Laboratory Response Network (LRN), or with the Food and Drug Administration (FDA) in the Food Emergency Response Network (FERN). All three organizations commented that they wished the VMLRP would be made available to veterinarians willing to pursue residencies or advanced degrees in the above-mentioned disciplines.

In their joint comprehensive set of comments, the AVMA and the AAVMC

stated that it is essential for the nation to address the well documented critical workforce shortages in veterinarians pursuing careers in food animal science, food safety, and public health. They continued their veterinary shortage discussion by commenting that the VMLRP will help address the growing disparities in the numbers and types of veterinarians practicing in rural and other underserved locations across the country as well as in areas of veterinary practice with a shortage of veterinarians. According to the statistics provided by the AVMA and the AAVMC, only about 10 percent of the veterinarians practicing in the United States today work in the food animal practice versus 100 percent at the beginning of the last century. In addition, there will continue to be a shortage of veterinarians in food safety and public health. They also cited the significant number of new veterinarians electing to enter companion animal medicine for several reasons, one of which is that the salary level is often higher than in food animal medicine. AVMA and AAVMC also stated that ''one of the most daunting obstacles standing in the way of students pursuing a career in food animal medicine is educational debt.'' They noted that the average student debt for a veterinary school graduate exceeded $106,000 in 2007 and to repay that sum over a 10-year period would average about $1,200 a month. The AVMA and AAVMC concluded their discussion of the need for the VMLRP by stating that the highest paying jobs in each of the practice categories are typically determined by geography and that jobs in rural areas, where most of the food animal practitioners are in the highest demand, often pay less due to demographics and other economic conditions.

The AVMA and the AAVMC recommended that the loan repayment agreements be for four years with the average annual loan repayment (exclusive of payments for tax liability) ranging from $25,000 to $40,000 per year over the agreement period. They recommended that 90 percent of the agreements be targeted to veterinarians practicing food animal medicine in any underserved area and to food animal medicine veterinarians practicing in rural areas (*i.e.,* with a mixed practice in which at least 30 percent of the practice is devoted to food animals). They further recommended that 10 percent be used to attract and retain veterinarians to critical veterinarian shortage situations in food safety and public health.

The AVMA and the AAVMC recommended that the Secretary, under the guidance of the Federal and state veterinarians, designate the veterinary shortage situations. They felt that these shortage situations are best determined at the state level. With regard to designation of a veterinary shortage situation, the AVMA and the AAVMC recommended that the nominations for these situations address risk, activity, and objective. They recommended CSREES assemble an official review panel of qualified individuals to review the nominations for designation of various shortage situations submitted by the states. In 2007, the AVMA compiled the Food Supply Veterinary Medicine Data Maps which can be found at *http://www.avma.org/fsvm/maps/default.asp.* As part of their joint comments, AVMA suggested that the data compiled in these maps may be useful in designating veterinarian shortage areas, particularly those related to food animal practices, and they stated that they were committed to keeping this information up-to-date. AVMA and AAVMC also made specific comments on the solicitation, selection criteria, and the administration of these loan repayment agreements, particularly the terms and conditions of these awards. For example, they recommended that eligibility not be limited to recent graduates and that CSREES explore the possibility of entering into an agreement with a service provider to administer the program.

Twenty-three of the 27 comments received were from veterinary medical students who discussed at great length their significant future debt loads after graduation, averaging from $100,000 to more than $300,000 in some cases when combined with the debt incurred during their undergraduate education. Most student respondents would be willing to locate to an underserved rural area or other critical veterinarian shortage situation (*e.g.,* food safety or public health) to practice food animal medicine. They also would be willing on average to agree to serve in that area from three to six years if a significant amount of their student loan debt was repaid through this program, at the rate of $20,000 per year. Many felt that the combined financial commitment by USDA and a time commitment by the veterinarian to practicing in the veterinarian shortage situation would result in the practicing veterinarian making a long-term commitment to the community. Most student respondents either had a desire or a potential interest in practicing food animal medicine full-time or in a mixed animal practice. Most indicated that they would probably continue serving in the community after the expiration of their service agreement. Most indicated that the looming debt and the monthly payments as well as their start-up costs (personal and professional) were driving them to consider other practices and other geographic areas to attain a certain level of income sufficient to make their monthly student loan payments.

One student recommended that the loan repayments be tax free. However, the authorizing act, National Veterinary Medicine Service Act, while not making these payments non-taxable, does include a provision for USDA to pay the tax liability incurred by VMLRP participants as a result of receiving these loan repayments. There was also a suggestion to allow participants to transfer from one shortage situation to another within the period of the service agreement.

In response to stakeholder input, CSREES will be awarding VMLRP loan repayment agreements in amounts ranging up to $25,000 for the first three or four years (with a minimum of three years). In addition, CSREES will be paying an amount up to 39 percent of the total amount of loan repayments made in a calendar year to reimburse program participants for the tax liability incurred as a result of their participation in VMLRP. Consequently, for each VMLRP participant, the loan repayment amounts plus the tax liability payments would be reported as income on the form 1099–G, Certain Government Payments, each calendar year.

In addition, CSREES is considering a small pilot program to implement the service in an emergency component of the VMLRP for a limited number of agreements. Potential agreements will be identified during the designation of the veterinary shortage situations. The emergency situations referred to in this Part are emergencies related to pandemics, zoonotic outbreaks, or other food supply emergencies, as determined by the Secretary, and do not include emergencies related to armed conflict. Successful applicants for these annual agreements may receive an additional loan repayment amount of up to $5,000 per year, plus an amount up to 39 percent of the amount of annual loan repayment made under the program, and will be required to serve no more than 60 days per year. Emergency responders will receive a salary for the period of emergency service, as determined by the Secretary, and will be reimbursed for travel and per diem expenses as appropriate for the duration of service. These agreements will be in addition to the primary VMLRP agreement. CSREES will identify which veterinarian shortage situations are

eligible for this type of agreement in the Request for Applications (RFA) for the VMLRP loan repayment applications from individual veterinarians.

Based on the stakeholder input received, the available funding for the program at this time, experiences of other Federal loan repayment programs, such as the NIH Division of Loan Repayment extramural programs, and the goals of the VMLRP program, CSREES believes that $25,000, per year in loan repayments for a minimum of three or four years, plus an amount sufficient to cover the additional tax liability, is an adequate incentive for VMLRP participants to relocate to veterinarian shortage situations critical to the security of our Nation's food supply and the health and safety of people, food animals, and the environment. CSREES anticipates that about 40 VMLRP agreements with be executed the first year. This approach will allow individual participants to reduce their qualifying educational debt within a 3- or 4-year time period and meet their additional tax liability while serving in shortage areas with the greatest need.

As recommended by AVMA and AAVMC, CSREES is negotiating with the National Institutes of Health (NIH) Division of Loan Repayment (DLR) to provide certain administrative services and support. These services may include the receipt of individual applications, initial administrative review of applications, verification and certification of selected applicants as being eligible to participate, payments to actual loan providers, tax liability payments, and monitoring and reporting functions. CSREES has entered into an interagency agreement with the NIH DLR to determine the feasibility of NIH DLR performing some of these functions for CSREES. The NIH DLR currently manages a portfolio of eight NIH loan repayment programs, five of which are extramural programs, with an annual budget of approximately $75 million. For the NIH extramural programs, the NIH DLR received over 3,000 applications and made over 1,600 awards in fiscal year (FY) 2007. The NIH DLR maintains a state-of-the-art system that manages the entire process from application through close-out. CSREES feels that it is in the best interest of potential applicants and VMLRP participants, as well as the Federal government, for CSREES to work with the NIH DLR on this initiative. Please note that CSREES will still be responsible for the determination of the veterinarian shortage situations, peer review of the individual VMLRP applications, and overall oversight and coordination of the VMLRP. The CSREES Web site for the VMLRP is available at *http://wwww.csrees.usda.gov/nea/education/in_focus/vmlrp/html* and will be updated, as appropriate. Please note that any VMLRP applicant and participant interfaces will be conducted via the CSREES Web site. Additional information about the NIH DLR is available at *http://www.lrp.nih.gov.*

Consideration of Stakeholder Input and the Interim Process and Procedures for the Designation of Veterinarian Shortage Situations

CSREES was very appreciative of the stakeholder input that was received during the recent comment period. Based on these comments and other research and analysis conducted, CSREES has determined to issue two subparts for this Part: Subpart A, Designation of Veterinarian Shortage Situations, and Subpart B, Administration of the VMLRP. As recommended by the AVMA and the AAVMC, CSREES will solicit, via a notice (published in the **Federal Register** and on the CSREES Web site), the veterinarian shortage situations from the State animal health official in each state. Nominators will be requested to submit to a designated e-mail box a Form—CSREES XXXX, VMLRP Veterinarian Shortage Situation Nomination, which will be available on the CSREES Web site at *http://www.csrees.usda.gov/nea/education/in_focus/vmlrp.html.*

Respondents will be required to identify the geographic location of the veterinarian shortage situation, as well as the area of practice. The area of practice includes private food animal science medicine (at least 80 percent of the practice), private mixed animal medicine (at least 30 percent of the practice dedicated to food animal medicine), food safety (identify employer and position), epidemiology (identify employer and position), public health (identify employer and position), and other (identify practice, employer, and position). The practice of private mixed animal medicine will only be considered for a veterinarian shortage situation in a rural area as defined in 7 CFR 3431.3. For the purposes of the VMLRP, CSREES is adopting the definition of rural area found in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(13)(A)). Respondents will then be requested to address four additional questions about the objectives, activities, and risk associated with the situation/position not being secured or retained as well as past efforts to recruit for and/or retain this position. Finally, respondents will be asked to identify if, how, and why this position may be considered for a secondary loan repayment agreement for service in an emergency.

CSREES intends to solicit these nominations for a 60-day period. Shortly thereafter, CSREES will convene a panel of food supply veterinary medicine experts from Federal and state agencies, as well as institutions receiving Animal Health and Disease Research Program funds under section 1433 of NARETPA, who will review the nominations and make recommendations to the CSREES Program Manager. CSREES explored the possibly of including experts from professional organizations for this process, but under the National Agricultural Research, Extension, and Teaching Policy Act (NARETPA) section 1409A(e), panelists for the purposes of this process are limited to Federal and State agencies and cooperating state institutions (*i.e.,* NARETPA section 1433 recipients).

The VMLRP Program Manager will then review the recommendations and designate the VMLRP shortage situations. The list of shortage situations will be published in the **Federal Register** and will be made available on the CSREES Web site at *http://csrees.usda.gov/nea/education/in_focus/vmlrp.html.*

Upon designation of the veterinarian shortage situations, CSREES will publish in the **Federal Register** and on the Agency's Web site a Request for Applications (RFA) for the VMLRP with applications due within 90 days. This is the same length of time that the NIH provides applicants under its loan repayment programs. Applicants would then submit an application through the CSREES VMLRP Web site. A loan repayment service provider will work with the CSREES Office of Extramural Programs (OEP), the office responsible for administration and payment of all CSREES Federal assistance awards, throughout the application and administration of the VMLRP. Ineligible applicants will be notified. Applications from eligible applicants will be forwarded to CSREES. CSREES will submit the applications to a peer review panel comprised of food supply veterinary medicine experts from the Federal and state agencies, colleges and universities, professional organizations, and other interested stakeholders. This peer review panel will review and evaluate applications from individual veterinarians and make recommendations to the VMLRP Program Manager. After the VMLRP

Program Manager prepares the final list of potential awardees for each shortage situation, a second level review is conducted to ensure fairness and integrity of the process. This final list of potential awardees is forwarded to OEP for a final administrative review and execution of the VMLRP loan repayment agreements. As noted previously, Subpart B of this Part will provide the policies and procedures from the RFA through the closeout of the agreement, such as tax liability payments, reporting, payment schedule, and terms and conditions for the agreements.

For the purposes of this regulation, CSREES is adopting the definition of ''food supply veterinary medicine'' from the Food Supply Veterinary Medicine (FSVM) Coalition Report entitled ''Estimating FSVM Demand and Maintaining the Availability of Veterinarians for Careers in Food Supply Related Disciplines in the United States and Canada,'' and the ''practice of veterinary medicine'' from the Model Veterinary Practice Act (Approved by the AVMA Executive Board, November 2003, revised April 2007, November 2007). CSREES developed a definition of ''practice of food supply veterinary medicine'' to include the practices contributing to the production of a safe and wholesome food supply and to animal, human, and environmental health. This definition incorporates the legislative intent of VMLRP and the adopted definition of ''food supply veterinary medicine.'' CSREES also adopted a definition of ''food animal'' for the purposes of this regulation so that it was clear to the public what is a ''food animal,'' while providing flexibility to the Secretary to consider other ''food animals,'' if appropriate.

USDA appreciates the efforts of the AVMA in compiling the Food Supply Veterinary Medicine Data Maps which can be found at *http://www.avma.org/fsvm/maps/default.asp* and will be encouraging States to use the data contained in these maps to justify their veterinarian shortage situation.

Consideration of Stakeholder Input and Administration of the VMLRP

CSREES considered and included many of the recommendations of the AVMA and the AAVMC in the development of the administrative provisions for the VMLRP. USDA is initially capping annual loan repayment of principal and interest of qualifying loans to $25,000 and the payments for the additional tax liability incurred to no more than 39 percent of the annual loan repayments. This will allow CSREES to maximize the number of service agreements in accordance with the authorizing program legislation, while providing sufficient debt relief to attract potential VMLRP participants committed to serve in veterinarian shortage situations. However, these interim regulations allow the Secretary of Agriculture to adjust the cap under § 3431.13(b), if appropriate. Any changes in the caps will be addressed in the RFA.

Please note that the solicitation for veterinary shortage situations and the VMLRP RFA will provide more specific details on the administration of the program. In addition, CSREES will establish a dedicated set of Web pages to the VMLRP similar to the Web pages established for the NIH loan repayment programs.

Timeline for Implementing the Program

This regulation is being published as ''final interim'' to allow CSREES to implement the program immediately. CSREES felt confident that this was the best approach for all given the delays in program implementation; the statutory requirement to promulgate regulations within 270 days of the enactment of the FCEA; the consideration and adoption of the stakeholder input received during the public meeting and comment period; the adoption, to the extent practical, of the NIH DLR best business practices for loan repayment programs; and the potential partnering of CSREES with the NIH DLR on this effort. However, CSREES is soliciting comments to consider and incorporate in the final rule.

CSREES anticipates soliciting for the veterinarian shortage situations via a **Federal Register** notice in September 2009 (open for 60 days) after the conclusion of the comment period for the associated information collection and approval by OMB of this information collection. At the same time, CSREES will continue to work with the NIH DLR on adapting the NIH DLR application forms for use by VMLRP as well as developing the other associated business processes (e.g., reporting, payments). CSREES anticipates soliciting for VMLRP participants in late fall 2009 or early winter 2010 (open for 90 days).

Although this interim regulation addresses most of the policies associated with this program, CSREES plans to create informational Web pages (providing detailed information and procedures) for the program similar to the pages created for the NIH DLR programs.

Administrative Requirements for the Interim Rulemaking

Executive Order 12866

The Office of Management and Budget has reviewed this interim rule because while it is not economically significant, it partially implements the Veterinary Medicine Loan Repayment Program (VMLRP). This interim rule will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities or principles set forth in the Executive Order.

Regulatory Flexibility Act of 1980

This interim rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department concluded that the rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget (OMB) implementing regulations (5 CFR part 1320), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request approval to establish an information collection for the purposes of submitting a nomination for the designation of a veterinarian shortage situation in response to a solicitation requesting nominations from the animal health official in each state.

Written comments on this notice must be received by September 8, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

You may submit comments, identified by Docket ID# CSREES–2009–0004, by any of the following methods: Federal eRulemaking Portal: *http://regulations.gov.* Follow the instructions for submitting comments. E-mail: *jhitchcock@csrees.usda.gov*; Mail: Jason Hitchcock, Information Systems and Technology Management, USDA/

CSREES, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216; Hand Delivery/Courier: Jason Hitchcock, Information Systems and Technology Management, USDA/CSREES, 800 9th Street, SW., Room 4217, Waterfront Centre, Washington, DC 20024; Fax: 202–720–0857.

FOR FURTHER INFORMATION CONTACT: Jason Hitchcock, (202) 720–4343. Information is also available at *http://www.csrees.usda.gov/nea/education/in_focus/vmlrp.html.*

Title: VMLRP Veterinarian Shortage Situation Nomination.

OMB Number: 0524–00XX.

Type of Request: Intent to request approval to establish an information collection.

Abstract: CSREES is establishing the process and procedures for designating veterinarian shortage situations for the Veterinary Medicine Loan Repayment Program (VMLRP) as authorized under section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA). This information collection applies to Subpart A of 7 CFR part 3431.

Need and Use of the Information: CSREES will be requesting the animal health official in each state to submit the VMLRP Veterinarian Shortage Situation Nomination Form, for each situation or position for which there is a critical shortage of practicing veterinarians. CSREES plans to publish a solicitation for these veterinarian shortage situations, requesting that State animal health officials provide nominations by submitting this form. This form will be available at the CSREES Web site as a PDF-fillable document (to be e-mailed, faxed, or mailed), and includes questions requiring check boxes or text with a word limitation to minimize the burden. These nomination forms will be reviewed and evaluated by a panel according to the criteria identified in the published solicitation. From these evaluations, the VMLRP Program Director may designate the most highly recommended shortage situations according to criteria identified in the solicitation. These situations will later be identified in the Request for Applications (RFA) for VMLRP loan repayment applications (from individual veterinarians).

Estimate of Burden: It is estimated that it will take approximately two hours to complete this PDF-fillable form with checkboxes and text-limiting fields to minimize the overall burden.

Respondents: Animal Health Official in each State.

Estimated Number of Respondents: 57 respondents.

Estimated Number of Responses: 114 responses (average of 2 per State).

Estimated Total Annual Burden on Respondents: 228 hours.

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 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; (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.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Jason Hitchcock by telephone, (202) 720–4343, or by e-mail, *jhitchcock@csrees.usda.gov.* Information also is available at *http://www.csrees.usda.gov/nea/education/in_focus/lvmlrp.html.* When the VMLRP application forms and participant reporting requirements (i.e., the information collection requirements under Subpart B) are finalized, CSREES intends to publish another **Federal Register** notice announcing its intent to seek OMB approval for the information collection requirements under Subpart B.

Catalog of Federal Domestic Assistance

This interim regulation applies to the following Federal assistance program administered by CSREES, Catalog of Federal Domestic Assistance (CFDA) No. 10.313, Veterinary Medicine Loan Repayment Program (VMLRP).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this interim rule in accordance with the requirements of Executive Order No. 13132, 64 FR 43225 (August 10, 1999) and the Unfunded Mandates Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local tribal governments or by the private sector, the department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this interim rule in accordance with Executive Order 13175, 65 FR 67249 (Nov. 9, 2000), and has determined that it does not have ''tribal implications.'' The interim 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.''

Clarity of This Regulation

Executive Order 12866, 58 FR 51735 (September 30, 1993), and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this interim rule easier to understand.

List of Subjects in Part 3431

Administrative practice and procedure; Agricultural research, education, extension; Veterinarians; Federal assistance.

■ For the reasons discussed in the preamble, the Cooperative State Research, Education, and Extension Service amends Chapter XXXIV of Title 7 of the Code of Federal Regulations to add Part 3431 to read as follows.

PART 3431—VETERINARY MEDICINE LOAN REPAYMENT PROGRAM

Subpart A—Designation of Veterinarian Shortage Situations

Sec.
3431.1 Applicability of regulations.
3431.2 Purpose.
3431.3 Definitions and acronyms.
3431.4 Solicitation of stakeholder input.
3431.5 Solicitation of veterinarian shortage situations.
3431.6 Review of nominations.
3431.7 Notification and use of designated veterinarian shortage situations.

Subpart B—Administration of the Veterinary Medicine Loan Repayment Program

3431.8 Purpose and scope.
3431.9 Eligibility to apply.
3431.10 Eligibility to participate.
3431.11 Application.
3431.12 Selection of applicants.
3431.13 Terms of loan repayment and length of service requirements.
3431.14 Priority.
3431.15 Qualifying loans.
3431.16 Certifications and verifications.
3431.17 VMLRP service agreement offer.

3431.18 Service agreement.
3431.19 Payment and tax liability.
3432.20 Administration.
3432.21 Breach.
3432.22 Waiver.
3432.23 Service to Federal government in emergency situations.
3431.24 Reporting requirements, monitoring, and close-out.

Authority: 7 U.S.C. 3151a; Public Law 106–107 (31 U.S.C. 6101 note).

§ 3431.1 Applicability of regulations.

This part establishes the process and procedures for designating veterinarian shortage situations as well as the administrative provisions for the Veterinary Medicine Loan Repayment Program (VMLRP) authorized by the National Veterinary Medical Service Act (NVMSA), 7 U.S.C. 3151a.

§ 3431.2 Purpose.

The Secretary will follow the processes and procedures established in Subpart A to designate veterinarian shortage situations for the VMLRP. Applications for the VMLRP will be accepted from eligible veterinarians who agree to serve in one of the designated shortage situations in exchange for the repayment of an amount of the principal and interest of the veterinarian's qualifying educational loans. The administrative provisions for the VMLRP, including the application process, are established in Subpart B.

§ 3431.3 Definitions and acronyms.

(a) *General definitions.*

Act means the National Veterinary Medical Service Act, as amended.

Agency or CSREES means the Cooperative State Research, Education, and Extension Service.

Department means the United States Department of Agriculture.

Food animal means the following species: bovine, porcine, ovine/camelid, cervid, poultry, and any other species as determined by the Secretary.

Food supply veterinary medicine means all aspects of veterinary medicine's involvement in food supply systems, from traditional agricultural production to consumption.

Insular area means the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands of the United States.

NVMSA means the National Veterinary Medicine Service Act.

Practice of food supply veterinary medicine includes corporate/private practices devoted to food animal medicine, mixed animal medicine located in a rural area (at least 30 percent of practice devoted to food animal medicine), food safety, epidemiology, public health, and other practices that contribute to the production of a safe and wholesome food supply.

Practice of veterinary medicine means:

(1) To diagnose, treat, correct, change, alleviate, or prevent animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions by any method or mode; including:

(i) The prescription, dispensing, administration, or application of any drug, medicine, biologic, apparatus, anesthetic, or other therapeutic or diagnostic substance or medical or surgical technique, or

(ii) The use of complementary, alternative, and integrative therapies, or

(iii) The use of any manual or mechanical procedure for reproductive management, or

(iv) The rendering of advice or recommendation by any means including telephonic and other electronic communications with regard to any of paragraphs (1)(i),(ii),(iii), or (iv) of this definition.

Rural area means any area other than a city or town that has a population of 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved has been delegated.

Service area means geographic area in which the veterinarian will be providing veterinary medical services.

State means any one of the fifty states, the District of Columbia, and the insular areas of the United States, including the Commonwealth of Puerto Rico; Guam; American Samoa; the Commonwealth of the Northern Mariana Islands; the Federated States of Micronesia; the Republic of the Marshall Islands; the Republic of Palau; and the Virgin Islands of the United States.

State animal health official means the State veterinarian, or equivalent, who will be responsible for nominating and certifying veterinarian shortage situations within the State.

Veterinarian means a person who has received a professional veterinary medicine degree from an accredited college of veterinary medicine.

Veterinary medicine means all branches and specialties included within the practice of veterinary medicine.

Veterinary Medicine Loan Repayment Program or VMLRP means the Veterinary Medicine Loan Repayment Program authorized by the National Veterinary Medical Service Act.

Veterinarian shortage situation means any of the following situations in which the Secretary, in accordance with the process in Subpart A, determines has a shortage of veterinarians:

(1) Geographical areas that the Secretary determines have a shortage of food supply veterinarians; and

(2) Areas of veterinary practice that the Secretary determines have a shortage of food supply veterinarians, such as food animal medicine, public health, epidemiology, and food safety.

(b) *Definitions applicable to Subpart B.*

Applicant means an individual who applies to and meets the eligibility criteria for the VMLRP.

Breach of agreement results when a participant fails to complete the service agreement obligation required under the terms and conditions of the agreement and will be subject to assessment of monetary damages and penalties as determined in the service agreement, unless a waiver has been granted or an exception applies.

Current payment status means that a qualified educational loan is not past due in its payment schedule as determined by the lending institution.

Debt threshold means the minimum amount of qualified student debt an individual must have, on their program eligibility date, in order to be eligible for program benefits, as determined by the Secretary.

Program eligibility date means the date on which an individual's VMLRP agreement is executed by the Secretary.

Program participant means an individual whose application to the VMLRP has been approved and whose service agreement has been accepted and signed by the Secretary.

Qualifying educational expenses means the costs of attendance of the applicant at an accredited college of veterinary medicine, exclusive of the tuition and reasonable living expenses. Educational expenses may include fees, books, laboratory expenses and materials, as required by an accredited college or school of veterinary medicine as part of a Doctor of Veterinary Medicine degree program, or the equivalent. The program participant must submit sufficient documentation, as required by the Secretary, to substantiate the school requirement for the educational expenses incurred by the program participant.

Qualifying educational loans means loans that are issued by any U.S.

government (i.e., Federal, state, or local) entity, accredited U.S. academic institution(s), and/or commercial lender(s) that are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or the state in which the lender has its principal place of business. Loans must have been made for one or more of the following: School tuition, other qualifying educational expenses, or reasonable living expenses relating to the obtainment of a degree of Doctor of Veterinary Medicine from an accredited college or school of veterinary medicine. Such loans must have documentation which is contemporaneous with the training received in a college or school of veterinary medicine. If qualifying educational loans are refinanced, the original documentation of the loan(s) will be required to be submitted to the Secretary to establish the contemporaneous nature of such loans.

Reasonable living expenses means the ordinary living costs incurred by the program participant while attending the college of veterinary medicine, exclusive of tuition and educational expenses. Reasonable living expenses must be incurred during the period of attendance and may include food and lodging expenses, insurance, commuting and transportation costs. Reasonable living expenses must be equal to or less than the sum of the school's estimated standard student budgets for living expenses for the degree veterinary medicine for the year(s) during which the program participant was enrolled in the school. However, if the school attended by the program participant did not have a standard student budget or if a program participant requests repayment for living expenses which are in excess of the standard student budgets described in the preceding sentence, the program participant must submit documentation, as required by the Secretary, to substantiate the reasonableness of living expenses incurred. To the extent that the Secretary determines, upon review of the program participant's documentation, that all or a portion of the living expenses are reasonable, these expenses will qualify for repayment.

Service agreement means the agreement, which is signed by an applicant and the Secretary for the VMLRP wherein the applicant agrees to accept repayment of qualifying educational loans and to serve in accordance with the provisions of NVMSA for a prescribed period of obligated service.

Termination means a waiver of the service obligation granted by the Secretary when compliance by the participant is impossible, would involve extreme hardship, or where enforcement with respect to the individual would be unconscionable (see breach of agreement).

Withdrawal means a request by a participant for withdrawal from participation in the VMLRP after signing the service agreement, but prior to VMLRP making the first annual payment on behalf of the participant. A withdrawal is without penalty to the participant and without obligation to the Program.

§ 3431.4 Solicitation of stakeholder input.

The Secretary will solicit stakeholder input on the process and procedures used to designate veterinarian shortage situations prior to the publication of the solicitation for nomination of veterinarian shortage situations. A notice may be published in the **Federal Register**, on the Agency's Web site, or other appropriate format or forum. This request for stakeholder input may include the solicitation of input on the administration of VMLRP and its impact on meeting critical veterinarian shortage situations. All comments will be made available and accessible to the public.

§ 3431.5 Solicitation of veterinarian shortage situations.

(a) *General.* The Secretary will follow the procedures described in this part to solicit veterinarian shortage situations as the term is defined in § 3431.3.

(b) *Solicitation.* The Secretary will publish a solicitation for nomination of veterinarian shortage situations in the **Federal Register**, on the Agency's Web site, or other appropriate format or forum.

(c) *Frequency.* Contingent on the availability of funds, the Secretary will normally publish a solicitation on a biennial basis. However, the Secretary reserves the right to solicit veterinarian shortage situations every year or every three years, as appropriate.

(d) *Content.* The solicitation will describe the nomination process, the review criteria and process, and include the form used to submit a nomination. The solicitation may specify the maximum number of nominations that may be submitted by each State animal health official.

(e) *Nominations.* Nominations shall identify the veterinarian shortage situation and address the criteria in the nomination form which may include the objectives of the position, the activities of the position, and the risk posed if the position is not secured.

(f) *Nominating Official.* The State animal health official in each state may nominate and certify veterinarian shortage situations within the State. It is anticipated that the State animal health official of each State will involve the leading health animal experts in the State in the nomination process.

§ 3431.6 Review of nominations.

(a) *Peer panel.* State nominations will be evaluated by a peer panel of experts in animal health convened by the Secretary. The panel will evaluate nominations according to the criteria identified in the solicitation. The panel will consider the objectives and activities of the veterinarian position in the veterinary service shortage situation and the risks associated with not securing or retaining the position and make a recommendation regarding each nomination.

(b) *Agency review.* The Secretary will evaluate the recommendations of the peer panel and designate shortage situations for the VMLRP.

§ 3431.7 Notification and use of designated veterinarian shortage situations.

The Secretary will publish the designated veterinarian shortage situations on the Agency's Web site and will use the designated veterinarian shortage situations to solicit VMLRP loan repayment applications from individual veterinarians in accordance with Subpart B.

Subpart B—Administration of the Veterinary Medicine Loan Repayment Program

§ 3432.8 Purpose and scope.

(a) *Purpose.* The regulations of this subpart apply to the award of veterinary medicine loan repayments under the Veterinary Medicine Loan Repayment Program (VMLRP) authorized by the National Veterinary Medicine Service Act, 7 U.S.C. 3151a.

(b) *Scope.* Under the VMLRP, the Secretary enters into service agreements with licensed veterinarians to pay principal and interest on education loans of veterinarians who agree to work in veterinary shortage situations for a prescribed period of time. In addition, program participants may enter into an agreement to provide services to the Federal government in emergency situations in exchange for salary, travel, per diem expenses, and additional amounts of loan repayment assistance. The purpose of the program is to ensure an adequate supply of trained food animal veterinarians in shortage situations and provide USDA with a pool of veterinary specialists to assist in the control and eradication of animal disease outbreaks.

§ 3431.9 Eligibility to apply.

(a) *General.* To be eligible to apply to the VMLRP an applicant must:

(1) Have a degree of Doctor of Veterinary Medicine (DVM), or the equivalent, from an accredited college of veterinary medicine;

(2) Have qualifying educational loan debt as defined in § 3431.3 of this title;

(3) Secure an offer of employment or establish and/or maintain a practice in a veterinary shortage situation, as determined by the Secretary in accordance with the procedures in Subpart A, within the time period specified in the VMLRP service agreement offer; and

(4) Provide certifications and verifications in accordance with § 3431.16 of this Part.

(b) *Non-eligibility.* The following individuals are ineligible to apply to the VLMRP:

(1) An individual who owes an obligation for veterinary service to the Federal government, a State, or other entity under an agreement with such Federal, State, or other entity is ineligible for the VMLRP unless such obligation will be completely satisfied prior to the beginning of service under the VMLRP;

(2) An individual who has a Federal judgment lien against his/her property arising from Federal debt; and

(3) An individual who has consolidated qualifying loans with loans not qualifying for repayment under the VMLRP.

§ 3431.10 Eligibility to participate.

To be eligible to participate in the VMLRP, a participant must meet the following criteria:

(a) Meet the eligibility criteria of § 3431.9 for applying to the VMLRP;

(b) Be selected for participation by the Secretary pursuant to § 3431.12.

(c) Be a licensed veterinarian in the jurisdiction in which he or she proposes to practice;

(d) Be a citizen, national, or permanent resident of the United States;

(e) Sign a service agreement to provide veterinary services in one of the veterinarian shortage situations; and

(f) Comply with the terms and conditions of the Service Agreement.

§ 3431.11 Application.

Individuals who meet the eligibility criteria of § 3431.9 may submit an online program application or any other application process provided by the Secretary.

§ 3431.12 Selection of applicants.

(a) *Review of applications.* Upon receipt, applications for the VMLRP will be reviewed for eligibility and completeness by the appropriate staff as determined by the Secretary. Incomplete or ineligible applications will not be processed or reviewed.

(b) *Peer review.* Applications for the VMLRP that are deemed eligible and complete will be referred to the VMLRP peer panel for peer review. In evaluating the application, reviewers are directed to consider the following components, as well as any other criteria identified in the RFA, and how they relate to the likelihood that the applicant will meet the terms and conditions of the VMLRP agreement, continue to serve in a veterinary shortage situation, or pursue a career in food animal veterinary medicine:

(1) Major or emphasis areas(s) during formal post-secondary training (*e.g.*, bachelors degree major, minor);

(2) Major or emphasis area(s) during formal training for DVM/VMD degree;

(3) Specialty training area/discipline (*e.g.*, board certification or graduate degree);

(4) Non-degree/non-board certification training or certifications (*e.g.,* animal agrosecurity coursework and certifications);

(5) Applicant's personal statement;

(6) Awards;

(7) Letters or recommendation, if applicable; and

(8) Other documentation or criteria, as specified in the RFA.

§ 3431.13 Terms of loan repayment and length of service requirements.

(a) *Loan repayment.* For each year of obligated service in a veterinary shortage situation, as determined by the Secretary, with a minimum of 3 years (and maximum of 4 years) of obligated service, the Secretary may pay:

(1) An amount not exceeding $25,000 per year of a program participant's qualifying loans; and

(2) An additional amount not exceeding $5,000 per year of a program participant's qualifying loans, if the program participant has already been selected for participation in the VMLRP and agrees to enter into a one-year agreement for each year of service to provide up to 60 days of obligated service to the Federal government in animal health emergency situations, as determined by the Secretary, provided the shortage situation in which the participant has agreed to serve has been designated as suitable for the Federal obligated service.

(b) To maximize the number of agreements and to encourage qualified veterinarians to participate in the VMLRP, the Secretary may establish a loan repayment cap that differs from the cap established under paragraph (a)(1) and (a)(2) of this section when it is in the best interest of VMLRP. This will be identified in the RFA.

(c) The Secretary will determine the debt threshold in the RFA.

(d) Loan repayments will be made directly to the loan provider on a quarterly basis, starting with the end of the first quarter after the program eligibility date of the service agreement.

(e) Once a service agreement has been signed by both parties, the Secretary will obligate such funds as will be necessary to ensure that sufficient funds will be available to make loan repayments and tax payments, as specified in the service agreement, for the duration of the period of obligated service. Reimbursements for tax liabilities in excess of the amount provided (not to exceed 39 percent of the amount of loan repayment) will be subject to the availability of funds. These additional tax payments, if available to the VMLRP participants, will be identified in the RFA and in the participant service agreement.

(f) Participants are required to keep payments current on all qualifying VMLRP loans.

(g) *Travel expenditures.* The VMLRP will not reimburse a program participant for expenses associated with traveling from the program participant's residence to the prospective practice site for the purpose of evaluating such site or the expenses of relocating from the program participant's temporary or permanent residence to a practice site.

§ 3431.14 Priority.

Pursuant to NVMSA, the Secretary will give priority to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations, as determined by the Secretary. The Secretary may establish additional criteria in the RFA for assigning priority levels to veterinarian shortage situations nominated for award.

§ 3431.15 Qualifying loans.

(a) *General.* Loan repayments provided under the VMLRP may consist of payments on behalf of participating individuals of the principal and interest on qualifying educational loans received by the individual for attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine, or the equivalent, which loans were made for one or more of the following:

(1) Tuition expenses;

(2) All other reasonable educational expenses, as defined in this part and as determined by the Secretary; and

(3) Reasonable living expenses, as defined in this part and as determined by the Secretary.

(b) *Non-eligible loans.* The following loans are ineligible for repayment under the VMLRP:

(1) Loans not obtained from a bank, credit union, savings and loan association, not-for-profit organization, insurance company, school, and other financial or credit institution which is subject to examination and supervision in its capacity as lending institution by an agency of the United States or of the State in which the lender has its principal place of business;

(2) Loans for which supporting documentation is not available;

(3) Loans that have been consolidated with loans of other individuals, such as spouses or children;

(4) Loans that have been consolidated with loans obtained to attend an educational institution other than an accredited veterinary medical school;

(5) Loans or portions of loans obtained for educational or living expenses which exceed the standard of reasonableness as determined by the participant's standard school budget for the year in which the loan was made, and are not determined by the Secretary to be reasonable based on additional documentation provided by the individual;

(6) Loans, financial debts, or service obligations incurred under another loan repayment or scholarship program, or similar programs, which provide loans, scholarships, loan repayments, or other awards in exchange for a future service obligation;

(7) Non-educational loans, including home equity loans; and

(8) Any loan in default, delinquent, or not in a current payment status.

§ 3431.16 Certifications and verifications.

(a) The application for the loan repayment program shall include a personal statement describing how the applicant would meet the requirements of:

(i) The veterinary service shortage situations as defined in the RFA;

(ii) The eligibility criteria for application of section § 3431.9 of this part; and

(iii) The selection priority of section § 3431.14 of this part.

(b) The applicant shall provide sufficient documentation to establish that the applicant has qualifying loans as described in section § 3431.15 of this part.

(c) The applicant shall provide sufficient documentation to establish that the applicant has the capacity to secure an offer of employment or establish and/or maintain a veterinary practice in a veterinary service shortage situation as defined in Subpart A.

(d) The applicant shall provide, if applicable, sufficient documentation to establish that the applicant is licensed to practice veterinary medicine in the jurisdiction in which the applicant has an offer of employment.

(e) The applicant shall provide, if applicable, the required documentation to establish whether the applicant receives payments under any other Federal, State, institutional, or private loan repayment programs.

(f) The applicant shall provide the required documentation to show that he/she has completed, or is in the process of completing, the National Veterinary Accreditation Program (NVAP).

(g) The applicant shall provide authorization to the appropriate staff as designated by the Secretary to obtain a copy of the participant's credit report.

§ 3431.17 VMLRP service agreement offer.

The Secretary will make an offer to successful applicants to enter into an agreement with the Secretary to provide veterinary services under the VMLRP. As part of the offer, successful VMLRP applicants will be provided a specific period of time, as defined in the RFA, to secure an offer of employment or establish and/or maintain a veterinary practice in a veterinary shortage situation.

§ 3431.18 Service agreement.

(a) The service agreement shall be signed by the program participant and the Secretary after acceptance of the terms and conditions of the loan repayment program by the program participant.

(b) The service agreement shall specify the period of obligated service.

(c) The service agreement shall specify the amount of loan repayment to be paid for each year of obligated service.

(d) The service agreement shall contain a provision defining when a breach of the agreement by the program participant has occurred.

(e) The service agreement shall provide remedies for the breach of a service agreement by a program participant, including repayment or partial repayment of financial assistance received, with interest.

(f) The service agreement shall include provisions addressing the granting of a waiver by the Secretary in case of hardship.

(g) Payments under the service agreement do not exempt a program participant from the responsibility and/or liability for any loan(s) for which he or she is obligated, as the Secretary is not obligated to the lender/note holder for its commitment to the program participant.

(h) During the term of the service agreement, the program participant shall agree that the Secretary or the designated VMLRP service provider is authorized to verify the status of each loan for which the Secretary will be reimbursing the participant.

(i) The service agreement shall contain certifications, as determined by the Secretary.

(j) The service agreement shall contain provisions addressing the income tax liability of the program participant and the availability of reimbursement of taxes incurred as a result of an individual's participation in the VMLRP.

(k) *Renewal.* The service agreement will indicate whether the existing service agreement may be renewed. However, renewal applications are subject to peer review and approval, acceptance is not guaranteed, and the position must still be considered a veterinarian shortage situation at the time of application for renewal. The Secretary may request additional documentation in connection with the review and approval of a renewal application. The Secretary reserves the right not to offer renewals. Any requests for renewal applications will be solicited via the RFA.

(l) The service agreement shall contain participant reporting requirements (e.g., quarterly, annual, and/or close-out) to allow for program monitoring and evaluation.

§ 3431.19 Payment and tax liability.

(a) *Loan repayment.* Loan repayments pursuant to a service agreement are made directly to a participant's lender(s) by the Secretary or the VMLRP service provider. If there is more than one outstanding qualified educational loan, the Secretary will repay the loans in the following order, unless the Secretary determines significant savings to the program would result from paying loans in a different order of priority:

(1) Loans guaranteed by the U.S. Department of Education;

(2) Loans made or guaranteed by a State;

(3) Loans made by a School; and

(4) Loans made by other entities, including commercial loans.

(b) *Tax Liability Payments.* The Secretary may make payments of an amount not to exceed 39 percent of the actual annual loan repayments made in a calendar year for all or part of the increased Federal, State, and local tax

liability resulting from loan repayments received under the VMLRP. Supplementary payments for increased tax liability may be made for the actual amount of tax liability associated with the receipt of loan repayments under the VMLRP. Availability of these additional tax liability payments (i.e., in excess of 39 percent) will be identified in the RFA and in the participant service agreement. Program participants wishing to receive tax liability payments will be required to submit their requests for such payments in a manner prescribed by the Secretary and must provide the Secretary with any documentation the Secretary determines is necessary to establish a program participant's increased tax liability. Tax liability payments in excess of 39 percent will be made on a reimbursement basis only.

(c) Under § 3431.19(a) and (b), the Secretary will make loan and tax liability payments to the extent appropriated funds are available for these purposes.

§ 3431.20 Administration.

The VMLRP will be administered by CSREES, Office of Extramural Programs (OEP). OEP may carry out this program directly or enter into agreements with another Federal agency or other service provider to assist in the administration of the VMLRP. However, the determination of the veterinarian shortage areas, peer review of individual VMLRP applications, and the overall VMLRP oversight and coordination will reside with the Secretary.

§ 3432.21 Breach.

(a) *General.* If a program participant fails to complete the period of obligated service incurred under the service agreement, including failing to comply with the applicable terms and conditions of a waiver granted by the Secretary, the program participant must pay to the United States an amount as determined in the service agreement. Payment of this amount shall be made within 90 days of the date that the program participant failed to complete the period of obligated service, as determined by the Secretary.

(b) *Exceptions.*

(1) A termination of service for reasons that are beyond the control of the program participant will not be considered a breach.

(2) A transfer of service from one shortage situation to another, if approved by the Secretary, will not be considered a breach.

(3) A call or order to active duty will not be considered a breach.

(c) The Secretary may renegotiate the terms of a participant's service agreement in the event of a transfer, termination or call to active duty pursuant to subsection (b).

(d) *Amount of repayment.* The service agreement shall provide the method for the calculation of the amount owned by a program participant who has breached a service agreement.

(e) *Debt collection.* Individuals in breach of a service agreement entered into under this part are considered to owe a debt to the United States for the amount of repayment. Any such debt will be collected pursuant to the Department's Debt Management regulations at 7 CFR part 3.

§ 3432.22 Waiver.

(a) A program participant may seek a waiver or suspension of the service or payment obligations incurred under this part by written request to the Secretary setting forth the bases, circumstances, and causes which support the requested action.

(b) The Secretary may waive any service or payment obligation incurred by a program participant whenever compliance by the program participant is impossible or would involve extreme hardship to the program participant and if enforcement of the service or payment obligation would be against equity and good conscience.

(1) Compliance by a program participant with a service or repayment obligation will be considered impossible if the Secretary determines, on the basis of information and documentation as may be required:

(i) That the program participant suffers from a physical or mental disability resulting in the permanent inability of the program participant to perform the service or other activities which would be necessary to comply with the obligation; or

(ii) That the employment of the program participant has been terminated involuntarily for reasons unrelated to job performance.

(2) In determining whether compliance by a program participant with the terms of a service or repayment obligation imposes an extreme hardship, the Secretary may, on the basis of information and documentation as may be required, take into consideration the nature of the participant's personal problems and the extent to which these affect the participant's ability to perform the obligation.

(c) All requests for waivers must be submitted to the Secretary in writing.

(d) A program participant who is granted a waiver in accordance with this section will be notified by the Secretary in writing.

(e) Any obligation of a program participant for service or payment will be canceled upon the death of the program participant.

§ 3431.23 Service to Federal Government in emergency situations.

(a) The Secretary may enter into agreements of 1 year duration with veterinarians who have service agreements for such veterinarians to provide services to the Federal Government in emergency situations, as determined by the Secretary, under terms and conditions specified in the agreement.

(b) Pursuant to a service agreement under this section, the Secretary shall pay an amount, in addition to the amount paid, as determined by the Secretary and specified in the agreement, of the principal and interest of qualifying educational loans of the veterinarians. This amount will be provided in the RFA.

(c) Agreements entered into under this paragraph shall include the following:

(1) A veterinarian shall not be required to serve more than 60 working days per year of the agreement.

(2) A veterinarian who provides service pursuant to the agreement shall receive a salary commensurate with the duties and shall be reimbursed for travel and per diem expenses as appropriate for the duration of the service.

§ 3431.24 Reporting requirements, monitoring, and close-out.

VMLRP participants will be required to submit periodic reports per the terms and conditions of their service agreements. In addition, the Secretary is responsible for ensuring that a VMLRP participant is complying with the terms and conditions of their service agreement, including any additional reporting or close-out requirements.

Signed at Washington, DC, on June 26, 2009.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. E9–15596 Filed 7–8–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 27, 29, 91, 121, 125 and 135

[Docket No. FAA–2005–20245; Amendment No. 23–58, 25–124, 27–43, 29–50, 91–300, 121–338, 125–54, 129–45, and 135–113]

RIN 2120–AH88

Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration (FAA) is amending a final rule published in the **Federal Register** on March 7, 2008. That final rule amended cockpit voice recorder and digital flight data recorder regulations affecting certain air carriers, operators, and aircraft. In that final rule, the FAA failed to include conforming amendments to certain operating rules to ensure that certain new requirements apply to only newly manufactured aircraft.

DATES: *Effective Date:* These amendments become effective July 9, 2009.

FOR FURTHER INFORMATION CONTACT: For technical questions contact: Timothy W. Shaver, Avionics Systems Branch, Aircraft Certification Service, AIR–130, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–4686; facsimile (202) 385–4651; e-mail *tim.shaver@faa.gov*. For legal questions contact: Karen L. Petronis, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073; facsimile (202) 267–3073; e-mail *karen.petronis@faa.gov*.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) published a final rule entitled ''Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations'' in the **Federal Register** on March 7, 2008 (73 FR 12542). That final rule amended cockpit voice recorder (CVR) and digital flight data recorder (DFDR) regulations affecting certain air carriers, operators, and aircraft manufacturers by:

- Increasing the duration of certain CVR recordings,
- Increasing the data recording rate for certain DFDR parameters,
- Requiring physical separation of the DFDR and CVR, improving the reliability of the power supplies to both the CVR and DFDR, and
- Requiring that certain datalink communications received on an aircraft be recorded if datalink communication equipment is installed.

Following publication of the final rule, an individual contacted us noting that §§ 91.609(e)(1) and 135.151(a)(1) require a CVR to be installed in accordance with § 23.1457(d) or § 25.1457(d). He noted that when we added new requirements to §§ 23.1457(d) and 25.1457(d) in the final rule without changing §§ 91.609(e)(1) and 135.151(a)(1), we mandated an immediate retrofit of existing aircraft to comply with the new certification requirements. He stated that this result appeared to conflict with our stated intent in the preamble to the final rule indicating that these new provisions would apply only to newly manufactured aircraft.

We agree that our failure to amend certain operating rules not otherwise addressed in the final rule had this unintended effect. We took the opportunity to review all of the operating rules in Title 14 Code of Federal Regulations (14 CFR) to determine whether other sections were similarly affected. Our review found similar issues in §§ 121.344, 121.344a, 121.359, 125.226 and 135.152.

We received another comment suggesting that we forgot to include the recorder location and mounting requirement for CVRs in airplanes operated under part 125. This is a requirement for newly manufactured airplanes. We agree that this was an oversight, and are amending § 125.227(h)(1) to correct this error.

This document makes the appropriate amendatory changes to clearly reflect the impact that the final rule's new requirements have on §§ 91.609, 121.344, 121.344a, 121.359, 125.226, 125.227, 135.151 and 135.152. This amendment will not impose any additional restrictions on operators affected by these regulations.

This document also corrects the change made to § 129.1(b), which included certain sections that had been redesignated.

Correcting Amendment

This correcting amendment will clarify the references to §§ 23.1457, 23.1459, 25.1457, 25.1459, 27.1457, 27.1459, 29.1457 and 29.1459 in §§ 91.609, 121.344, 121.344a, 121.359, 125.226, 129.1, 135.151 and 135.152.

This amendment also modifies references to §§ 23.1457, 25.1457, 27.1457, and 29.1457, by separating the two requirements in paragraph (d)(1) of each section into two subparagraphs. The first requirement will be designated (d)(1)(i); the second will be designated (d)(1)(ii). The second requirement, which was added in the final rule, applies only to airplanes manufactured after April 7, 2010. References to these sections contained in the operating rules are also being amended to conform to this modification.

Similarly, this amendment modifies references to §§ 23.1459, 25.1459, 27.1459, and 29.1459 by separating the two requirements in paragraph (a)(3) of these sections into two subparagraphs. The first requirement will be designated paragraph (a)(3)(i); the second will be designated (a)(3)(ii). The second requirement, which was added in the final rule, applies only to airplanes manufactured after April 7, 2010. References to these sections contained in the operating rules are also being amended to conform to this modification.

This amendment will revise § 125.227(h)(1) to reference § 25.1457(e).

Finally, this amendment corrects the list of sections included in § 129.1(b).

List of Subjects

14 CFR Parts 23, 25, 27, 29, 91 and 125

Aircraft, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety.

Correction

■ In consideration of the foregoing, the Federal Aviation Administration amends parts 23, 25, 27, 29, 91, 121, 125, 129, and 135 of Title 14, Code of Regulations, as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

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

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

■ 2. Amend § 23.1457 by revising paragraph (d)(1) to read as follows:

§ 23.1457 Cockpit voice recorders.

* * * * *

(d) * * *

(1)(i) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads.

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the airplane.

* * * * *

■ 3. Amend § 23.1459 by revising paragraph (a)(3) to read as follows:

§ 23.1459 Flight data recorders.

(a) * * *

(3)(i) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight data recorder without jeopardizing service to essential or emergency loads.

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the airplane.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

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

■ 5. Amend § 25.1457 by revising paragraph (d)(1) to read as follows:

§ 25.1457 Cockpit voice recorders.

* * * * *

(d) * * *

(1)(i) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads.

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the airplane.

* * * * *

■ 6. Amend § 25.1459 by revising paragraph (a)(3) to read as follows:

§ 25.1459 Flight data recorders.

(a) * * *

(3)(i) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight data recorder without jeopardizing service to essential or emergency loads.

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the airplane.

* * * * *

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 7. The authority citation for part 27 continues to read as follows:

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

■ 8. Amend § 27.1457 by revising paragraph (d)(1) to read as follows:

§ 27.1457 Cockpit voice recorders.

* * * * *

(d) * * *

(1)(i) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads.

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the airplane.

* * * * *

■ 9. Amend § 27.1459 by revising paragraph (a)(3) to read as follows:

§ 27.1459 Flight data recorders.

(a) * * *

(3)(i) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight data recorder without jeopardizing service to essential or emergency loads.

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the airplane.

* * * * *

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

■ 10. The authority citation for part 29 continues to read as follows:

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

■ 11. Amend § 29.1457 by revising paragraph (d)(1) to read as follows:

§ 29.1457 Cockpit voice recorders.

* * * * *

(d) * * *

(1)(i) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads.

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the airplane.

* * * * *

■ 12. Amend § 29.1459 by revising paragraph (a)(3) to read as follows:

§ 29.1459 Flight data recorders.

(a) * * *

(3)(i) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight data recorder without jeopardizing service to essential or emergency loads.

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the airplane.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 13. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 14. Amend § 91.609 by revising paragraph (e)(1) to read as follows:

§ 91.609 Flight data recorders and cockpit voice recorders.

* * * * *

(e) * * *

(1) Is installed in compliance with § 23.1457(a)(1) and (2), (b), (c), (d)(1)(i), (2) and (3), (e), (f), and (g);
§ 25.1457(a)(1) and (2), (b), (c), (d)(1)(i), (2) and (3), (e), (f), and (g);
§ 27.1457(a)(1) and (2), (b), (c), (d)(1)(i), (2) and (3), (e), (f), and (g); or
§ 29.1457(a)(1) and (2), (b), (c), (d)(1)(i), (2) and (3), (e), (f), and (g) of this chapter, as applicable; and

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 15. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 16. Amend § 121.344 by revising paragraph (j) introductory text to read as follows:

§ 121.344 Digital flight data recorders for transport category airplanes.

* * * * *

(j) Each flight data recorder system required by this section must be installed in accordance with the requirements of § 25.1459(a) (except paragraphs (a)(3)(ii) and (a)(7)), (b), (d) and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain a sufficient number of correlation points to accurately establish the conversion

from the recorded values to engineering units or discrete state over the full operating range of the parameter. Except for airplanes having separate altitude and airspeed sensors that are an integral part of the flight data recorder system, a single correlation may be established for any group of airplanes—

* * * * *

■ 17. Amend § 121.344a by revising paragraph (d) introductory text to read as follows:

§ 121.344a Digital flight data recorders for 10–19 seat airplanes.

* * * * *

(d) Each flight data recorder system required by this section must be installed in accordance with the requirements of § 23.1459(a) (except paragraphs (a)(3)(ii) and (6)), (b), (d) and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain a sufficient number of correlation points to accurately establish the conversion from the recorded values to engineering units or discrete state over the full operating range of the parameter. A single correlation may be established for any group of airplanes—

* * * * *

■ 18. Amend § 121.359 by revising paragraphs (d)(1) and (e)(1) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(d) * * *

(1) Is installed in compliance with § 23.1457(a)(1) and (2), (b), (c), (d)(1)(i), (2) and (3), (e), (f), and (g); or § 25.1457(a)(1) and (2), (b), (c), (d)(1)(i), (2) and (3), (e), (f), and (g) of this chapter, as applicable; and

* * * * *

(e) * * *

(1) Is installed in compliance with § 23.1457 (except paragraphs (d)(1)(ii), (4) and (5)) or § 25.1457 (except paragraphs (d)(1)(ii), (4) and (5)) of this chapter, as applicable; and

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 19. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 20. Amend § 125.226 by revising paragraph (j) introductory text to read as follows:

§ 125.226 Digital flight data recorders.

* * * * *

(j) Each flight data recorder system required by this section must be installed in accordance with the requirements of § 25.1459(a) (except paragraphs (a)(3)(ii) and (7)), (b), (d) and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain a sufficient number of correlation points to accurately establish the conversion from the recorded values to engineering units or discrete state over the full operating range of the parameter. Except for airplanes having separate altitude and airspeed sensors that are an integral part of the flight data recorder system, a single correlation may be established for any group of airplanes—

* * * * *

■ 21. Amend 125.227 by revising paragraph (h)(1) to read as follows:

§ 125.227 Cockpit voice recorders.

* * * * *

(h) * * *

(1) Meets the requirements of § 25.1457(a)(3) through (a)(6), (d)(1), (d)(4), (d)(5), (d)(6), and (e) of this chapter;

* * * * *

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 22. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71, sec. 104.

■ 23. Amend § 129.1 by revising paragraph (b) to read as follows:

§ 129.1 Applicability.

* * * * *

(b) *Operations of U.S.-registered aircraft solely outside the United States.* In addition to the operations specified under paragraph (a) of this section, §§ 129.14, 129.20 and 129.24 and subpart B also apply to U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 24. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 25. Amend § 135.151 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 135.151 Cockpit voice recorders.

* * * * *

(a) * * *

(1) Is installed in compliance with § 23.1457(a)(1) and (2), (b), (c), (d)(1)(i), (2) and (3), (e), (f), and (g); § 25.1457(a)(1) and (2), (b), (c), (d)(1)(i), (2) and (3), (e), (f), and (g), § 27.1457(a)(1) and (2), (b), (c), (d)(1)(i), (2) and (3), (e), (f), and (g); or § 29.1457(a)(1) and (2), (b), (c), (d)(1)(i), (2) and (3), (e), (f), and (g) of this chapter, as applicable; and

* * * * *

(b) * * *

(1) Is installed in compliance with § 23.1457 (except paragraphs (d)(1)(ii), (4) and (5)), § 25.1457 (except paragraphs (d)(1)(ii), (4) and (5)), § 27.1457 (except paragraphs (d)(1)(ii), (4) and (5)) or § 29.1457 (except paragraphs (d)(1)(ii), (4) and (5)) of this chapter, as applicable; and

* * * * *

■ 26. Amend § 135.152 by revising paragraphs (f)(1) introductory text and (f)(2) introductory text to read as follows:

§ 135.152 Flight data recorders.

* * * * *

(f)(1) For airplanes manufactured on or before August 18, 2000, and all other aircraft, each flight recorder required by this section must be installed in accordance with the requirements of § 23.1459 (except paragraphs (a)(3)(ii) and (6)), § 25.1459 (except paragraphs (a)(3)(ii) and (7)), § 27.1459 (except paragraphs (a)(3)(ii) and (6)), or § 29.1459 (except paragraphs (a)(3)(ii) and (6)), as appropriate, of this chapter. The correlation required by paragraph (c) of §§ 23.1459, 25.1459, 27.1459, or 29.1459 of this chapter, as appropriate, need be established only on one aircraft of a group of aircraft:

* * * * *

(2) For airplanes manufactured after August 18, 2000, each flight data recorder system required by this section must be installed in accordance with the requirements of § 23.1459(a) (except paragraphs (a)(3)(ii) and (6)), (b), (d) and (e), or § 25.1459(a) (except paragraphs (a)(3)(ii) and (7)), (b), (d) and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain a sufficient number of correlation points to accurately establish the conversion from the recorded values to engineering units or discrete state over the full operating range of the parameter. Except for airplanes having separate altitude and airspeed sensors that are an integral part of the flight data recorder system, a single correlation may be established for any group of airplanes—

* * * * *

Issued in Washington, DC, on July 2, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–16056 Filed 7–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0046; Directorate Identifier 2008–NE–05–AD; Amendment 39–15962; AD 2009–14–12]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. (P&WC) Models PW305A and PW305B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

P&WC has determined that the Post-Service Bulletin (SB) PW300–72–24287 High Pressure Compressor (HPC) drum rotor assemblies P/N 30B2478 and 30B2542 on PW 305A and 305B engines with single stage coated labyrinth seals, are susceptible to developing significant cracks in the region of the labyrinth seal.

We are issuing this AD to detect cracks in the HPC drum rotor assembly, which could lead to an uncontained failure of the drum rotor assembly and damage to the airplane.

DATES: This AD becomes effective August 13, 2009.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 20, 2009 (74 FR 7836). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

P&WC has determined that the Post-Service Bulletin (SB) PW300–72–24287 High Pressure Compressor (HPC) drum rotor assemblies P/N 30B2478 and 30B2542 on PW 305A and 305B engines with single stage coated labyrinth seals, are susceptible to developing significant cracks in the region of the labyrinth seal.

P&WC issued SB PW300–72–24462 for initial inspection of affected HPC drum rotor assemblies for cracks. In addition, the PW305 Maintenance Manual (MM) 05–20–00 was revised (Revision No. 26) accordingly, to add requirement for repeat inspection interval. A new P/N 31B6325–01, HPC drum rotor assembly, which is not susceptible to subject cracking, is made available through SB PW300–72–24376, as terminating action for the required repeat inspection.

Recent data (Ref: SIL: PW300–093) indicate that a number of high-time Pre-SB–PW300–72–24376 HPC drum rotor assemblies (P/N 30B2478 and 30B2542), with potential for a hazardous disk failure in consequence of non-compliance with the inspection requirements, are still in-service. This AD is issued to mandate the inspection of the affected P/N 30B2478 and 30B2542 HPC drum rotor assemblies in accordance with PW305–MM–05–20–00 requirements.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 540 products of U.S. registry. We also estimate that it will take about 10 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $5,000 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $3,132,000. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–14–12 Pratt & Whitney Canada Corp: Amendment 39–15962. Docket No. FAA–2009–0046; Directorate Identifier 2008–NE–05–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 13, 2009.

Affected ADs

(b) None.

(c) This AD applies to Pratt & Whitney Canada Corp. (P&WC) Models PW305A and PW305B turbofan engines with high pressure compressor (HPC) drum rotor assemblies, post P&WC Service Bulletin (SB) PW300–72–24287 but without P&WC SB PW300–72–24376, installed. These engines are installed on, but not limited to, Bombardier Learjet M60 and Hawker Beechcraft 1000 series airplanes.

Reason

(d) P&WC has determined that the Post-Service Bulletin (SB) PW300–72–24287 High Pressure Compressor (HPC) drum rotor assemblies P/N 30B2478 and 30B2542 on PW305A and 305B engines with single stage coated labyrinth seals, are susceptible to developing significant cracks in the region of the labyrinth seal. We are issuing this AD to detect cracks in the HPC drum rotor assembly, which could lead to an uncontained failure of the drum rotor assembly and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Within 500 flight hours after effective date of this directive, borescope-inspect the interiors of affected HPC rotor assemblies for cracks. If a crack is found, remove the engine before next flight for HPC drum rotor replacement. Pratt & Whitney Maintenance Manual, Chapter 72–00–00, contains guidance on borescope inspection.

Credit for Previous Inspections

(2) Inspection of affected HPC drum rotor assembly per P&WC SB PW300–72–24462 and or SB PW305 MM 05–20–00 inspection requirements prior to the effective date of this directive satisfies the requirements of paragraph (e)(1) of this AD.

(3) Repeat borescope inspection per paragraph (e)(1) of this AD, at intervals not exceeding 1,350 flight cycles. If a crack is found, remove the engine before next flight for HPC rotor drum replacement.

Optional Terminating Action

(4) Replacement of the affected HPC rotor assembly P/N 30B2478 or 30B2542 with Post-SB PW300–72–24376 assembly P/N 31B6325–01 or later superseding P/N, will constitute terminating action for the inspection requirements of the above paragraphs (e)(1) and (e)(2) of the corrective action requirements of this AD.

Other FAA AD Provisions

(f) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to Canadian Airworthiness Directive CF–2007–25R1, dated February 13, 2008, and P&WC SB PW300–72–24462, dated December 13, 1999, for related information. Contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1, telephone: (800) 268–8000, for a copy of this service information.

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

Material Incorporated by Reference

(i) None.

Issued in Burlington, Massachusetts, on June 30, 2009.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–16111 Filed 7–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2008–0937; Amendment No. 91–308]

RIN 2120–AJ37

Drug and Alcohol Testing Program; Technical Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making minor technical changes to a final rule published in the **Federal Register** on May 14, 2009. That final rule amended the FAA's drug and alcohol regulations to place them in a new part. In that final rule the FAA inadvertently did not include an instruction to amend a cross-reference to two appendices.

DATES: *Effective Dates:* Effective on July 13, 2009.

FOR FURTHER INFORMATION CONTACT: Rafael Ramos, Office of Aerospace Medicine, Drug Abatement Division, AAM–800, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8442; facsimile (202) 267–5200; e-mail *drugabatement@faa.gov*.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) published a document in the **Federal Register** May 14, 2009, in 74 FR 22649 that amended the regulations governing FAA-required drug and alcohol testing requirements. The FAA inadvertently did not include an instruction to revise language in § 91.146 to change the reference to the drug and alcohol testing program regulation title from the old (14 CFR part 121, appendices I and J) to new, 14 CFR part 120. This amendment will not impose any additional restrictions on operators affected by these regulations.

Technical Amendment

The technical amendment will further amend part 91 by updating a cross-reference in § 91.146(b).

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Aviation safety.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 91 is amended as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Section 91.146(b) introductory text is revised to read as follows:

§ 91.146 Passenger-carrying flights for the benefit of a charitable, nonprofit, or community event.

* * * * *

(b) Passenger carrying flights for the benefit of a charitable, nonprofit, or community event identified in paragraph (c) of this section are not subject to the certification requirements of part 119 or the drug and alcohol testing requirements in part 120 of this chapter, provided the following conditions are satisfied and the limitations in paragraphs (c) and (d) are not exceeded:

* * * * *

Issued in Washington, DC, on July 2, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–16059 Filed 7–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–1999–6482; Amendment No. 121–346]

RIN 2120–AG87

Revisions to Digital Flight Data Recorder Regulations for Boeing 737 Airplanes and for All Part 125 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration (FAA) is amending a final rule published in the **Federal Register** on December 2, 2008. That final rule amended the regulations governing flight data recorders to increase the number of digital flight data recorder parameters for all Boeing 737 series airplanes manufactured after August 18, 2000. The rule also adopts a prohibition on deviations from flight recorder requirements for all airplanes operated under part 125. In our changes to part 125, the FAA incorrectly referenced the appendix containing airplane flight recorder specifications as appendix M when it is actually appendix E.

DATES: *Effective Date:* These amendments become effective July 9, 2009.

FOR FURTHER INFORMATION CONTACT: For technical questions contact: Brian A. Verna, Avionics Systems Branch, Aircraft Certification Service, AIR–130, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4100, Washington, DC 20024; telephone (202) 385–4643; facsimile (202) 385–4651; e-mail *brian.verna@faa.gov*. For legal questions contact: Karen L. Petronis, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence, Avenue, SW., Washington, DC 20591; telephone (202) 267–3073; facsimile (202) 267–3073; e-mail *karen.petronis@faa.gov.*

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration published a final rule entitled ''Revisions to Digital Flight Data Recorder Regulations for Boeing 737 Airplanes and for All Part 125 Airplanes'' in the **Federal Register** on December 2, 2008 (73 FR 73171). That final rule amended the regulations governing flight data recorders to increase the number of digital flight data recorder parameters for all Boeing 737 series airplanes manufactured after August 18, 2000. The rule also adopted a prohibition on deviations from flight recorder requirements for all airplanes operated under part 125.

Following publication of the final rule, an individual contacted us noting that the amended language in § 125.226(f)(1) references ''appendix M to this part'' when the correct appendix is appendix E. Upon reviewing our other changes to part 125, we noted the same incorrect reference in the amended language of § 125.226(n).

This document makes the appropriate amendatory changes to §§ 125.226(f)(1) and 125.226(n) to correctly reference appendix E to part 125.

Correcting Amendment

This correcting amendment will clarify the references to appendix E to part 125 in §§ 125.226(f)(1) and 125.226(n).

List of Subjects in 14 CFR Part 125

Aircraft, Aviation safety.

Correction

■ In consideration of the foregoing, the Federal Aviation Administration amends part 125 of Title 14, Code of Regulations, as follows:

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 1. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 2. Amend § 125.226 by revising paragraphs (f)(1) and (n) to read as follows:

§ 125.226 Digital flight data recorders.

* * * * *

(f) * * *

(1) The parameters listed in paragraphs (a)(1) through (a)(88) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in Appendix E to this part.

* * * * *

(n) In addition to all other applicable requirements of this section, all Boeing 737 model airplanes manufactured after August 18, 2000 must record the parameters listed in paragraphs (a)(88) through (a)(91) of this section within the ranges, accuracies, resolutions, and recording intervals specified in Appendix E to this part. Compliance with this paragraph is required no later than February 2, 2011.

Issued in Washington, DC, on July 2, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–16057 Filed 7–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0494]

Drawbridge Operation Regulations; Norwalk River, Norwalk, CT, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing

the operation of the Washington Street S136 Bridge across the Norwalk River, mile 0.0, at Norwalk, Connecticut. This deviation allows the bridge to remain in the closed position for five weekends in July and August to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 2 a.m. on July 11, 2009 through 6 a.m. on August 24, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0494 and are available online at *www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0494 in the docket ID box, pressing enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The owner of the bridge, Connecticut Department of Transportation, requested this temporary deviation. The Washington Street S136 Bridge, across the Norwalk River, mile 0.0, at Norwalk, Connecticut, has a vertical clearance in the closed position of 9 feet at mean high water and 16 feet at mean low water. The Drawbridge Operation Regulations are listed at 33 CFR 117.217(a).

The Norwalk River supports commercial and recreational vessel traffic. The commercial operators were contacted and no objections were raised.

This deviation allows the bridge to remain in the closed position from 2 a.m. on Saturday through 6 a.m. on Monday, for five weekends: July 11 through July 13; July 25 through July 27; August 8 through August 10; August 15 through August 17, and August 22 through August 24, 2009.

Vessels able to pass under the closed draw may do so at any time.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 23, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9–16306 Filed 7–8–09; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2008–9]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing a final rule establishing adjusted fees for its services. The adjusted fees will recover a significant part of the costs to the Office of registering claims and provide full cost recovery for many other services provided by the Office which benefit only or primarily the user of that service. The new fees are based on reliable information regarding the costs of providing services, and reflect cost savings associated with the implementation of electronic processing in the Copyright Office in 2007. Under the new fee structure, the fee for online registration of a basic claim will remain $35. The registration fee for Form CO will be raised from $45 to $50 and the registration fee for paper filings of Forms PA, SR, TX, VA, SE and faulty CO will be raised from $45 to $65. In a few instances, fees have been adjusted downward from the fees published in the notice of proposed rulemaking in light of comments received from the public.

EFFECTIVE DATE: August 1, 2009.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Deputy General Counsel, or Kent Dunlap, Principal Legal Advisor for the General Counsel. P.O. Box 70400, Washington, DC 20024–0400, Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

This final rule adjusts Copyright Office fees in accordance with the applicable provisions of title 17, United States Code, and the Technical Amendments Act, Pub. L. No. 105–80, 111 Stat. 1529 (1997), codified as 17 U.S.C. 708(b). The expenses of the Copyright Office have always been substantially funded through the charging of fees for the services provided. Nevertheless, fees have never provided full cost recovery for all expenditures of the Copyright Office. For the last fifty years, cost recovery through the charging of fees has ranged between 50% to 80% of the expenses of the Copyright Office. The current fee adjustment is forecasted to cover approximately 60% of the Copyright Office's expenses.

In 1997, Congress amended section 708 of the Copyright Act, delegating to the Register of Copyrights authority to adjust fees by regulation in accordance with a new procedure. Fees for services specifically enumerated in sections 708(a)(1)–(9), referred to as ''statutory fees,'' are adjusted according to the procedures set forth in section 708(b). This procedure requires the Register of Copyrights to complete a cost study, and forward an economic report and proposed fee schedule to Congress. The Register may implement the new rules after 120 days unless Congress enacts a law within that period disapproving the new fees.

The Register also has authority under the law to adopt new fees for other services based on ''the cost of providing the service.'' 17 U.S.C. 708(a). These fees are for services not specifically enumerated in sections 708(a)(1)–(9), and for the purpose of this rulemaking, these fees are termed ''discretionary fees.'' As with the statutory fees, the Copyright Office adjusts the discretionary fees after conducting a cost study to determine the cost of providing the service and providing the public an opportunity to comment on the proposed fee changes.

The Copyright Office has instituted fee adjustments under the Technical Amendments Act on four separate occasions. The first schedule was adopted in 1999. *See* 63 FR 43426 (August 13, 1998) and 64 FR 29518 (June 1, 1999). Three years later a second adjustment was made raising many copyright fees, but leaving the basic registration fee at $30. 67 FR 38003 (May 31, 2002). The third fee adjustment was adopted in 2006, in which most statutory fees were again raised in response to an increase in costs. At that time, the basic registration fee was increased from $30 to $45. 71 FR 15368 (March 28, 2006) and 71 FR 31089 (June 1, 2006). The registration fee was again adjusted in 2007, at which time the Office established a lower basic registration fee of $35 for copyright claims submitted electronically, while retaining the $45 fee for filing a paper

application. 72 FR 33690 (June 19, 2007). The introduction of the dual fee structure reflected the reduced cost of processing electronic claims and served as an incentive to the public to file claims through the then–new online registration system.

In the 2007 adjustment proceeding lowering the fee for electronic submission of basic copyright registration, the Office also stated that it would likely review the registration and service fees once electronic claim processing was operational for a sufficient period of time so as to yield reliable information on the actual costs involved in providing the service. The beta test of the electronic, online registration system began in August 2007 and, in July 2008, the system for the electronic submission of copyright claims was made available to the general public. Also in July 2008, a new procedure was introduced using the new Form CO – a form which must be completed on the Office website and which, when printed out, contains 2–D barcodes that carry the information entered on the application in digital form. In light of the experience and lessons learned over the last 21 months, the Office has reviewed its current practices, assessed the costs, and determined that fee adjustments are now in order.

Proposed fee adjustment and cost study

On October 14, 2008, the Copyright Office published a notice of proposed rulemaking setting out the proposed adjustments for both statutory fees and discretionary fees. 73 FR 60658 (October 14, 2008). Shortly thereafter the cost study upon which the proposed adjustments were based was made available to the public on the Copyright Office web site.

Among the statutory fees, the most important are those for basic registration. In keeping with the Office's goal of encouraging online, electronic registration, the proposed schedule of fees maintained the $35 fee for electronic copyright registration. However, the Office proposed a rate increase for submissions on existing paper forms, *i.e.*, Forms PA, VA, SR, TX, or SE, from $45 to $65, to reflect the added cost associated with processing the information on these forms into the electronic system, and a slight increase to $50 from $45 for Form CO. Group registration claims for database updates, published photographs, and contributions to periodicals currently can only be submitted on a paper application at this time. Hence, the fees for a group registration were adjusted upward to the same $65 fee proposed for filing a paper application for a single claim. When online group registration of these classes of works becomes available, the notice of proposed rulemaking stated that a lower fee would apply and, therefore, the notice included all fees that would be applicable to claims in a group registration.

In addition to the registration fees, the notice proposed changes to other statutory fees. Specifically, the Office proposed a minimum two hour charge for searches performed by the Records Research & Certification Division, in addition to a further adjustment for the rate of inflation since the last fee adjustment. It also proposed an adjustment to the fee for the recordation of a notice of intention to obtain a compulsory license under section 115(b). The notice proposed increasing that fee from $12 to $105, plus an additional $20 fee for each additional group of ten titles. And finally, the Office suggested a reduction in the fee for supplementary registration from $115 to $100, and in the fee for an additional certificate of registration from $40 to $35.

For the discretionary fees, adjustments were proposed either to recover the cost of the service or to account for inflation. For example, Licensing Division fees were adjusted based on the cost of providing the service. These services include the filing of an Amended Statement of Account in accordance with sections 111, 112, 119, & 1003; recordation of licensing agreements under section 118; and search, certification, and copying fees. The Office also proposed an additional charge of $30 for each group of ten domain names in addition to the basic fee for the recordation of an interim designation of agent to receive notification of claimed infringement under section 512(c)(2) in order to cover the costs associated with processing a large number of domain names.

The notice additionally stated the intention of the Copyright Office to harmonize its refund policy. Currently, the Copyright Office retains the filing fee for original, basic, supplementary, or renewal registration even if the claim is rejected because the material deposited was not copyrightable or because the claim was invalid for any other reason, in order to cover administrative costs for handling the claim. The Copyright Office also incurs administrative costs for other services, e.g., processing requests for recordation services or Licensing Division non–royalty fees, where either the request is withdrawn, or cannot be fulfilled due to no fault of the Copyright Office, but the Office retains no fees to cover processing costs. However, in the notice of proposed rulemaking, the Office stated its intention to modify the regulations to authorize the charging of an administrative fee equivalent to the minimum fee for all services. Such changes are adopted herein.

Comments

The Office received comments from Music Reports, Inc. (''MRI''); Author Services, Inc.; Program Suppliers; and Professional Photographers of America (''PPA''). Each comment addressed a different topic. The issues raised by those submitting comments are summarized and discussed herein.

Final Regulation

a. *Adjusted fee reduced for recordation of a Notice of Intention to Make and Distribute Phonorecords.* Music Reports, Inc., a provider of music licensing and royalty accounting services to digital music services in the United States, opposed the change in the fee for recording the notice of intention. It maintained that the proposed fee of $105 was excessive and burdensome for filers who have a large number of titles. The comment requested that the Office cap the fee for a single filing at $20, no matter how many titles were included.

In considering the MRI comment, the Copyright Office reviewed its cost study with respect to the recordation of a notice of intention to make and distribute phonorecords under section 115 of the copyright law, and determined that the cost could be reduced in the near term by having the work involved performed by lower graded staff. With this adjustment, it was determined that a fee of $60 per filing, plus $20 per group of ten titles would achieve full cost recovery. This adjustment represents a significant reduction over the proposed fee of $105 per filing. Accordingly, an adjustment in the filing fee was made in the cost study submitted to Congress on March 15, 2009. The Office also notes that once electronic filing for this service becomes available, costs will likely fall, and if they do, the fee can be reduced.

b. *Adjusted fees reduced for Renewal Addendum.* Author Services, Inc., the literary agency representing the works of L. Ron Hubbard, filed a comment opposing the contemplated increases for registration of a renewal claim. It argued that the proposed fees for renewal registration are too high and should be reduced. The comment expressed the opinion that costs for renewal should have gone down because instructions with new forms issued in October 2007

are more complete, thereby reducing errors in the submissions. They believed the effect of that change was not taken into account.

The Copyright Office has reviewed the cost study with respect to the fees relating to renewal registration, and concluded that the cost for processing a registration of a renewal had increased to the proposed fee of $115. However, the Office concluded that the current fee of $220 for Renewal Addendum could cover the cost of that service. Accordingly, the cost study did not ultimately recommend an increase in the fee for the registration of a renewal claim with an addendum. The fee for Renewal Addendum will remain at the current level of $220.

c. *Fees for registration of groups of published photographs.* The Professional Photographers of America objected to raising the $45 fee to $65 primarily on the ground that the Office had not, as of yet, made such registration available online. The increase, the comment argued, would discourage photographers from completing the registration process. Moreover, PPA objected to the stated intention of the Copyright Office to charge a per–title processing fee for listing titles of individual works in an application for a collection.

The Copyright Office believes the $65 fee is appropriate for photographers to pay in the interim period between the fee increase and the offering of group registrations in eCO. Photographers can submit an application for group registration encompassing hundreds of photographs and the current $35 fee does not cover the cost of processing such a claim. When electronic filing becomes available, claimants will be able to register groups of published photographs for the $35 fee because of the savings associated with the electronic registration process. As regarding the proposed per–title fee for unpublished collections, before the fee is implemented the public will have an opportunity to comment on the change.

d. *Fees for special services delivered by the Licensing Division.* The Motion Picture Association of America, Inc. filed a comment on behalf of its member companies and other program suppliers, objecting to the imposition of fees on program suppliers relating to the review of cable, satellite, and Dart compulsory license records. They contended that costs for requests from program suppliers for searches, copying, and other services should be deducted from the general royalty fund, rather than collected from the program suppliers who made the requests because the costs of performing such services have already been deducted from the royalty pools.

The Copyright Office rejects the argument of the MPAA that requests for special services by certain program suppliers should be deducted from the general royalty fund. Program suppliers who order special services obviously have personal business reasons for requesting the service, and such suppliers are the only ones who benefit from the Copyright Office fulfilling the requests. If such requests were deducted from the general royalty fund, all claimants to the fund would be paying for the special requests of a few claimants. The Office believes it apparent that program suppliers who request special services, and are the only ones benefitting from the service, should pay the costs of those services.

e. *Faulty Form CO submission.* Recent experience of the Copyright Office in processing Form CO submissions with 2–D barcodes has revealed common mistakes made by remitters which make it impossible to process the information in the barcodes. The option of filing on Form CO with 2–D barcodes was implemented on July 1, 2008. The 2–D barcode captures the data entered into Form CO and, when scanned in the Office, populates the various fields with the digitized data, eliminating the need for any transcription. Users who complete the Form CO on the Copyright Office Web site, print it from the Web site, and submit it with the fee and deposit copy or copies are charged a fee that is higher than the online registration fee, but lower than the fee for paper filings using the old application forms. The slightly higher costs associated with processing Form CO as compared to the online registration claims accounts for the price differential.

Unfortunately, three common mistakes are being made by users which make the 2–D barcode useless and require the Office to process the application in a similar fashion as the traditional paper forms. The first mistake is submitting a CO application which lacks all required barcodes. The second is submitting a CO application which is incomplete; in this instance a statement appears on the website that the application is incomplete and should not be submitted. The third is adding information to the form after it has been printed. In these three instances, the costs of processing the form is similar to the costs of processing paper applications because the Office cannot rely solely on the information in the 2–D barcodes, if available. Due to the added cost to the Copyright Office, these faulty CO applications must be handled like a paper claim and, hence, the remitter will be charged the same $65 fee as traditional paper applications.

f. *Refund policy.* As indicated in the notice of proposed rulemaking, the Copyright Office is amending regulation § 201.6(c) to harmonize its refund policy. Under the amended regulation, fees will be retained for submission of a document found unrecordable; for requests for preparation of a search report or for certification and document services which are later withdrawn; or for requests for special services of the Licensing Division which are later withdrawn, and cannot be fulfilled due to a mistake in the submission.

g. *Effective date.* Congress has 120 days from March 15, 2009, to review the proposed changes to the statutory fees submitted to Congress on that date. If no legislation is enacted barring adoption of these fees during that time period, the proposed fee schedule for registration, recordation, and other related services shall be adopted, effective August 1, 2009. The remaining fees, which are not subject to the Congressional review process set forth in 17 U.S.C. 708 (b)(5), shall become effective on August 1, 2009 as well.

List of Subjects in 37 CFR Parts 201

Copyright, General provisions.

Final Rule

■ In consideration of the foregoing, part 201 of 37 CFR chapter II is amended as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Section 201.3(c), (d) and (e) are revised to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) *Registration, recordation and related service fees.* The Copyright Office has established the following fees for these services:

Registration, Recordation and Related Services	Fees
(1) Registration of a basic claim in an original work of authorship:	
Electronic Filing	$35
Form–D barcode application properly completed online)	50
Forms PA, SR, TX, VA, SE; and Form CO without barcodes or incomplete information, or information added after printing (paper filing).	65
(2) Registration of a claim in a group of contributions to periodicals (Form GR/CP), published photographs, or database updates:	
Electronic filing	35
Forms GR/CP, PA, SR, VA and SE (paper filing)	65
(3) Registration of a renewal claim (Form RE):	
Claim without Addendum	115
Addendum	220
(4) Registration of a claim in a group of serials (Form SE/Group)(per issue, minimum 2 issues)	25
(5) Registration of a claim in a group of daily newspapers and qualified newsletters (Form G/DN)	80
(6) Registration of a claim in a restored copyright (Form GATT)	65
(7) Preregistration of certain unpublished works	115
(8) Registration of a correction or amplification to a claim (Form CA and Form DC)	100
(9) Registration of a claim in a mask work (Form MW)	105
(10) Registration of a claim in a vessel hull (Form D/VH)	220
(11) Providing an additional certificate of registration	35
(12) Certification of other Copyright Office records (per hour)	165
(13) Search report prepared from official records (per hour) (minimum: 2 hours)	165
Estimate of search fee	115
(14) Location and retrieval of Copyright Office materials or records (per hour)	165
Fee for location and retrieval of electronic records (per quarter hour) (minimum: ½ hour)	41.25
(15) Recordation of document, including a Notice of Intention to Enforce (NIE) (single title)	105
Additional titles (per group of 10 titles)	30
(16) Recordation of an Interim Designation of Agent to Receive Notification of Claimed Infringement under § 512(c)(2) (single name)	105
Additional domain names (per group of 10)	30
(17) Recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. 115) (single title)	60
Additional titles (per group of 10)	20
(18) Issuance of a receipt for § 407 deposit	30

(d) *Special Service Fees.* The Copyright Office has established the following fees for special services:

Special Services	Fees
(1) Service charge for deposit account overdraft	$165
(2) Service charge for dishonored deposit account replenishment check	85
(3) Service charge for an uncollectible or non–negotiable check	25
(4) Appeals:	
(i) First appeal	250
Additional claim in related group	25
(ii) Second appeal	500
Additional claim in related group	25
(5) Secure test processing charge (per hour)	165
(6) Copying of Copyright Office records by staff:	
Photocopy (b&w, 8½ x 11) (per page, minimum $12)	0.50
Photocopy (b&w, 11 x 17) (per page, minimum $12)	1
Photocopy (color, 8½ x 11) (per page, minimum $12)	2
Photocopy (color, 11 x 17) (per page, minimum $12)	4
Photograph (Polaroid)	15
Photograph (digital)	45
Slide	3
Audiocassette (first 30 minutes)	75
Additional 15 minute increments	20
Videocassette (first 30 minutes)	75
Additional 15 minute increments	25
CD or DVD	100
Zip or floppy disk	100
(7) Special handling fee for a claim	760
Additional fee for each claim using the same deposit	50
(8) Special handling fee for recordation of a document	480
(9) Handling fee of extra deposit copy for certification	45
(10) Full–term retention of a published deposit	470
(11) Expedited search report service (per hour) (minimum 2 hours)	445
(12) Expedited location and retrieval, certification, and copying services (surcharge, per hour)	265
(13) Notice to Libraries and Archives	50
Each additional title	20
(14) Service charge for Federal Express mailing	40

Special Services	Fees
(15) Service charge for delivery of documents via facsimile (per page, 7 page maximum)	1

(e) *Licensing Division service fees.* The Copyright Office has established the following fees for certain services performed by the Licensing Division:

Licensing Division Services	Fees
(1) Recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. 115) (single title)	$60
Additional titles (per group of 10)	20
(2) Recordation of a licensing agreement for use of certain works in connection with noncommercial broadcasting (17 U.S.C. 118)	140
(3) Recordation of certain contracts by cable TV systems located outside the 48 contiguous states	50
(4) Amendment to Statement of Account filed pursuant to 17 U.S.C. 111, 119 or 1003)	100
(5)Notice of Digital Transmission of Sound Recording (17 U.S.C. 112 and 114)	25
Amended Notice of Digital Transmission of Sound Recording	25
(6) Photocopy of record by staff (b&w) (per page) (minimum $12)	0.50
(7) Search and report services (per hour)	165
(8) Certification of search report (per hour)	165

■ 3. Amend § 201.6 by revising paragraph (c) to read as follows:

§ 201.6 Payment and refund of Copyright Office fees

* * * * *

(c) *Refunds.* (1) Money remitted to the Copyright Office for basic, supplementary or renewal registration, including mask works and vessel hulls, will not be refunded if the claim is rejected because the material deposited does not constitute copyrightable subject matter or because the claim is invalid for any other reason. Payments made by mistake or in excess of the fee will be refunded, but amounts of $50 or less will not be refunded unless specifically requested, and refunds of less than $2 may be made in postage stamps. Except for services specified in paragraphs (c)(2) and (3) of this section, before making any refund for fees remitted in relation to non–registration copyright services, the Copyright Office shall deduct an administrative processing fee in an amount equivalent to one hour of the requested service, or the minimum charge for the service.

(2) In instances where money has been remitted to pay for recordation of a document, and it is determined that the document cannot be recorded, the basic recordation fee covering one title will be retained as a filing fee. Any additional money over the basic fee for one title will be refunded, but amounts of $50 or less will not be refunded unless specifically requested, and refunds of less than $2 may be made in postage stamps.

(3) For services where fees are calculated on an hourly basis, such as preparation of a search report, certification of certain Copyright Office records, or location and retrieval of records, in instances where the request is withdrawn before work is begun by the staff member responsible for providing the service, the Copyright Office will retain half of the hourly charge for administrative expenses, and refund the remaining portion of the fee subject to paragraph (c)(1) of this section. In addition, the fee for an estimate of a search fee is non–refundable. This policy applies to requests to the Records, Research and Certification Section, and requests to the Licensing Division.

* * * * *

Dated: June 25, 2009.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. E9–16126 Filed 7–8–09; 8:45 am]

BILLING CODE 1410–30–S

Proposed Rules

Federal Register
Vol. 74, No. 130
Thursday, July 9, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA 2008–1292; Notice No. 09–05]

RIN 2120–AJ35

Flightcrew Alerting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the airworthiness standards for transport category airplanes concerning flightcrew alerting. The proposed standards address regulations regarding definitions, prioritization, color requirements, and performance for flightcrew alerting. This proposal would update the current regulations regarding the latest technology and functionality for flightcrew alerting. This proposal is necessary to add additional alerting functions, and consolidate and standardize definitions and regulations for flightcrew warning, caution, and advisory alerting systems. Adopting this proposal would harmonize standards between the U.S. and European Aviation Safety Agency for flightcrew warning, caution, and advisory alerting systems.

DATES: Send your comments on or before September 8, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA 2008–1292 using any of the following methods:

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

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket. Or, go to Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Loran Haworth, FAA, Airplane and Flightcrew Interface Branch (ANM–111), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1133; facsimile 425–227–1232; e-mail *Loran.Haworth@faa.gov.* For legal questions concerning this proposed rule contact Doug Anderson, FAA, Office of the Regional Counsel (ANM–7), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2166; facsimile 425–227–1007; e-mail *Douglas.Anderson@faa.gov.*

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards required in the interest of safety for the design and performance of aircraft. This change more accurately reflects language in Section 44701(a)(1). This proposed rule is within the scope of that authority. It prescribes new safety standards for the design and operation of transport category airplanes.

Background

Flightcrew Alerting Philosophy

The purpose of alerting functions on airplanes is to get the attention of the flightcrew, to inform them of specific airplane system conditions and certain operational events that require their awareness, and, in modern alerting systems, to make them aware of actions (for example, actions listed in an electronic checklist that accompanies an alert) to address the condition. To fulfill this purpose, designers of alerts must consider three elements. First, designers must determine what airplane system conditions (the sensed condition) should cause an alert (for example, engine overheating). Second, they must further consider what alert information should be communicated to the pilot within the specific flight deck and operational context (for example, the alert message, urgency, prioritization among other possible alerts, and if it should be suppressed). Finally, they must determine how the alert is presented to the flightcrew (for example, location of the alert on the flightdeck,

alert combinations [aural, visual, tactile], and color standardization). The condition sensing, information processing, and alert presentation features should all be designed to support the purpose of the alerting function. Conditions and events that do not require flightcrew awareness should not trigger an alert. The presentation of all alerting information should be accomplished using a consistent alerting philosophy.

Statement of the Problem

Title 14 Code of Federal Regulations (14 CFR) § 25.1322 became effective February 1, 1977,[1] and has never been amended. Since it was issued, there have been many advances in the design and technology of flight deck alerting devices. The new technologies associated with integrated visual, aural, and tactile flightcrew alerts and alert messaging are more effective in alerting the flightcrew and aiding them in decision making than the discrete colored lights for warning, caution, and advisory alerts prescribed in § 25.1322. The word ''alert'' in the above context is a generic term used to describe a flight deck indication meant to attract the attention of the flightcrew and identify a non-normal operational or airplane system condition. Warnings, cautions, and advisories are considered alerts.

Because § 25.1322 is outdated and lacks content commensurate with state of the art flight deck display technology, applicants have to perform additional work when showing compliance to that regulation. This also results in additional work for the FAA because we must generate issue papers and special conditions when applicants want to install advanced flightdeck designs and current display technologies that are not addressed in § 25.1322.

Currently § 25.1322 has the following deficiencies:

- It prescribes only a color standard for alerting lights and lags behind current alerting technology advancements. For example, discrete lights have been predominantly replaced with electronic displays that incorporate integrated warning, caution, and advisory text messages.
- It does not provide a definition for ''advisory,'' although the term is included in the title.
- It does not clearly define a prioritization scheme. The prioritization hierarchy requirement for alerts increases flight safety by informing the flightcrew of the urgency of the alerting condition, so the flightcrew can take appropriate and timely action.
- It prescribes only a visual requirement for timely attention-getting alert cues. Adding timely, attention-getting alert cues that include aural and tactile alerting in addition to visual cues increases flight safety by ensuring that the pilot is satisfactorily alerted and has adequate time to make any necessary correction.
- It does not prescribe a requirement for providing alerting information needed to enable the flightcrew to identify the alert and determine a corrective action, if any. Appropriate alerting information (for example, a message) increases flight safety by facilitating the flightcrew's ability to precisely identify the alert, which further assists the flightcrew in taking the appropriate corrective action.
- It does not address requirements for minimizing nuisance alerts. Minimizing nuisance alerts increases flight safety by reducing the impact of frequent false or nuisance alerts. False alerts and nuisance alerts increase the flightcrew's workload, reduce the flightcrew's confidence in the alerting system, negatively affect their reaction to a real alert, and may even lead the flightcrew to take an inappropriate action.
- It prescribes only the color ''amber'' for caution lights and not the color ''yellow.'' Yellow, which appears visually similar to amber, has also been accepted as an aviation industry standard for caution alerts.
- It does not clearly outline a consistent flight deck alerting philosophy that prescribes the objectives, the prioritization hierarchy, and the need to minimize nuisance alerts. A consistent flight deck alerting philosophy increases flight safety because it solidifies flightcrew expectations (for example, how an alert will be presented, how and when an alert should be suppressed, and the priority of the response) and reduces flightcrew interpretation time and errors.
- It uses ''warning'' in a generic sense without a specific, standardized definition. Standardizing terminology for flightcrew alerting supports consistent applications of and compliance with the standard.
- It does not address using integrated visual and aural alerts or prioritizing multiple alerts that occur concurrently.
- It does not address visual alerts for monochromatic displays.

History

Currently, § 25.1322 only considers discrete colored lights for warning, caution, and advisory alerts and does not consider new technologies that may be more effective in aiding the flightcrew in decision making. Transport category airplanes were designed with discrete red and amber lights for the flightcrew warning and caution alerting functions in the flight deck. A red light indicated a hazard to the flightcrew (for example, engine fire), which may require immediate corrective action. An amber light indicated the possible need for future corrective action. A green light indicated safe operation. For the flightcrew advisory alerting function, any light that was not red, amber, or green, including white, was used to indicate, for example, a system or operational status change. Each light normally indicated the alert status of a single system parameter, such as high engine oil temperature.

Development of the Proposal

Both the FAA and the aviation industry agree that the current rule is no longer appropriate for flight deck designs and needs to be updated. Based on information from aviation industry groups,[2] the FAA determined that discrete lights could be replaced with more effective logic-based integrated alerting systems that take advantage of the capabilities of newer display hardware and software. This was accomplished by implementing increasingly capable ''smart'' alerting logic for flightcrew alerting systems that are comprised of integrated and prioritized visual alerts, aural alerts (such as voice messages or tone generation systems), and tactile alerts (such as stick shakers). Smart alerting systems are highly integrated systems that monitor the status of an airplane and its operational environment and, when necessary, provide effective and timely flightcrew alerts in the flight deck with appropriate information. Compared to discrete lights, these ''smart'' integrated alerting systems more effectively alert and inform the flightcrew because they:

- Provide timely attention-getting cues through at least two different senses to sufficiently attract the flightcrew's attention for alerts requiring immediate flightcrew awareness (for example, in addition to a visual alert, providing an aural alert or a tactile alert).
- Provide more information with discrete lighted text messages (for example, ''CONFIG DOORS'') for correct

[1] Published in the **Federal Register** (41 FR 44567) on December 20, 1976; Amendment No. 25–38.

[2] The FAA reviewed recommendations from the Commercial Aviation Safety Team and the Aviation Rulemaking Advisory Committee. Information regarding these groups and their recommendations appears later in this NPRM and in the public docket.

identification of the alert condition and flightcrew actions (for example, actions shown in an electronic checklist that accompanies an alert).

• Prioritize the presentation of multiple alerts so that pilots know which alert to respond to first. For example, in a list of multiple visual alerts, warning alerts are presented above caution alerts. For aural alerts, warning alerts sound before caution alerts.

• Reduce the number of nuisance alerts so pilots are not distracted by inappropriate alerts.

FAA Safer Skies Initiative and Commercial Aviation Safety Team (CAST)

In 1997, the FAA initiated the ''Safer Skies'' program in an effort to reduce the number of fatal aviation accidents. That same year the U.S. aviation industry developed a safety plan that addressed many of the same issues. The ''Safer Skies'' and aviation industry initiatives were combined into the Commercial Aviation Safety Team (CAST). Working groups were established to perform in-depth analyses of the top accident categories in commercial aviation. The groups used a data-driven approach to:

• Analyze past accidents and incidents.

• Identify accident precursors.

• Develop specific safety enhancements (SE) to address precursors and contributing factors.

In May of 2001, the CAST provided safety enhancement recommendations to the FAA for airplane flightcrew alerts. Those recommendations appear below. The CAST working groups recommended a number of SEs in the ''Joint Safety Implementation Team, Results and Analysis—Approach & Landing Report,'' dated May 17, 2001.[3] The CAST SE Number 21 addresses flightcrew alerting and states:

Implement interactive electronic checklist and smart alerting systems that address issues such as:

• Reduced nuisance alerts,

• Reduced redundant alerts,

• Flight-phase sensitive alerts (for example, some alerts attenuated on takeoff roll, others on short final approach), and

• Built-in logic prompting the flightcrew to take appropriate actions.

That SE also states that § 25.1322 should be revised to include requirements for smart alerting systems. The proposed § 25.1322 addresses the alerting system improvements noted in SE Number 21.

Aviation Authorities

The proposed § 25.1322 results from a joint effort to harmonize the U.S. and EASA airworthiness standards for flightcrew, warning, caution, and advisory alerting systems.

Federal Aviation Administration

Title 14 CFR part 25 contains the U.S. airworthiness standards for type certification of transport category airplanes. Part 25 standards apply to airplanes manufactured within the U.S. and to airplanes manufactured in other countries and imported into the U.S. under a bilateral airworthiness agreement.

Joint Aviation Authorities (JAA)

Joint Airworthiness Requirement (JAR)–25 contains the European airworthiness standards for type certification of transport category airplanes. Thirty-seven European countries accept airplanes type certificated to JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

European Aviation Safety Agency (EASA)

A new aviation regulatory body, EASA, was established by the European Community to develop standards to ensure the highest level of safety and environmental protection, oversee their uniform application across Europe, and promote them internationally. EASA formally became responsible for certification of aircraft, engines, parts, and appliances on September 28, 2003. EASA will eventually absorb all functions and activities of the JAA, including its efforts to harmonize European airworthiness certification regulations with those of the U.S.

JAR–25 standards have been incorporated into EASA's ''Certification Specifications for Large Aeroplanes, (CS)–25,'' in similar if not identical language. EASA's CS–25 became effective on October 17, 2003.

Aviation Rulemaking Advisory Committee (ARAC)

The FAA, in cooperation with the JAA and representatives of American and European aerospace industries, recognized that a common set of standards would not only economically benefit the aviation industry, but also maintain a high level of safety. In 1988, the FAA and the JAA began a process to harmonize their respective airworthiness standards. In 1991, the FAA established the Aviation Rulemaking Advisory Committee (ARAC) to obtain industry's input on a wide range of regulatory issues, including the FAA/JAA harmonization efforts.[4]

In April, 2002, the FAA tasked ARAC to review and make recommendations for revising § 25.1322.[5] ARAC accepted the task and assigned the Avionics Systems Harmonization Working Group (ASHWG) to develop recommendations that would:

• Bring the safety standards up-to-date.

• Make the standards more appropriate for addressing flight deck design and technologies associated with visual, aural, and tactile annunciation.

• Address prioritization of multiple alerts that may occur at the same time.

At a minimum, the recommendations were to consider airworthiness, safety, cost, recent certifications and fleet experience, and harmonization of JAR 25.1322.

The ASHWG reviewed and recommended revisions to § 25.1322 that would make the standards more appropriate for addressing current and future flight deck design and technologies associated with visual, tactile, and aural annunciation and smart alerting systems. With the guidance of ARAC's Human Factors Harmonization Working Group (HFHWG) and CAST SE 21, the ASHWG identified potential human-error issues with flight deck alerting. The ASHWG also coordinated with RTCA, Inc. (formerly the Radio Technical Commission for Aeronautics) Special Committee 195, Flight Information Services Communications, in a review of the latest draft of RTCA DO–267, ''Minimum Aviation System Performance Standards for Flight Information Services-Broadcast (FIS–B) Data Link.''

Special Committee 195 identified potential conflicts between this proposed rule and RTCA DO–267, which allows flight deck weather displays to use the color ''red'' to depict warm fronts or low-pressure centers in a way that may appear inconsistent with the proposed § 25.1322. While the proposed § 25.1322 associates the use of the color ''red'' with conditions that require immediate pilot recognition and response, or represent a serious safety threat, it does allow limited use of red for functions other than flightcrew alerting (for example, the use of red and

[3] ''Joint Safety Implementation Team, Results and Analysis—Approach & Landing Report,'' dated May 17, 2001, is available in the public docket.

[4] Published in the **Federal Register** (56 FR 2190) on January 22, 1991.

[5] Published in the **Federal Register** (67 FR 19796) on April 23, 2002.

amber or yellow on weather radar displays). Red areas on a weather radar display represent more severe (higher) precipitation rates than the amber or yellow areas, and may suggest a higher probability of convective turbulence that may be hazardous. Such displays help the pilot determine areas to avoid, if possible. Such use of colors is not considered alerting, and does not typically degrade the effectiveness of flightdeck alerts. Additionally, what constitutes a severe weather condition for a given flight is a function of many factors, and whether to use red or amber or yellow to indicate reduced visibility or other weather conditions such as icing can be dependent on the general capabilities of the aircraft, for example whether it is approved for operation in icing or low visibility conditions.

This proposed rule would limit the use of red, amber, and yellow in the flight deck. This limitation would reduce potential human errors caused by red, amber, and yellow alert colors being used in non-alerting ways. The FAA's primary concern is that the flightcrew might become desensitized to the meaning and importance of color coding for alerts if the use of the colors red, amber, and yellow were not limited for non-alerting uses. In addition to weather radar displays, Terrain Awareness and Warning System (TAWS) displays (excluding the alerting functions) currently use red, amber, and yellow. TAWS displays indicate if terrain is above, at, or below the airplane's current altitude. Weather radar and TAWS displays are two examples of acceptable uses of red, amber, and yellow for non-alerting situations that have not interfered with flightcrew alerting. Both of these examples provide a progression from green to amber to red representing increasing degrees of threat, potential hazard, safety criticality, or need for flight crew awareness or possible response. The proposed rule includes provisions to allow limited use of red, amber, and yellow for non-alerting functions if it does not adversely affect flightcrew alerting. This means, for example, we may allow use of the color ''red'' in certain types of flight deck weather displays, but we would need to evaluate the effect on flightcrew alerting.

This proposed rule is based on the ASHWG's report. The Transport Airplane and Engine Issues Group approved the report and forwarded it to ARAC, which forwarded it to the FAA. EASA is also initiating rulemaking based on this report, and we are working with EASA to ensure harmonized standards.

Advisory Material

In addition to being tasked to recommend revisions to § 25.1322, the ASHWG was tasked to recommend a new advisory circular (AC) with guidance material identifying acceptable ways to comply with the recommended new and revised requirements. The JAA already provides guidance in Advisory Material Joint (AMJ) 25.1322. The ASHWG developed proposed language and submitted it to the FAA. Once the FAA has drafted a proposed AC it will be made available for public comment.

Discussion of the Proposed Regulatory Requirements

Expansion of Scope and Title Change

The proposed § 25.1322 would expand and update the current § 25.1322 from only addressing visual alerting lights to including all flightcrew alerting functions. These proposed flightcrew alerting functions include not only visual alerting lights but also aural, tactile, other visual display alerting methods, and integrated smart flightcrew alerting systems. We therefore propose to change the title of § 25.1322 from ''Warning, caution, and advisory lights'' to ''Flightcrew alerting.'' The new title would encompass all of the changes included in the proposed rule.

Administrator Approval for Deviation From Colored Light Standards

We also propose to remove the general text in the first sentence of the current § 25.1322 that allows a deviation from the standardization of the color of the lights for flightcrew alerting, if approved by the Administrator. We propose to limit the use of the colors red, amber, and yellow so flightcrews can unmistakably associate the use of red, amber, or yellow with flightcrew alerts, except as allowed in proposed § 25.1322(f). Proposed § 25.1322(f) would allow the use of red, amber, and yellow for non-alerting functions only if the applicant shows that the use is limited and would not adversely affect flightcrew alerting.

General Performance Standards for Flightcrew Alerts

We propose to add performance based requirements for all flightcrew alerting methods. These performance requirements would increase flight safety by setting standards for alerting elements in future alerting systems, including cueing by more than one sense, information content, ease and immediacy of detection, and alert intelligibility. Proposed § 25.1322(a) would require that:

1. Flightcrew Warning and Caution alerts provide timely attention-getting cues through at least two different senses by a combination of aural, visual, or tactile indications.
2. Flightcrew alerts provide the information needed to identify the alert and determine correct action, if any.
3. Flightcrew alerts be readily and easily detectable and intelligible by the flightcrew in all foreseeable operating conditions, including where multiple alerts are provided.

Hierarchy of Alerts

Some conditions that generate alerts are more urgent and safety critical than others and should take priority. The prioritization hierarchy requirements for alerts increase flight safety by informing the flightcrew of the urgency of the flight condition for each type of alert so the flightcrew can take appropriate action, normally by dealing with the most important conditions first. For clarifying the alerting categories currently embodied in § 25.1322, and prioritizing the hierarchy for alerts based on the urgency of flightcrew awareness and response, we propose to set the following definitions and conditions:

- Warning alerts would require immediate flightcrew awareness and an immediate flightcrew response (for example, ''CONFIG RUDDER'' indicating that rudder trim is not centered when engine thrust is at takeoff).
- A caution alert would require immediate flightcrew awareness and a less urgent flightcrew response (for example, an autothrottle disconnect alert).
- Advisory alerts would be required for conditions that require flightcrew awareness but may require subsequent flightcrew response (for example, the failure of a single fuel pump in a tank with redundant fuel pumps). Unlike warning and caution alerts, advisory alerts do not require immediate awareness and do not always require a subsequent flightcrew response.

Nuisance Alerts

Proposed § 25.1322(c) would include new airworthiness standards to minimize nuisance alerts for flightcrew alerting. A nuisance alert is an alert generated by a system that is functioning as designed, but is inappropriate or unnecessary for the particular condition. For example, the landing gear configuration warning may be automatically inhibited in those flight phases where that warning is clearly unnecessary and would distract the flightcrew. Nuisance alerts must be

minimized because the flightcrew's assessment of a nuisance alert increases their workload, reduces their confidence in the alerting system, and affects their reaction in case of a legitimate alert. Proposed § 25.1322(c) would require that the flightcrew alert presentation be designed to minimize nuisance alerts and their subsequent effects. The proposed rule would minimize the effect of nuisance alerts by:

- Permitting acknowledgement and suppression of visual and aural attention-getting cues to eliminate display clutter and reduce distractions.
- Preventing the presentation of inappropriate or unnecessary alerts that could cause a hazard if the flightcrew was distracted by or responded to the alert.
- Removing the presentation of a flightcrew alert when the alert condition no longer exists to reduce unnecessary flightcrew distractions, workload, and display clutter.

In addition, proposed § 25.1322(c) would require a means for suppressing an attention getting component of an alert caused by a failure of the alerting system that interferes with the flightcrew's ability to safely operate the airplane along with a clear and unmistakable indication that the alert has been suppressed. The means of suppressing the attention getting component of an alert resulting from a failure of the alerting system must not be readily available to the flightcrew such that it could be operated inadvertently or by habitual reflexive action. For example, the action of suppressing an aural alert or extinguishing a flashing master warning or caution light by reaching forward and pressing the alerting light (switch light) is a common acceptable means of suppressing the attention getting component(s) of the alerts, but would not be acceptable for suppressing alerts caused by failure of the alerting system.

Monochromatic Display Alerts

We propose to revise § 25.1322 to establish requirements for presenting visual alerts on monochromatic displays, as prescribed in proposed § 25.1322(e). Certain displays, such as head-up displays (HUD) located in the pilot's primary field of view, are monochromatic and are not capable of displaying alerting colors. Since there is an overall safety benefit in displaying alerts on the HUD, visual display coding techniques other than color need to be used for alerts appearing in the HUD so flightcrews can easily and clearly distinguish between warning, caution, and advisory alert categories. Proposed § 25.1322(e) would require that visual alert indications shown on monochromatic displays use display features such that the flightcrew can clearly distinguish between warning, caution, and advisory alert categories. For example, consistent display coding techniques such as location, shape, font style, size, boxing, texture, and other coding methods may be used to distinguish between each alert category.

Color Standardization

We propose to revise § 25.1322 to establish color standardization for warning, caution, and advisory alert indications on multicolor displays, as prescribed in proposed § 25.1322(d). The proposed color standardization in § 25.1322(d) is similar to the color standardization for indicator lights in the current § 25.1322(a) and (b), with the following changes:

- Current § 25.1322 prescribes only the color for warning, caution, and advisory lights. Proposed § 25.1322 would include color standardization for visual alerts beyond just discrete lights to include all visual alerts.
- Current § 25.1322(b) prescribes only the color ''amber'' for caution lights. The color ''yellow'' was added to proposed § 25.1322(d)(2) so that either amber or yellow light can be used for caution alert indications. Yellow was added because it is commonly used in flight deck displays and is visually similar to amber.
- Proposed § 25.1322(b)(3) defines what an ''advisory'' alert is. It also prohibits the use of amber or yellow for advisory alerts since the colors amber and yellow are already reserved for caution alerts (proposed § 25.1322(d)(2)) and color coding is used as the primary means for distinguishing between alert categories. Under the current rule, amber or yellow can be used for both caution and advisory alerts on the same display. This makes it more difficult for the flightcrew to rapidly distinguish between alerting categories when two alert categories (caution and advisory) are the same color. Using different colors to distinguish between the caution and advisory alerts will help satisfy other proposed rule changes that require alerts to ''be readily and easily detectable and intelligible by the flightcrew under all foreseeable operating conditions including those where multiple alerts are provided'' (proposed § 25.1322(a)(3)) and allow the flightcrew to correctly recognize the ''urgency of flightcrew response'' (§ 25.1322(b)).
- Proposed § 25.1322(d)(3) prescribes the colors for advisory alerts.
- Since proposed § 25.1322 is intended to address only alerting functions, the text from current § 25.1322(c) regarding use of the color ''green'' was not retained because green is used to indicate safe operation, not an alert. An alert indicates a non-normal operational or airplane system condition. Green is mentioned in proposed § 25.1322(d)(3) to specify that it cannot be used for an advisory alert.

Limitations on Using Red, Amber, and Yellow

We propose to include a new paragraph (f) in § 25.1322 to limit the use of red, amber, and yellow within the flight deck for functions other than flightcrew alerting, so that these colors can effectively indicate the immediacy of response commensurate with the associated hazard. The restrictions are necessary so that non-alerting uses of these same colors do not adversely affect the flightcrew's interpretation of how quickly they need to respond to an alert. By standardizing the colors used for alerts and by limiting the use of the above colors for other functions on the flight deck, the flightcrew will be more likely to both rapidly detect an alert and understand the urgency of the alert. An adverse effect would be slowed recognition of an alert and the urgency of the alert.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Analysis Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act

of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; however, the Office of Management and Budget has determined that this NPRM is a ''significant regulatory action'' because it harmonizes U.S. aviation standards with those of other civil aviation authorities, (3) is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

These proposed requirements need only prevent 10 serious injuries over the period of analysis, with estimated benefits of $8.3 million ($4.4 million present value). Based on a threshold analysis, this is extremely likely, given the history of flightcrew confusion of alerts contributing to accidents. The total estimated costs are $7.7 million ($4.1 million present value). Accordingly, estimated benefits of the proposal justify the costs.

Persons Potentially Affected by This Rule

Manufacturers of part 25 airplanes

Assumptions

Discount rate—7%

Period of analysis—Twenty Years (2009 through 2028).

Benefits of This Proposed Rule

By examining the historical data, we have shown that over the past twenty years, there were both non-fatal events and fatal events, which might have been prevented with the requirements contained in this NPRM. The potential severity of an event is demonstrated in the DC 9–82 accident on August 16, 1987, that occurred shortly after takeoff from Detroit Metropolitan Airport, which resulted in 154 deaths. The National Transportation Safety Board (NTSB) determined that one contributing factor was the airplane takeoff warning system, which failed to warn the flightcrew that the airplane was improperly configured for takeoff. This finding led to the current proposed rulemaking.

To quantify the benefits of this proposal, we have performed a ''threshold'' analysis. Threshold or ''break-even'' analysis answers the question, ''How small could the value of the benefits be before the rule would yield zero net benefits?'' [6]

Our threshold analysis demonstrates that if these proposed requirements prevent at least ten serious injuries ($830,000 per injury) over the period of analysis, the total estimated benefits would be $8.3 million ($4.4 million present value).

Costs of This Rule

We obtained compliance cost estimates from three part 25 airplane manufacturers and two designers of alerting systems. The two alerting system designers stated that there would be no additional cost. Although the manufacturers stated there were no additional manufacturing or operating costs that would occur as a result of this proposal, they indicated there would be additional design and certification cost. We averaged the three estimates from the part 25 manufacturers and arrived at an average cost estimate of $0.7 million per new aircraft design. When the average cost per new aircraft certification ($0.7 million) is multiplied by estimated annual number of new certifications (0.55), we arrive at annual costs of $385,000. When summed over the period of analysis the total estimated costs are $7.7 million ($4.1 million present value).

[6] OMB Circular A–4, September 2003.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The current United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, Raytheon Aircraft, and Sabreliner Corporation. All United States transport category aircraft manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees.

Given that there are no small entity manufacturers of part 25 aircraft, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the

establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this proposed rule to ensure it does not exclude imports that meet this objective. As a result, this proposed rule is not considered as creating an unnecessary obstacle to foreign commerce and has been determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate; therefore, the requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in FAA Order 1050.1E, paragraph 312(f), and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant regulatory action'' under the executive order because while it is not a ''significant regulatory action'' under Executive Order 12866, and DOT's Regulatory Policies and Procedures, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

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

2. Revise § 25.1322 to read as follows:

§ 25.1322 Flightcrew alerting.

(a) Flightcrew alerts must:

(1) For warning and caution alerts, provide timely attention-getting cues through at least two different senses by a combination of aural, visual, or tactile indications.

(2) Provide the flightcrew with the information needed to identify the alert and determine the correct action, if any.

(3) Be readily and easily detectable and intelligible by the flightcrew under all foreseeable operating conditions, including conditions where multiple alerts are provided.

(b) Alerts must conform to the following prioritization hierarchy based upon urgency of flightcrew awareness and urgency of flightcrew response.

(1) Warning: For conditions that require immediate flightcrew awareness and immediate flightcrew response.

(2) Caution: For conditions that require immediate flightcrew awareness and less urgent flightcrew response.

(3) Advisory: For conditions that require flightcrew awareness and may require subsequent flightcrew response.

(c) Alert presentation means must be designed to minimize nuisance effects. In particular a flightcrew alerting system must:

(1) Permit each occurrence of attention getting cues to be acknowledged and suppressed unless they are otherwise required to be continuous.

(2) Prevent the presentation of an alert that is inappropriate or unnecessary.

(3) Remove the presentation of the alert when the condition no longer exists.

(4) Provide a means to suppress an attention getting component of an alert caused by a failure of the alerting system that interferes with the flightcrew's ability to safely operate the airplane. This means must not be readily available to the flight crew such that it could be operated inadvertently, or by habitual reflexive action. In this case, there must be a clear and unmistakable annunciation to the flight crew that the alert has been suppressed.

(d) Visual alert indications that are shown on multicolor displays must conform to the following color convention:

(1) Red for warning alert indications.

(2) Amber or yellow for caution alert indications.

(3) Any color except red, amber, yellow, or green for advisory alert indications.

(e) Visual alert indications shown on monochromatic displays must use display coding techniques such that the flightcrew can clearly distinguish between warning, caution, and advisory alert categories.

(f) The colors red, amber, or yellow are normally reserved for alerting functions. The use of these colors for functions other than flightcrew alerting must be limited and must not adversely affect flightcrew alerting.

Issued in Washington, DC, on July 2, 2009.

K.C. Yanamura,

Deputy Director, Aircraft Certification Service.

[FR Doc. E9–16236 Filed 7–8–09; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, and 416

[Docket No. SSA–2007–0053]

Compassionate Allowances for Early-Onset Alzheimer's Disease and Related Dementias; Office of the Commissioner, Hearing

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of public hearing.

SUMMARY: We are considering ways to quickly identify diseases and other serious medical conditions that obviously meet the definition of disability under the Social Security Act (Act) and can be identified with minimal objective medical information. We are calling this method ''Compassionate Allowances.'' We will hold a hearing on July 29, 2009, to obtain information about possible methods of identifying adults with Early-Onset Alzheimer's Disease and related dementias and the advisability of implementing compassionate allowances for people with these diseases.

DATES: This hearing will be held on July 29, 2009, between 8:30 a.m. and 5 p.m., Central Daylight Time (CDT), in Chicago, IL. The hearing will be held at the Drake Hotel, 140 East Walton Place, Chicago, IL 60611. While the public is welcome to attend the hearing, only invited witnesses will present testimony.

You may also watch the proceedings live via Webcast beginning at 9 a.m. CDT. You may access the Webcast line for the hearing on the Social Security Administration Web site at *http://www.socialsecurity.gov/compassionate_allowances/hearings0709.htm*.

ADDRESSES: You may submit written comments about the compassionate allowances initiative with respect to adults with Early-Onset Alzheimer's Disease and Related Dementias, as well as topics covered at this hearing by (1) e-mail addressed to *Compassionate.Allowances@ssa.gov*; or (2) regular mail to Nancy Schoenberg, Acting Director, Office of Compassionate Allowances and Disability Outreach, ODP, ORDP, Social Security Administration, 4671 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. We welcome your comments, but we may not respond directly to comments sent in response to this notice of the hearing.

FOR FURTHER INFORMATION CONTACT: *Compassionate.Allowances@ssa.gov*. You may also mail inquiries about this meeting to Nancy Schoenberg at the above-mentioned address. 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 Social Security online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under titles II and XVI of the Act, we pay benefits to claimants who meet our rules for entitlement and have medically determinable physical or mental impairments that are severe enough to meet the definition of disability in the Act. The rules for determining disability can be very complicated, but some claimants have such serious medical conditions that their conditions obviously meet our disability standards. To better address the needs of these claimants, we have implemented the Compassionate Allowance initiative to quickly identify diseases and other medical conditions that invariably qualify under our Listing of Impairments based on minimal objective medical information.

Will We Respond to Your Comments?

We will carefully consider your comments, although we will not respond directly to comments sent in response to this notice or the hearing.

Additional Hearings

We have held three hearings since December 2007. These hearings were on rare diseases, cancers, and traumatic brain injury and stroke. You may access the transcripts of the hearings at *http://www.socialsecurity.gov/compassionateallowances*. We plan to hold additional hearings on other conditions and will announce those hearings later with notices in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.006, Supplemental Security Income.)

Dated: July 1, 2009.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E9–16277 Filed 7–8–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150066–08]

RIN 1545–BI45

Guidance Regarding Foreign Base Company Sales Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing; correction.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Monday, December 29, 2008 (73 FR 79421), relating to foreign base company sales income.

FOR FURTHER INFORMATION CONTACT: Ethan Atticks, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is subject to these corrections are under section 954 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–150066–08), which was the subject of FR Doc. E8–30729, is corrected as follows:

1. On page 79422, column 1, in the preamble under the heading Background and Explanation of Provision, the last sentence, the language ''The preamble to the temporary regulations explains these proposed regulations.'' is corrected to read ''The preamble to the temporary regulations explains the amendments.''

2. On page 79422, column 2, in the preamble under the heading Comments and Public Hearing, the first paragraph, line 3 the language ''consideration will be give to any written'' is corrected to read ''consideration will be given to any written''.

3. On page 79422, column 3, in the preamble under the heading Part 1—Income Taxes, instructional paragraph 2, lines 5 and 6, the language ''(b)(2)(ii)(e), (b)(4) *Example (3),* (c), and (d), and adding *Examples 8* and *9* to'' is corrected to read ''(b)(2)(ii)(e) and (b)(4) *Example (3),* and adding *Examples (8)* and (*9*) to''.

4. On page 79423, column 1, § 1.954–3, the third line of *Example (8),* the language ''*(8)* is the same as the text of § 1.954–3T'' is corrected to read ''(8) is the same as the text of § 1.954–3T(b)(4)''.

5. On page 79423, column 1, § 1.954–3, the third line of *Example (9),* the language ''*(9)* is the same as the text of § 1.954–3T(b)(4)''.

Guy R. Traynor,

Federal Register Liaison, Procedure & Administration, Associate Chief Counsel, Publications & Regulations.

[FR Doc. E9–16192 Filed 7–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Danger Zone, Naval Air Station North Island, San Diego, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to establish a new danger zone in the waters adjacent to the existing small arms range (SAR) on Naval Air Station North Island (NASNI) located in San Diego, California. The proposed regulation would prohibit any activity by the public within the danger zone. The new danger zone is necessary to bring the existing SAR into compliance with the Naval Facilities Engineering Command MIL–HDBK 10–27/3B by preventing any SAR ricochet rounds from posing a hazard to passing water traffic.

DATES: Written comments must be submitted by August 10, 2009.

ADDRESSES: You may submit comments, identified by docket number COE–2009–0033, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2009–0033, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2009–0033. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that 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 Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps 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 public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Ms. Kari Coler, U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division, at 760–602–4834 or Ms. Therese O'Rourke, U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division, at 760–602–4830.

SUPPLEMENTARY INFORMATION: In response to a request from the Department of the Navy and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is proposing to amend the regulations at 33 CFR part 334 to establish a new danger zone. The proposed danger zone will prohibit access to waters adjacent to the SAR located on NASNI without prior written permission from the Commander, Navy Region Southwest or a designee, thereby ensuring that no threat is posed to passing water traffic due to ricochet rounds.

Procedural Requirements

a. *Review Under Executive Order 12866.* The proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that this danger zone would have practically no economic impact on the public, and minimal anticipated navigational hazard or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. *Review under the National Environmental Policy Act.* Due to the administrative nature of this action and because the proposed site for the danger zone is located in the Pacific Ocean and vessels may navigate around the prohibited area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. It may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. *Unfunded Mandates Act.* This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private section mandate and it is not subject to the requirements of either section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.866 to read as follows:

§ 334.866 Pacific Ocean, at the Naval Air Station North Island, San Diego, California; Naval Danger Zone.

(a) *The area.* The danger zone shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, in the Pacific Ocean contiguous to the existing small arms range located on Naval Air Station North Island, delineated as a 206.1 acre trapezium (quadrilateral with no parallel sides) beginning at latitude 32°41′13″ N., longitude 117°′12′45″ W.; thence easterly, along mean high water, to latitude 32°41′14″ N., longitude 117°12′32″ W.; thence southerly to latitude 32°40′31″ N., longitude 117°12′12″ W.; thence westerly to latitude 32°40′25″ N., longitude 117°12′43″ W.; thence northerly, landward, to the point of origin.

(b) *The regulations.* No person, vessel, craft, article, or thing, except those under the supervision of the military or naval authority, shall enter the area without the permission of the enforcing agency or his/her designee. The restriction shall apply at all times.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commander, Navy Region Southwest, and such agencies and persons as he/she may designate.

Dated: July 2, 2009.

Approved.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. E9–16235 Filed 7–8–09; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN15

Charges Billed to Third Parties for Prescription Drugs Furnished by VA to a Veteran for a Nonservice-Connected Disability

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its medical regulations concerning ''reasonable charges'' for medical care or services provided or furnished by VA to a veteran for a nonservice-connected disability. More specifically, VA proposes to amend the regulations regarding charges billed for prescription drugs not administered during treatment by changing the billing formula to reflect VA's actual drug costs for each drug rather than our current practice of using a national average drug cost for all prescriptions dispensed. The revised formula for calculating ''reasonable charges'' for prescription drug costs would also continue to include an average administrative cost for each prescription. The purpose is to provide VA with a more accurate billing methodology for prescription drugs.

DATES: Comments must be received by VA on or before August 10, 2009.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN15 ''Charges Billed to Third Parties for Prescription Drugs Furnished by VA to a Veteran for a Nonservice-Connected Disability.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Romona Greene, Manager of Rates and Charges, VHA Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1595. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1729, VA has the right to recover or collect reasonable charges for medical care or services (including the provision of prescription drugs) from a third party to the extent that the veteran or the provider of the care or services would be eligible to receive payment from the third party for:

- A nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract, 38 U.S.C. 1729(a)(2)(D), 38 CFR 17.101(a)(1)(i);
- A nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services, 38 U.S.C. 1729(a)(2)(A), 38 CFR 17.101(a)(1)(ii); or
- A nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations (no-fault) insurance, 38 U.S.C. 1729(a)(2)(B), 38 CFR 17.101(a)(1)(iii).

However, under current 38 CFR 17.101(a)(4), which implements 38 U.S.C. 1729(c)(2)(B), a third-party payer liable for such medical care and services under a health plan contract has the option of paying, to the extent of its coverage, either the billed charges or the amount the third-party payer demonstrates it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area.

In general, current regulations set forth a methodology to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used (see 68 FR 56876, October 2, 2003). To avoid a windfall, the regulations do not apply this methodology to prescription drugs because, under authority of 38 U.S.C. 8126, VA purchases drugs at discounted prices. Instead, VA currently bills for prescription drugs based on the sum of two components: (1) The national average of VA's drug costs for all prescriptions, and (2) the national average of VA's administrative costs associated with furnishing prescription drugs. Further, in accordance with § 17.102(h), VA currently bills $51 for each prescription filled (see 70 FR 66866, November 3, 2005).

We propose to change the billing methodology for prescription drugs. With respect to the portion of the billing concerning VA's cost for prescription drugs, we propose to bill based on the actual cost to VA of each prescription drug rather than the $51 national average. Under the current methodology, VA bills more than the actual cost for some prescription drugs and less than the actual cost for others. (For the purpose of the following two examples, VA's ''actual average cost'' is based upon the total cost incurred by VA for filling the prescription drug during calendar year 2008 and divided by the sum of the total number of such prescriptions filled nationally.) For example, in 2008 VA's average actual cost for a 30-day supply of immunological agent was $297.73 (not including administrative cost). Also, in 2008 VA's average actual cost for a 30-day supply of antihistamine was $7.46 (also not including administrative costs). However, under the current methodology, VA billed $51.00 for each of these prescriptions (including administrative costs), regardless of whether the prescription was for 30, 60, or 90 days.

Instead of billing based on a national average, it is more accurate to bill as close to the actual costs as possible. Consistent with this conclusion, we propose to change the methodology for billing for prescription drugs not administered during treatment. In this regard, we propose to bill the total of:

- The actual cost to VA for prescription drugs (i.e., the cost to the facility that purchased the drugs); and
- The average national administrative cost associated with dispensing the drugs for each prescription.

We created the current national average for prescription drug costs at a time when it was not feasible to bill for the actual cost of the drugs. However, we now have the capability to bill VA's actual local cost for each specific drug (i.e., the cost to the facility that purchased the drugs). The cost will be obtained from the Outpatient Pharmacy Prescription file or the Drug file at each VA facility.

We would still use VA's national average for the administrative costs associated with the dispensing of the drugs. The formula that VA would use to determine the average for the administrative costs is set forth in proposed § 17.101(m). This formula considers the sum of the indirect costs (such as utilities and financial service) and the national drug dispensing costs (such as labor and packaging) and then divides the total by the actual number of VA prescriptions filled nationally. The national average is the most administratively feasible methodology to utilize to determine this cost. We know of no other practical manner in which to determine the actual administrative costs associated with each prescription.

Further, we propose to calculate the administrative cost annually for the prior Fiscal Year (FY) (October through September) and then apply any changes at the beginning of the next calendar year. Based on the FY 2008 national VA average for the administrative costs associated with the provision of prescription drugs, the administrative cost to be used for calendar year 2009 is $11.17.

In FY 2008, we billed health care plans approximately $350.3 million (based upon VA's average actual cost for each prescription) but due to lesser amounts payable under the terms of the health care plans, we collected approximately $127.5 million. Had the proposed rule been in effect, we would have billed approximately $303.4 million (VA's actual cost plus an administrative cost for each prescription), and we believe we would have collected approximately $186.6 million (based on our model regarding projected payments under the proposed rule). This reflects a substantial increase in the percentage of payment compared

to the billed amounts. Accordingly, had the proposed billing methodology been in effect in FY 2008, we believe that the VA collections for prescription drugs would have increased by approximately $59 million. Based on OMB's Medical Consumer Price Index, when we compare FY 2008 with 2019 (ten year period after projected publication of final rule) we would expect the VA collections amount to increase by almost $87.2 million (an annual increase of slightly more than 3 percent). Based on the amount of time in FY 2010 that the proposed rule is in effect, we project that VA will realize a proportional amount of $62,570,965 in additional collections. We project that in FY 2011 VA will realize $64,760,949 million in additional VA collections (first full year of implementation). We expect that this amount will increase by the projection for the Medical Consumer Price Index (CPI) which is approximately 3 percent each year as shown in the table below. We welcome any comments regarding VA's projected collections and projected payments.

1st	FY2010	$62,570,965
2nd	FY2011	64,760,949
3rd	FY2012	67,157,104
4th	FY2013	69,709,074
5th	FY2014	72,358,019
6th	FY2015	75,107,623
7th	FY2016	77,961,713
8th	FY2017	80,924,258
9th	FY2018	83,999,380
10th	FY2019	87,191,356

As required by 38 U.S.C. 1729(c)(2)(A), we will consult with the Comptroller General of the United States prior to promulgating a final rule.

Comment Period

Under the rulemaking guidelines in Executive Order 12866, VA ordinarily provides a 60-day comment period for proposed rules. However, as stated in the preamble of this rulemaking notice, the methodology for billing health care plans for prescription drugs in VA's current regulations is not accurate for certain drugs because it results in significant underpayments. Under the proposed rule, VA would implement an actual-cost methodology that ensures fair and accurate billing for all prescription drugs covered by third party payers. The rule would ensure that VA satisfies its obligation to seek reimbursement for prescription drug purchases and maintain all appropriate funds for the care of veterans. Accordingly, VA has determined that it would be in the public interest to provide a shorter comment period for this proposed rule and has specified that comments must be received within 30 days of the publication in the **Federal Register**.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This document contains no collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

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

VA has examined the economic, interagency, budgetary, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would mainly affect large insurance companies. This proposed rule might have an insignificant impact on a few small entities that do an inconsequential amount of their business with VA. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

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

List of Subjects in 38 CFR Part 17

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

Approved: April 17, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

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

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

2. Revise the second sentence of paragraph (a)(2) and paragraph (m) of § 17.101 to read as follows:

§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.

(a) * * *

(2) * * * In addition, the charges billed for prescription drugs not administered during treatment will be the amount determined under paragraph (m) of this section. * * *

* * * * *

(m) *Charges for prescription drugs not administered during treatment.* Notwithstanding other provisions of this section, when VA provides or furnishes prescription drugs not administered during treatment, within the scope of care referred to in paragraph (a)(1) of this section, charges billed separately for such prescription drugs will consist of the amount that equals the total of the actual cost to VA for the drugs and the national average of VA administrative costs associated with dispensing the drugs for each prescription. The actual VA cost of a drug will be the actual amount expended by the VA facility for the purchase of the specific drug. The administrative cost will be determined annually using VA's managerial cost accounting system. Under this accounting system, the average administrative cost is determined by adding the total VA national drug indirect costs (such as utilities and financial services) to the total VA national drug dispensing costs (such as labor and packaging) with the sum divided by the actual number of VA prescriptions filled nationally. Based on this accounting system, VA will determine the amount of the average administrative cost annually for the prior fiscal year (October through September) and then apply the charge at the start of the next calendar year.

* * * * *

[FR Doc. E9–16294 Filed 7–8–09; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2009–0027; FRL–8928–3]

RIN 2060–AO94

National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing national emissions standards for the control of emissions of hazardous air pollutants (HAP) from the asphalt processing and asphalt roofing manufacturing area source category. These proposed emissions standards for new and existing sources are based upon EPA's proposed determination as to what constitutes the generally available control technology or management practices (GACT) for the source category.

DATES: Comments must be received on or before August 10, 2009 unless a public hearing is requested by July 20, 2009. If a hearing is requested on the proposed rules, written comments must be received by August 24, 2009. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 10, 2009.

ADDRESSES: You may submit comments, identified by Docket ID No. EPA–HQ–OAR–2009–0027, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web Site.
- *E-mail: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2009–0027 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Area Source NESHAP for Asphalt Processing and Asphalt Roofing Manufacturing Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0027. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Area Source NESHAP for Asphalt Roofing Manufacturing Docket, EPA/DC,

EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Johnson, Outreach and Information Division, Office of Air Quality Planning and Standards (MC–C404–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5124; fax number: (919) 541–0242; e-mail address: *johnson.warren@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 to EPA?
C. Where can I get a copy of this document?
D. When would a public hearing occur?
II. Background Information for Proposed Area Source Standards
A. What is the statutory authority and regulatory approach for the proposed standards?
B. What source categories are affected by the proposed standards?
C. What are the production operations, emission sources, and available controls?
D. What existing national standards apply to this source category?
III. Summary of Proposed Standards
A. Do the proposed standards apply to my source?
B. When must I comply with the proposed standards?
C. What are the proposed standards?
D. What are the initial and continuous compliance requirements?
E. What are the notification, recordkeeping, and reporting requirements?
IV. Rationale for This Proposed Rule
A. How did we select the source category?
B. How did we select the affected source?
C. How did we address PAH emissions in this rule?
D. How was GACT determined?
E. How did we select the compliance requirements?
F. How did we decide to exempt this area source category from title V permitting requirements?
V. Summary of Impacts of the Proposed Standards
A. What are the air impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental, and energy impacts?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by the proposed standards include:

Category	NAICS code [1]	Examples of regulated entities
Petroleum Refineries	324110	Area source facilities that refine asphalt.
Asphalt Shingle and Coating Materials Manufacturing	324122	Area source facilities that manufacture asphalt roofing materials.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.11559 of subpart AAAAAAA (NESHAP for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA–HQ–OAR–2009–0027. 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?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed rule by July 20, 2009, we will hold a public hearing on July 24, 2009. Persons interested in presenting oral testimony at the hearing, or inquiring as to whether a hearing will be held, should contact Ms. Christine Adams at (919) 541–5590 at least two days in advance of the hearing. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby.

II. Background Information for Proposed Area Source Standards

A. What is the statutory authority and regulatory approach for the proposed standards?

Section 112(d) of the Clean Air Act (CAA) requires EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices (GACT) by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories, like this one, that have many small businesses. Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

We are proposing these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for 4 source categories listed pursuant to section 112(c)(3) and (k) by August 17, 2009 (*Sierra Club* v. *Johnson,* no. 01–1537, D.D.C., March 2006). Additional rulemakings will be published in separate **Federal Register** notices for the remaining source categories that are due in August 2009.

B. What source categories are affected by the proposed standards?

We listed the asphalt processing and asphalt roofing manufacturing source category under CAA section 112(c)(3) in one of a series of amendments (November 22, 2002, 67 FR 70427) to the original source category list included in the 1999 Integrated Urban Strategy. The inclusion of this source category on the section 112(c)(3) area source category list is based on 1990 emissions data, as EPA used 1990 as the baseline year for that listing. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. The asphalt processing and asphalt roofing manufacturing source category was listed for its contributions toward meeting the 90 percent requirement for polycyclic organic matter in the form of polycyclic aromatic hydrocarbons (PAH).

C. What are the production operations, emission sources, and available controls?

The two production operations for which this category was listed are: (1) The asphalt processing operation (performed in blowing stills); and (2) the roofing product manufacturing operation, where substrates are coated with asphalt and other materials to produce various roofing products (*e.g.,* shingles, roll roofing). The emission sources are the process vents from each of these operations.

The production operation with the largest potential to emit PAH is the processing operation. To our knowledge, all existing blowing still process vents are controlled by combustion devices that reduce total hydrocarbon (THC) emissions through thermal oxidation, which also reduces particulate matter (PM) and PAH emissions (PM is a component of THC and PAHs are components of PM). We believe that thermal oxidation controls are the only type of emission control applied to blowing stills in this source category. We did not identify any management practices that would reduce PAH emissions from the asphalt processing operation.

The other production operation with the potential to emit PAH at these facilities is the manufacturing (coating) operation. The equipment configuration of coating operations varies depending on the type of roofing product manufactured at the facility. Three types of manufacturing operations (coating line configurations) are used in the industry: (1) Lines with coaters only (these lines manufacture roofing products using inorganic substrates), (2) lines that have both saturators/wet loopers and coaters (these lines can manufacture roofing products using either inorganic or organic substrates), and (3) lines that have saturators/wet loopers only (these lines manufacture roofing products using organic substrates). Each of these manufacturing operation types have a unique emission characteristic profile.

Based on available information, we believe PM controls (*e.g.,* fiber-bed filters, high efficiency air filters (HEAF) or, in some of cases, thermal oxidizers) are the only type of add-on emission control devices applied to the manufacturing operation equipment. While these control technologies are capable of achieving similar control efficiencies, the emissions reductions that may be achieved through use of PM controls vary depending on the PM emissions generated by the different types of equipment configurations. We did not identify any management practices that would reduce PAH emissions from the asphalt roofing manufacturing operations.

D. What existing national standards apply to this source category?

The New Source Performance Standards (NSPS) for Asphalt

Processing and Asphalt Roofing Manufacture (40 CFR Part 60, Subpart UU) applies to ''each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants'' for which construction or modification commenced after November 18, 1980. The term ''saturator'' is defined in the NSPS to include the saturator, wet looper, and coater. Sources that are subject to the NSPS because they have blowing stills, saturators, wet loopers, or coaters that have been constructed or modified since November 18, 1980 would be subject to this proposed rule.

In addition to the asphalt NSPS, the major source NESHAP for asphalt processing and asphalt roofing manufacturing (40 CFR part 63, subpart LLLLL) regulates HAP emissions from the same types of equipment (*i.e.,* blowing stills, saturators, wet loopers, coating mixers, and coaters) covered by this proposed rule. However, area sources that would be subject to this proposed rule would not be covered by the asphalt NESHAP unless they become a major source.

III. Summary of Proposed Standards

A. Do the proposed standards apply to my source?

The proposed subpart AAAAAAA standards would apply to each existing and new area source facility that processes asphalt and/or manufactures roofing products using saturation and/or coating processes. The standards do not apply to research or laboratory facilities, as defined in section 112(c)(7) of the CAA.

B. When must I comply with the proposed standards?

All existing area source facilities subject to this proposed rule would be required to comply with the rule requirements no later than one year after the date of publication of the final rule in the **Federal Register.** New sources would be required to comply with the rule requirements by the date of publication of the final rule in the **Federal Register** or at startup of the facility, whichever is later.

Because the majority of existing sources in this category are already well-controlled, we believe that one year is a reasonable amount of time to allow existing sources to conduct performance testing and prepare compliance demonstrations with the proposed rule.

C. What are the proposed standards?

As discussed in section II.C of this preamble, the two production operations for which this category was listed are: (1) Asphalt processing (refining) operations; and (2) roofing product manufacturing operations.

For asphalt processing, the proposed standards would require the owner or operator to limit PAH emissions to 0.003 lb/ton of asphalt charged to the asphalt refining (blowing still) operation. Alternatively, owners or operators may choose to comply with a PM emissions limit of 1.2 lb/ton of asphalt charged to the asphalt refining operation. The proposed standards for new refining operations are the same as for existing sources.

For the asphalt roofing product manufacturing operations, we examined the process operations and other factors and determined that subcategories are justified to reflect the unique emission characteristic profiles of the different equipment configurations. We developed three subcategories based upon the various equipment configurations used in the industry: (1) Production lines that use a coater only, (2) production lines that use a saturator only, and (3) production lines that use saturators and coaters. See section IV.D of this preamble for a discussion of how GACT was determined.

For existing coater-only production lines, the proposed standards would require the owner or operator to limit PAH emissions from all coating mixers and coaters to 0.0002 lb/ton of product manufactured. Alternatively, owners or operators may choose to comply with a PM emission limit of 0.03 lb/ton of product manufactured.

For existing saturator-only production lines, the proposed standards would require the owner or operator to limit PAH emissions from all saturators (and wet loopers) to 0.0004 lb/ton of product manufactured. The proposed standards for saturator-only production lines would alternatively allow owners or operators to comply with a PM emissions limit of 0.05 lb/ton of product manufactured.

For existing combined saturator and coater production lines, the proposed standards would require the owner or operator to limit PAH emissions from all saturators, wet loopers, coating mixers, and coaters to 0.0006 lb/ton of product manufactured. The proposed standards for combined saturator and coater production lines would alternatively allow owners or operators to comply with a PM emissions limit of 0.07 lb/ton of product manufactured. This alternative emission limit is at least as stringent as GACT for PAH emissions.

The proposed standards for new roofing product manufacturing operations for all subcategories are the same as for existing sources.

D. What are the initial and continuous compliance requirements?

The proposed standards would require an initial performance assessment of the process emissions or control device outlet to demonstrate initial compliance with the applicable standard, and to establish the range of parameter values (*e.g.,* temperature, pressure drop) for the process or control device that will be monitored to demonstrate continuous compliance. For existing sources, the proposed standards would require owners or operators to conduct the initial compliance assessment within 180 days of the date the final rule is published in the **Federal Register.** Owners or operators of new sources would be required to conduct compliance assessments within 180 days of the date the final rule is published in the **Federal Register** or startup (whichever is later).

Initial compliance with proposed emission limits for existing and new asphalt processing operations and asphalt roofing manufacturing lines that include a saturator must be demonstrated by conducting emission tests. For existing and new asphalt roofing manufacturing lines that do not include a saturator, the proposed standards would allow owners or operators to demonstrate initial compliance and establish continuous monitoring parameters:

- By conducting emissions tests, or
- By using process knowledge and engineering calculations.

As an alternative to conducting emission tests to demonstrate initial compliance with the asphalt processing or asphalt roofing manufacturing emission limits, an owner or operator of an existing source may use the results from an emission test conducted in the past five years. Owners or operators can use the results of the previously-conducted test only if the emission measurements were made using the test methods specified in the proposed standards. Additionally, the owner or operator must be able to demonstrate that no process changes have been made since the date of the previous test, or that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite any process changes.

Continuous compliance with the proposed emission limits would be demonstrated by monitoring parameters

and process conditions established during the initial compliance assessment. Under normal operating conditions (*i.e.,* periods other than startup, shutdown, and malfunction), the proposed standards for demonstrating continuous compliance are based upon a 3-hour averaging period. In cases where add-on control devices are not needed to comply with the proposed standards, facilities would be required to establish operating values for process parameters during the performance assessment and maintain the 3-hour average of those parameters within the established values. If a thermal oxidizer is used to comply with the PAH or PM emission limits, the proposed standards would require that the 3-hour average combustion zone temperature of each affected thermal oxidizer be maintained at or above the operating limit established during the performance assessment. For PM control devices, the proposed standards would require that the inlet gas temperature be maintained at or below the average 3-hour value established during the performance assessment. The pressure drop across any filter media, if used by the control device (*e.g.,* a HEAF), must also be maintained at or below the average 3-hour values established during the performance assessment. If an electrostatic precipitator (ESP) is used as the PM control device, the proposed standards would require that the 3-hour average ESP voltage be maintained at or above the operating value established during the initial performance test. For other types of controls, the proposed standards would allow the owner or operator to establish approved monitoring parameters and maintain the value of those parameters within the operating values established during the initial performance test. During periods of startup, shutdown, and malfunction, facilities would be required to comply with the proposed emission limits; however, the averaging period for determining compliance would be extended from three hours to 24 hours.

E. What are the notification, recordkeeping, and reporting requirements?

Affected new and existing sources would be required to comply with certain requirements set forth in the General Provisions (40 CFR part 63, subpart A), as identified in Table 5 of this proposed rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting. Among other requirements, each facility would be required to submit an initial notification that complies with the requirements in 40 CFR 63.9(b) of the General Provisions within 120 days of the effective date of the final rule and a notification of compliance status that complies with the requirements in 40 CFR 63.9(h) within 60 days after completion of the compliance assessment. Facilities would also be required to submit semi-annual compliance summary reports.

IV. Rationale for This Proposed Rule

A. How did we select the source category?

As described in section II.B, we listed the asphalt processing and asphalt roofing manufacturing source category under CAA section 112(c)(3) on November 22, 2002 (67 FR 70427). The inclusion of this source category on the area source category list was based on data from the CAA section 112(k) inventory, which represents 1990 urban air information. The asphalt processing and asphalt roofing manufacturing area source category was listed as contributing a percentage of the total area source urban HAP emissions for PAH.

In developing the proposed standards for this source category, we relied upon information on the production operations, emission sources, and prevalent emission controls employed by area sources: (1) Obtained from the industry trade association; (2) gleaned from published literature; and (3) derived from reviewing operating permits. We also held discussions with industry representatives, State permitting organizations, and EPA experts. This research confirmed that the asphalt processing and asphalt roofing manufacturing source category emits PAH.

B. How did we select the affected source?

''Affected source'' means the collection of equipment and processes in the source category or subcategory to which the subpart applies. We selected the affected source for this subpart based upon the processes identified in the CAA section 112(k) inventory data for this category as emitting PAH. The affected source is comprised of two operations, which are: (1) Asphalt processing (refining) operations; and (2) asphalt manufacturing (coating) operations. Some facilities conduct both of these operations, while others conduct only asphalt coating operations.

C. How did we address PAH emissions in this rule?

The proposed rule includes both a PAH emission limit and an equivalent PM emission limit. We have determined that it is appropriate to treat PM as a surrogate for PAH. PAH are a fractional constituent of the PM currently being controlled by affected sources. Thus, reductions in PM emissions necessarily result in proportional reductions in PAH emissions since the PM control devices used by sources in the category also effectively control PAH emissions. As we have been able to quantify the relationship between PM emissions and PAH emissions, we believe that it is appropriate to allow owners and operators to monitor and quantify PM emissions in lieu of monitoring and quantifying PAH emissions. This approach is particularly appropriate for this source category since the existing Federal regulations that cover these sources (*i.e.,* the asphalt NSPS) already require testing for PM emissions.

D. How was GACT determined?

As provided in CAA section 112(d)(5), we are proposing standards representing GACT to regulate PAH emissions from the asphalt processing and asphalt roofing manufacturing source category. The CAA allows the Agency to establish standards for area sources listed pursuant to section 112(c) based on GACT. The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.

In establishing GACT, we considered the control technologies currently used by facilities in the source category that reduce PAH emissions from the refining operations and coating operations described in section II.C. of this preamble, and the costs and incremental emissions reduction achieved by more stringent controls. We were unable to identify any management practices which effectively reduced PAH emissions.

1. Asphalt processing.

Based upon the process equipment and control device configuration data supplied by the industry trade association (the Asphalt Roofing Manufacturers Association, ARMA) and data obtained through online permit database searches, all of the existing blowing stills are controlled using thermal oxidation. Thermal oxidizers at existing sources reduce PAH to 0.003 lb/ton of asphalt charged to the blowing stills. Consequently, we consider GACT

for existing blowing stills to be a PAH emissions limit of 0.003 lb/ton of asphalt charged to the blowing stills. Alternatively, the proposed standards would allow facilities to comply with an equivalent PM emissions limit of 1.2 lb/ton of asphalt charged to the blowing stills.

For new blowing stills, we are also proposing that GACT is a PAH emissions limit of 0.003 lb/ton of asphalt charged to the blowing stills, or a PM emissions limit of 1.2 lb/ton of asphalt charged to the blowing stills. Based upon the information currently available, we did not identify any technologies beyond thermal oxidation for which we would propose more stringent emission limits for new blowing stills in this source category.

2. Asphalt roofing manufacturing.

For roofing manufacturing operations, we estimated the baseline level of control in the industry using process equipment and control device configuration data supplied by ARMA and data obtained through online permit database searches. We also conducted a Web search and obtained operating permits for 9 non-ARMA facilities. Using the emissions data collected to support development of the asphalt NESHAP, we determined that establishing separate subcategories for coater-only, saturator-only, and combined saturator/coater production lines is appropriate to address the different types of equipment configurations. Saturators manufacture roofing products using organic substrates (*e.g.*, felt) which require much higher asphalt application rates than coaters which are used to manufacture roofing products based upon inorganic substrates (*e.g.*, fiberglass mat). Because of the different asphalt application rates, the emission rate of PAH and PM from a saturator is an order of magnitude higher than that from a coater.

We established the proposed emission limits indicative of GACT for each of these subcategories by applying the average reduction performance for PAH and PM emissions achieved by the controls identified at baseline for each type of process. For existing roofing production lines, we established GACT as follows for each subcategory:

- PAH emission limit of 0.0002 lb/ton of product manufactured or an alternative, equivalent PM emission limit of 0.03 lb/ton of product manufactured for coater-only lines;
- PAH emission limit of 0.0004 lb/ton of product manufactured or an alternative, equivalent PM emission limit of 0.05 lb/ton of product manufactured for saturator-only lines; and
- PAH emission limit of 0.0006 lb/ton of product manufactured or an alternative, equivalent PM emission limit of 0.07 lb/ton of product manufactured for combined saturator/coater lines.

For new sources, we established the GACT level of control at the same level as GACT for existing sources, which reflects the use of fiber-bed or high-efficiency air filters. We considered requiring that new sources reduce PAH emission using thermal oxidizers. However, we rejected this option because of the high cost-effectiveness value ($5,000,000/ton of PAH reduced) which is due to the very low levels of PAH emissions and the high capital and annual costs associated with thermal oxidizers, when compared to less expensive PM controls.

E. How did we select the compliance requirements?

We are proposing testing, monitoring, notification, and recordkeeping requirements that are adequate to assure continuous compliance with the requirements of the rule. These provisions are based, in part, on requirements that have been applied to industries with similar control devices in other rulemakings. We selected these requirements based upon our determination of the information necessary to ensure emissions controls are maintained and operated properly on a continuing basis. We believe the proposed requirements would ensure continuous compliance with the emission reduction requirements of this proposed rule without posing a significant additional burden for facilities that must implement them.

1. Asphalt Processing

We are proposing that compliance with the emission limits for blowing stills be demonstrated by monitoring the combustion zone operating temperature and maintaining the 3-hour average combustion zone operating temperature at or above the temperature established during the initial compliance demonstration.

The performance of thermal oxidizers is dictated by the turbulence and residence time of the gases in the combustion zone and by the combustion zone temperature. For a given flow rate, the turbulence and residence time are fixed properties. Therefore, the remaining parameter necessary for determining the operation of the thermal oxidizer is combustion zone temperature. Additionally, most thermal oxidizers are already equipped with systems for monitoring and recording operating temperature. Monitoring of combustion zone temperature for blowing still thermal oxidizers is also required by the asphalt NSPS. For the initial compliance demonstration, facilities would be allowed to use the results from performance tests used to demonstrate compliance with Federal or State regulations that are at least as stringent as the proposed emission limits, provided that the performance test was conducted within the last 5 years and the test methods used were the same as the test methods specified in the proposed rule. Additionally, the owner or operator must be able to demonstrate that no process changes have been made since the date of the previous test, or that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite any process changes. We are proposing to allow the use of existing performance tests to reduce the potential compliance burden on asphalt area sources.

2. Asphalt Roofing Manufacturing

We are proposing that compliance with the emission limits for saturators, coating mixers, and coaters using add-on controls be demonstrated by monitoring the gas temperature at the inlet of the PM control device and the pressure drop across the device. Facilities must maintain the 3-hour average inlet gas temperature and the 3-hour average pressure drop across the control device at or below the operating limits established during the initial compliance demonstration. We believe that, for this source category, the removal performance of PM control devices is adequately characterized by the inlet gas temperature and pressure drop across the device. For all PM control devices, the inlet gas temperature would have to be at or below the temperature at which the performance test was conducted to ensure that a sufficient amount of PM has condensed from the vent gas prior to entering the PM control device. The control device pressure drop would have to be at or below the value established during the performance test to ensure that the control device is providing sufficient removal of PM and that the removal mechanism (*e.g.*, filter media) does not become plugged or fouled. Although monitoring of pressure drop is not required by the asphalt NSPS, monitoring of inlet gas temperature for PM control devices is the same as the monitoring requirements of the asphalt NSPS. This minimizes the monitoring, recordkeeping, and reporting burden on

facilities with these processes. We are also proposing to allow the use of existing performance tests for PM control devices in an effort to reduce the potential compliance burden on asphalt area sources, provided that the performance test was conducted within the last 5 years and the test methods used were the same as the test methods specified in the proposed rule. Additionally, the owner or operator must be able to demonstrate that no process changes have been made since the date of the previous test, or that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite any process changes.

Facilities that can comply with the proposed standards without the use of add-on control devices must monitor approved process parameters and maintain those parameters within the range of values established during the initial performance test.

F. How did we decide to exempt this area source category from title V permitting requirements?

For the reasons described below, we are proposing exemption from title V permitting requirements for affected sources in the asphalt processing and asphalt roofing manufacturing area source category that are not already required to have a title V permit for other reasons. We estimate that approximately 33 of the 75 area source facilities in this industry currently have title V permits. We are not proposing that sources in this category that already have a title V permit be exempt from title V permitting requirements.

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if (s)he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (Exemption Rule).

The four factors that EPA identified in the Exemption Rule for determining whether title V is unnecessarily burdensome on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing these factors in the Exemption Rule, we further explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' See 70 FR 75323. Thus, in the Exemption Rule, we explained that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting an area source category would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. As explained below, we propose that title V permitting is unreasonably burdensome for the area source category at issue in this proposed rule. We have also determined that the proposed exemptions from title V would not adversely affect public health, welfare and the environment. Our rationale for this decision follows here.

In considering the exemption from title V requirements for sources in the category affected by this proposed rule, we first compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in the proposed NESHAP for the area source category. The proposed rule requires facilities to comply with an emission limit using either process changes or add-on controls. Continuous compliance would be demonstrated using parametric monitoring of the process or a control device. Facilities that can comply with the proposed standards without the use of add-on control devices must monitor approved process parameters and maintain those parameters within the range or value established during the initial performance test. For add-on control devices (*i.e.,* PM control devices and thermal oxidizers) used to comply with the emission limits, the proposed rule specifies the monitoring parameters and averaging periods. For PM control devices, the proposed standards would require that the inlet gas temperature be maintained at or below the average 3-hour value established during the performance assessment. The pressure drop across any filter media, if used by the control device, must also be maintained at or below the average 3-hour values established during the performance assessment. If an electrostatic precipitator is used as the PM control device, the proposed standards would require that the 3-hour average ESP voltage be maintained at or above the operating value established during the initial performance test. For other types of controls, the proposed standards would allow owners or operators to establish approved monitoring parameters and maintain the value of those parameters within the operating values established during the initial performance test. For thermal oxidizers, the proposed rule would require the owner or operator to maintain the 3-hour average combustion zone temperature at or above the temperature established during the initial compliance demonstration. Existing sources would be allowed to use previously conducted performance tests to demonstrate compliance provided that the tests were conducted within the past 5 years and the emission measurements were made using the test methods specified in the proposed standards.

Additionally, the owner or operator must be able to demonstrate that no process changes have been made since the date of the previous test, or that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite any process changes. New sources would be required to conduct initial performance tests.

The proposed rule also requires the preparation of a semi-annual

compliance certification report and submission of this report, which would include any deviations from the emission or operating limits that occurred during the reporting period, to the State agency. The semi-annual report would call attention to those facilities in need of inspection to the State agency in the same way as a title V permit. Records would be required to ensure that the compliance requirements are followed and that any needed corrective actions are taken. Therefore, this proposed rule contains monitoring requirements that are sufficient to assure compliance with the proposed rule.

As part of the first factor, in addition to monitoring, we have considered the extent to which title V could potentially enhance compliance for area sources covered by this proposed rule through recordkeeping or reporting requirements. We have considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification in 40 CFR 70.6 and 71.6. For any affected area source in this category, this proposed rule would require an Initial Notification and a Notification of Compliance Status. In addition, owners or operators or affected facilities must maintain records that show on-going compliance with the emission limits and the established monitoring parameters. The information in the semi-annual compliance reports is consistent with the information that must be provided in the monitoring reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

We acknowledge that title V might impose additional compliance requirements on this category, but we believe the monitoring, recordkeeping, and reporting requirements of this proposed NESHAP for the asphalt processing and asphalt roofing manufacturing source category would be sufficient to assure compliance with the provisions of this NESHAP, and title V would not significantly improve those compliance requirements.

For the second factor, we determined whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimated that the average cost of obtaining and complying with a title V permit was $65,700 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, June 2007, EPA ICR Number 1587.07. EPA does not have specific estimates for the burdens and costs of permitting these specific types of area sources; however, there are certain activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the facility. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of consultants to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for facilities affected by this proposal, approximately 33 currently have title V permits leaving approximately 42 facilities that do not. Based upon the permits reviewed for this proposed rulemaking, we believe that none of the facilities that currently have title V permits are small entities. There are approximately 11 facilities owned and operated by small entities. As discussed above, title V permitting would impose significant costs on these area sources, and, accordingly, we conclude that title V is a significant burden for sources in this category. Furthermore, given the number of sources in the category that currently do not have a title V permit, it may be difficult for them to obtain sufficient assistance from the permitting authority. Thus, we conclude that factor two supports title V exemption for this category.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. As explained above for the second factor, the costs of compliance with title V would impose a significant burden on facilities that do not currently have title V operating permits. Although title V might impose additional requirements, we believe in considering the first factor the monitoring, recordkeeping and reporting requirements in this proposed NESHAP assure compliance with the emission standards imposed in the NESHAP as proposed. In addition, in our consideration of the fourth factor, we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are high for any small entity, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for this area source category.

The fourth factor we considered in determining if title V is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. EPA has implemented regulations that provide States the opportunity to take delegation of area source NESHAP, and we believe that States' delegated programs are sufficient to assure compliance with this NESHAP. See 40 CFR part 63, subpart E (States must have adequate programs to enforce the section 112 regulations and provide assurances that they will enforce the NESHAP before EPA will delegate the program). We also noted that EPA retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these proposed standards. We believe that the statutory requirements for implementation and enforcement of this NESHAP by the delegated States and EPA and the additional assistance programs described above together are sufficient to assure compliance with

these proposed standards without relying on title V permitting.

In light of all the information presented here, we believe that there are implementation and enforcement programs in place that are sufficient to assure compliance with the proposed standards without relying on title V permitting.

Balancing the four factors for this area source category strongly supports the proposed finding that title V is unnecessarily burdensome in this situation. While title V might add additional compliance requirements if imposed, we believe that there would not be significant improvements to the compliance requirements in this proposed rule because the proposed rule requirements are specifically designed to assure compliance with the emission standards imposed on this area source category. We further maintain that the costs of compliance with title V would impose a significant burden on the 42 facilities that do not currently have a title V permit. We determined that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V permitting were required. And, finally, there are adequate implementation and enforcement programs in place to assure compliance with these proposed standards. Thus, we propose that title V permitting is ''unnecessarily burdensome'' for this area source category.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome,'' EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting this area source category from title V requirements would adversely affect public health, welfare, or the environment. Exemption of this area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources.

Furthermore, we explained in the Exemption Rule that requiring permits for a relatively small number of area source facilities subject to these proposed standards could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. Based on the above analysis, we conclude that title V exemptions for these area sources will not adversely affect public health, welfare, or the environment for all of the reasons explained above.

For the reasons stated here, we are proposing to exempt this area source category from title V permitting requirements.

V. Summary of Impacts of the Proposed Standards

A. What are the air impacts?

Since 1990, in addition to the increased use of add-on controls due to Federal and State permitting requirements, the asphalt processing and asphalt roofing manufacturing industry has further reduced its air impacts by reducing the amount of asphalt used to manufacture roofing products (reformulation), largely through the use of inorganic substrates which do not require the asphalt-intensive step of saturating the substrate. These process improvements have reduced the generation rate of PAH emissions by approximately 0.0015 lbs/ton of product manufactured before controls are applied. In addition to the PAH emission reductions, the process improvements undertaken by the industry since 1990 have resulted in reductions of approximately 0.02 lbs of total HAP, 0.29 lbs of THC, and 0.58 lbs of PM per ton of product manufactured.

We believe that the proposed standards codify the reductions in PAH emissions, and co-control of total HAP, THC, and PM emissions, that have been achieved by the asphalt refining and asphalt roofing manufacturing industry since 1990 by requiring compliance with the level of control that can be achieved via use of current GACT coupled with the reduced rate of asphalt used by the industry.

B. What are the cost impacts?

We believe that all asphalt processing and asphalt roofing manufacturing facilities will be able to meet the proposed standards using existing controls; some facilities may need to conduct emission tests to demonstrate compliance. Therefore, no additional air pollution control devices would be required. However, we have assumed that 38 facilities (50 percent) will need to install a pressure drop monitoring system for existing controls. No other capital costs are associated with this proposed rule and no new operational and maintenance costs are expected because, absent any data to demonstrate otherwise, we have assumed that existing facilities are already following the manufacturer's instructions for operation and maintenance of pollution control devices and systems.

The annual cost of monitoring, reporting, and recordkeeping for this proposed rule is estimated at approximately $3,000 per facility per year for the first 3 years following promulgation. The costs are expected to be less than 1 percent of revenues. The annual estimate includes 8 hours per facility per year for preparing semiannual compliance reports.

The total number of labor hours for the first 3 years following promulgation in this annual cost estimate is 12,442 hours. This total includes 173 hours industry-wide for preparation of the Initial Notification in the first year and 173 hours industry-wide for preparation of the Notification of Compliance Status in the first year. The average total labor hour burden in the first year is 71 hours per facility, which include 15 hours per facility for monitoring activities.

Information on our cost impact estimates on the sources is available in the docket for this proposed rule. (See Docket ID No. EPA–HQ–OAR–2009–0027).

C. What are the economic impacts?

The only measurable costs attributable to these proposed standards are associated with the monitoring, recordkeeping, and reporting requirements. These proposed standards are estimated to impact a total of 75 area source facilities. We estimate that 11 of these facilities are owned by small businesses. Our analysis indicates that this proposed rule would not impose a significant adverse impact on any facilities, large or small, because these costs are less than 1 percent of the individual company revenues.

D. What are the non-air health, environmental, and energy impacts?

No detrimental secondary impacts are expected to occur from the asphalt processing and asphalt roofing manufacturing sources because all facilities are currently achieving the GACT level of control. No additional solid waste would be generated as a result of the PAH and PM emissions collected and there are no additional energy impacts associated with the

operation of control devices or monitoring systems for the asphalt refining and asphalt roofing manufacturing sources. We expect no increase in the generation of wastewater or other water quality impacts. None of the control measures considered for this proposed rule generates a wastewater stream.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the OMB for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2352.01.

The recordkeeping and reporting requirements in this proposed rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This proposed NESHAP would require asphalt roofing manufacturing area sources to submit an Initial Notification and a Notification of Compliance Status and to conduct continuous parametric monitoring and submit semi-annual compliance reports according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 4,147 labor hours per year at a cost of $224,085 or approximately $3,000 per facility.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number [EPA–HQ–OAR–2009–0027]. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 9, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by August 10, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the proposed area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 750 for NAICS 324122); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is estimated to impact all new and existing asphalt roofing manufacturing area source facilities. We estimate that 11 facilities are owned by small entities. Although some small entities may incur capital costs to install additional monitoring equipment (*e.g.,* pressure drop monitoring system for existing controls), we have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be less than 1 percent. The costs are so small that the impact is not expected to be significant. Although this proposed rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next year, and consequently, we did not estimate any impacts for new sources.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. The standards represent practices and controls that are common throughout the asphalt roofing manufacturing industry. The standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed based on information obtained for small businesses in the data provided by ARMA and obtained through online permit database searches, consultation with small business representatives on the State and national level, and industry representatives that are affiliated with small businesses.

We continue to be interested in the potential impacts of this proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, and tribal governments or the private sector. This action imposes no enforceable duty on any State, local, tribal governments or the private sector.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rules contain no requirements that apply to such governments, and impose no obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to

ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The action imposes requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any adverse energy impacts.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA proposes in this rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5A, and 23. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified.

Under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

EPA welcomes comments on this aspect of this proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule will establish national standards for the asphalt processing and asphalt roofing manufacturing area source category.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 2, 2009.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart AAAAAAA to read as follows:

Subpart AAAAAAA—National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing Applicability and Compliance Dates

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Applicability and Compliance Dates

§ 63.11559 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an asphalt processing operation and/or asphalt roofing manufacturing operation that is an area source of hazardous air pollutant (HAP) emissions, as defined in § 63.2.

(b) This subpart applies to each new or existing affected source as defined in paragraphs (b)(1) and (b)(2) of this section.

(1) *Asphalt processing.* The affected source for asphalt processing operations is the collection of all blowing stills, as defined in § 63.11566, at an asphalt processing operation.

(2) *Asphalt roofing manufacturing.* The affected source for asphalt roofing manufacturing operations is the collection of all asphalt coating equipment, as defined in § 63.11566, at an asphalt roofing manufacturing operation.

(c) This subpart does not apply to hot mix asphalt plant operations that are used in the paving of roads or hardstand, or operations where asphalt may be used in the fabrication of a built-up roof.

(d) An affected source is a new affected source if you commenced construction after July 9, 2009.

(e) An affected source is reconstructed if it meets the criteria as defined in § 63.2.

(f) An affected source is an existing source if it is not new or reconstructed.

(g) On and after [Insert date of publication of the final rule in the FEDERAL REGISTER], if your asphalt processing or asphalt roofing manufacturing operation becomes a major source, as defined in § 63.2, you must meet the requirements of 40 CFR part 63, subpart LLLLL.

(h) This subpart does not apply to research or laboratory facilities, as defined in section 112(c)(7) of the Clean Air Act.

(i) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11560 What are my compliance dates?

(a) If you own or operate an existing affected source, you must be in compliance with the applicable provisions in this subpart no later than [Insert date one year after publication of the final rule in the **Federal Register**]. As specified in § 63.11562(f), you must demonstrate initial compliance within 180 calendar days after [Insert date one year after publication of the final rule in the **Federal Register**].

(b) If you own or operate a new affected source, you must be in compliance with the provisions in this subpart on or before [Insert date of publication of the final rule in the **Federal Register**] or upon startup, whichever date is later. As specified in § 63.11562(g), you must demonstrate initial compliance with the applicable emission limits no later than 180 calendar days after [Insert date of publication of the final rule in the **Federal Register**] or within 180 calendar days after startup of the source, whichever is later.

Standards and Compliance Requirements

§ 63.11561 What are my standards and management practices?

(a) For asphalt processing operations, you must meet the emission limits specified in Table 1 of this subpart.

(b) For asphalt roofing manufacturing lines, you must meet the applicable emission limits specified in Table 2 of this subpart.

(c) These standards apply at all times.

§ 63.11562 What are my initial compliance requirements?

(a) For asphalt processing operations, you must demonstrate compliance with the emission limits specified in Table 1 of this subpart by conducting emission tests using the methods specified in Table 3 of this subpart.

(b) For asphalt roofing manufacturing lines that include a saturator, you must demonstrate initial compliance with the applicable emission limits specified in Table 2 of this subpart by conducting emission tests using the methods specified in Table 3 of this subpart.

(c) For asphalt roofing manufacturing lines that do not include a saturator, you must demonstrate initial compliance with the applicable emission limits specified in Table 2 of this subpart by:

(1) Conducting emission tests using the methods specified in Table 3 of this subpart, or

(2) Using process knowledge and engineering calculations.

(d) During the emission tests specified in paragraphs (a), (b), and (c)(1) of this section, you must establish the value of the monitoring parameters specified in Table 4 to this subpart. If you are using process knowledge and engineering calculations to demonstrate initial compliance, as specified in paragraph (c)(2) of this section, you must identify the process parameters and corresponding parameter values that you will monitor and maintain to demonstrate continuous compliance.

(e) As an alternative to the emission testing requirement specified in paragraphs (a), (b), and (c) of this section, you may use the results of a previously-conducted emission test to demonstrate compliance with the emission limitations in this subpart for existing sources if:

(1) The test was conducted within the last 5 years;

(2) No changes have been made to the process since the time of the emission test;

(3) The operating conditions and test methods used for the previous test conform to the requirements of this subpart; and

(4) The control device and process parameter values established during the previously-conducted emission test are used to demonstrate continuous compliance with this subpart.

(f) For existing sources, you must demonstrate initial compliance no later than 180 calendar days after [Insert date one year after publication of the final rule in the **Federal Register**].

(g) For new sources, you must demonstrate initial compliance no later than 180 calendar days after [Insert date of publication of the final rule in the Federal Register] or within 180 calendar days after startup of the source, whichever is later.

(h) For emission tests conducted to demonstrate initial compliance with the emission limits specified in Tables 1 and 2, you must follow the requirements specified in paragraphs (h)(1) through (h)(5) of this section.

(1) You must conduct the tests under conditions that represent normal operation. You may not conduct performance tests during periods of

startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(2) You must conduct a minimum of three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). The sampling time and sample volume of each test run must be as follows:

(i) For asphalt processing operations, the sampling time and sample volume for each test run must be at least 90 minutes or the duration of the coating blow or non-coating blow, whichever is greater, and 2.25 dscm (79.4 dscf).

(ii) For asphalt coating operations, the sampling time and sample volume for each test run must be at least 120 minutes and 3.00 dscm (106 dscf).

(3) For asphalt processing operations, you must use the following equations to calculate the asphalt charging rate (P).

(i) $P=(Vd)/(K' \Theta)$

Where:

P = asphalt charging rate to blowing still, Mg/hr (ton/hr).
V = volume of asphalt charged, m^3 (ft^3).
d = density of asphalt, kg/m^3 (lb/ft^3).
K′ = conversion factor, 1000 kg/Mg (2000 lb/ton).
Θ = duration of test run, hr.

(ii)

$d=K_i-K_iT$

Where:

d = Density of the asphalt, kg/m^3 (lb/ft^3)
K_1= 1056.1 kg/m^3 (metric units)
= 64.70 lb/ft^3 (English Units)
K_2= 0.6176 kg/(m^3 °C) (metric units)
= 0.0694 lb/(ft^3 °F) (English Units)
T_i= temperature at the start of the blow, °C (°F)

(4) You must use the following equation to demonstrate compliance with the emission limits specified in Table 2 of this subpart:

E = [(C)*(Q)/(P)*(K)]

Where:

E = emission rate of particulate matter, kg/Mg (lb/ton).
C = concentration of particulate matter, g/dscm (gr/dscf).
Q = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = asphalt roofing production rate or asphalt charging rate, Mg/hr (ton/hr).
K = conversion factor, 1000 g/kg [7000 (gr/lb)].

(5) For coating operations, you must conduct the performance test while manufacturing one of the following final products:

(i) A 106.6-kg (235-lb) shingle or mineral-surfaced roll roofing.

(ii) A 6.8-kg (15-lb) saturated felt or smooth-surfaced roll roofing.

(iii) A 100-kg (220-lb) fiberglass shingle.

§ 63.11563 What are my monitoring requirements?

(a) If you are using a control device to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must establish site-specific control device parameter values during the initial emission test and maintain those parameters as specified in Table 4 of this subpart.

(b) If you are using an emission test to demonstrate that no add-on control devices are required to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must establish site-specific process parameter values during the initial emission test and maintain those parameters as specified in Table 4 of this subpart.

(c) If you are using means other than those listed in paragraphs (a) or (b) of this section to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must apply to the Administrator for approval of an alternative monitoring plan under § 63.8(f). The plan must specify how process parameters identified in the initial compliance demonstration under § 63.11562(c)(2) will be monitored and maintained to demonstrate continuous compliance.

(d) If you are using a control device to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must install, operate, and maintain a continuous parameter monitoring system (CPMS) as specified in paragraphs (d)(1) through (d)(3) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(2) To determine the 3-hour average, you must:

(i) Have a minimum of four successive cycles of operation to have a valid hour of data.

(ii) Have valid data from at least three of four equally spaced data values for that hour from a CPMS that is not out-of-control according to your site-specific monitoring plan.

(iii) Determine the 3-hour average of all recorded readings for each operating day, except as stated in paragraph (b) of this section. You must have at least two of the three hourly averages for that period using only hourly average values that are based on valid data (*i.e.,* not from out-of-control periods).

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(e) For each temperature monitoring device, you must meet the CPMS requirements in paragraph (d) of this section and the following:

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a noncryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.8 °C or 1.0 percent of the temperature value, whichever is larger.

(3) If a chart recorder is used, the recorder sensitivity in the minor division must be at least 20 °F.

(4) Perform an accuracy check at least semiannually or following an operating parameter deviation:

(i) According to the procedures in the manufacturer's documentation; or

(ii) By comparing the sensor output to redundant sensor output; or

(iii) By comparing the sensor output to the output from a calibrated temperature measurement device; or

(iv) By comparing the sensor output to the output from a temperature simulator.

(5) Conduct accuracy checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(6) At least quarterly or following an operating parameter deviation, perform visual inspections of components if redundant sensors are not used.

(f) For each pressure measurement device, you must meet the CPMS requirements of paragraph (d) of this section and the following:

(1) Locate the pressure sensor(s) in, or as close as possible, to a position that provides a representative measurement of the pressure.

(2) Use a gauge with a minimum measurement sensitivity of 0.12 kiloPascals or a transducer with a minimum measurement sensitivity of 5 percent of the pressure range.

(3) Check pressure tap pluggage daily. Perform an accuracy check at least quarterly or following an operating parameter deviation:

(i) According to the manufacturer's procedures; or

(ii) By comparing the sensor output to redundant sensor output.

(4) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(5) At least monthly or following an operating parameter deviation, perform a leak check of all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(6) At least quarterly or following an operating parameter deviation, perform visible inspections on all components if redundant sensors are not used.

(g) For each electrostatic precipitator (ESP) used to control emissions, you must install and operate a CPMS to provide representative measurements of the voltage supplied to the ESP.

(h) As an alternative to installing the CPMS specified in paragraph (d) of this section, you may install a continuous emissions monitoring system (CEMS) that meets the requirements specified in § 63.8 and the applicable performance specifications of 40 CFR part 60, appendix B.

(i) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(j) For each monitoring system required in this section, you must develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that addresses the following:

(1) Installation of the CPMS or CEMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(k) In your site-specific monitoring plan, you must also address the following:

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (c)(3), (c)(4)(ii), (c)(7), and (c)(8);

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(l) You must conduct a performance evaluation of each CPMS or CEMS in accordance with your site-specific monitoring plan.

(m) You must operate and maintain the CPMS or CEMS in continuous operation according to the site-specific monitoring plan.

(n) At all times the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

§ 63.11564 What are my notification, recordkeeping, and reporting requirements?

(a) You must submit the notifications specified in paragraphs (a)(1) through (a)(6) of this section.

(1) You must submit all of the notifications in §§ 63.5(b), 63.7(b); 63.8(e) and (f); 63.9(b) through (e); and 63.9(g) and (h) that apply to you by the dates specified in those sections.

(2) As specified in § 63.9(b)(2), if you have an existing affected source, you must submit an Initial Notification not later than 120 calendar days after [Insert date of publication].

(3) As specified in § 63.9(b)(4) and (5), if you have a new affected source, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(4) You must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(5) You must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). You must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(6) If you are using data from a previously-conducted emission test to serve as documentation of conformance with the emission standards and operating limits of this subpart, you must submit the test data in lieu of the initial performance test results with the Notification of Compliance Status required under paragraph (a)(5) of this section.

(b) You must submit a compliance report as specified in paragraphs (b)(1) through (b)(3) of this section.

(1) During periods for which there are no deviations from any emission limitations (emission limit or operating limit) that apply to you, the compliance report must contain the information specified in paragraphs (b)(1) through (b)(1)(v) of this section.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) A statement that there were no deviations from the emission limitations during the reporting period.

(v) If there were no periods during which the CPMS or CEMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS or CEMS was out-of-control during the reporting period.

(2) For each deviation from an emission limitation (emission limit and operating limit), including periods of startup, shutdown, and malfunction, you must include the information in paragraph (b)(2) of this section.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each CPMS or CEMS was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time and duration that each CPMS or CEMS was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of CPMS or CEMS downtime during the reporting period and the total duration of CPMS or CEMS downtime as a percent of the total source operating time during that reporting period.

(viii) An identification of each air pollutant that was monitored at the affected source.

(ix) A brief description of the process units.

(x) A brief description of the CPMS or CEMS.

(xi) The date of the latest CPMS or CEMS certification or audit.

(xii) A description of any changes in CPMS, CEMS, processes, or controls since the last reporting period.

(3) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report in Table 4 to this subpart and according to the following dates:

(i) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.11560 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.11560.

(ii) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.11560.

(iii) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iv) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(c) You must maintain the records specified in paragraphs (c)(1) through (c)(7) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(3) Documentation identifying the emissions limit of the compliance alternative specified in § 63.11561(c)(1) or (c)(2), if an alternative is used, and the calculations that show that the emission reductions achieved by the compliance alternative are at least as stringent as those achieved by complying with the applicable emission limits specified in § 63.11561(a) and (b).

(4) Calculations and supporting documentation that shows compliance with the applicable emission limits specified in Table 2 of this subpart if the initial compliance demonstration is based upon process knowledge and engineering calculations as specified in § 63.11562(c)(2).

(5) Documentation that shows that the following conditions are true, if you use a previously-conducted emission test to demonstrate initial compliance as specified in § 63.11562(d):

(i) The test was conducted within the last 5 years;

(ii) No changes have been made to the process since the time of the emission test;

(iii) The operating conditions and test methods used for the previous test conform to the requirements of this subpart; and

(iv) The control device and process parameter values established during the previously-conducted emission test are used to demonstrate continuous compliance with this subpart.

(6) A copy of the approved alternative monitoring plan required under § 63.11563(c).

(7) Records required in Table 4 to this subpart to show continuous compliance with each operating limit that applies to you.

Other Requirements and Information

§ 63.11565 What General Provisions sections apply to this subpart?

You must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) according to Table 5 of this subpart.

§ 63.11566 What definitions apply to this subpart?

Asphalt flux means the organic residual material from distillation of crude oil that is generally used in asphalt roofing manufacturing and paving and non-paving asphalt products.

Asphalt coating equipment means the saturators, coating mixers, and coaters used to apply asphalt to substrate to manufacture roofing products (*e.g.,* shingles, roll roofing).

Asphalt processing operation means any operation engaged in the preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities. Asphalt preparation, called ''blowing,'' is the oxidation of asphalt flux, achieved by bubbling air through the heated asphalt, to raise the softening point and to reduce penetration of the oxidized asphalt. An asphalt processing facility includes one or more asphalt flux blowing stills.

Asphalt roofing manufacturing operation coating equipment means the collection of equipment used to manufacture asphalt roofing products through a series of sequential process steps. The equipment configuration of an asphalt roofing manufacturing process varies depending upon the type of substrate used (*i.e.,* organic or inorganic). For example, an asphalt roofing manufacturing line that uses organic substrate (*e.g.,* felt) typically would consist of a saturator (and wet looper), coating mixer, and coater (although the saturator could be bypassed if the line manufacturers multiple types of products). An asphalt roofing manufacturing line that uses inorganic (fiberglass mat) substrate typically would consist of a coating mixer and coater.

Blowing still means the equipment in which air is blown through asphalt flux to change the softening point and penetration rate of the asphalt flux, creating oxidized asphalt.

Coater means the equipment used to apply amended (filled or modified) asphalt to the top and bottom of the substrate (typically fiberglass mat) used to manufacture shingles and rolled roofing products.

Coating mixer means the equipment used to mix coating asphalt and a mineral stabilizer, prior to applying the stabilized coating asphalt to the substrate.

Responsible official is defined in § 63.2.

Saturator means the equipment in which substrate (predominantly organic felt) is impregnated with asphalt. Saturators are predominantly used for the manufacture of saturated felt products. The term saturator includes the saturator and wet looper.

§ 63.11567 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the following authorities are retained by the Administrator of U.S. EPA:

(1) Approval of alternatives to the requirements in §§ 63.11559, 63.11560, 63.11561, 63.11562, and 63.11563.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

Tables to Subpart AAAAAAA of Part 63

TABLE 1 TO SUBPART AAAAAAA OF PART 63—EMISSION LIMITS FOR ASPHALT PROCESSING (REFINING) OPERATIONS

For . . .	You must meet the following emission limits . . .
1. Blowing stills	a. Limit PAH emissions to 0.003 lb/ton of asphalt charged to the blowing stills; or b. Limit PM emissions to 1.2 lb/ton of asphalt charged to the blowing stills.

TABLE 2 TO SUBPART AAAAAAA OF PART 63—EMISSION LIMITS FOR ASPHALT ROOFING MANUFACTURING (COATING) OPERATIONS

For . . .	
1. Coater-only production lines	a. Limit PAH emissions to 0.0002 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.03 lb/ton of asphalt roofing product manufactured.
2. Saturator-only production lines	a. Limit PAH emissions to 0.0004 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.05 lb/ton of asphalt roofing product manufactured.
3. Combined saturator/coater production lines.	a. Limit PAH emissions to 0.0006 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.07 lb/ton of asphalt roofing product manufactured.

TABLE 3 TO SUBPART AAAAAAA OF PART 63—TEST METHODS

For . . .	You must use . . .
1. Selecting the sampling locations [a] and the number of traverse points	EPA test method 1 or in appendix A to part 60.
2. Determining the velocity and volumetric flow rate	EPA test method 2, 2A, 2C, 2D, 2F, or 2G, as appropriate, in appendix A to part 60.
3. Determining the gas molecular weight used for flow rate determination.	EPA test method 3, 3A, 3B, as appropriate, in appendix A to part 60.
4. Measuring the moisture content of the stack gas	EPA test method 4 in appendix A to part 60.
5. Measuring the PM emissions	EPA test method 5A in appendix A to part 60.
6. Measuring the PAH emissions	EPA test method 23 [b] with analysis by SW–846 Method 8270D.

[a] The sampling locations must be located at the outlet of the process equipment (or control device, if applicable), prior to any releases to the atmosphere.

[b] When using EPA Method 23, the toluene extraction step specified in section 3.1.2.1 of the method should be omitted.

TABLE 4 TO SUBPART AAAAAAA OF PART 63—OPERATING LIMITS

For this type of control device . . .	You must establish an operating value for [a] . . .	And maintain [b] . . .
1. Thermal oxidizer	Combustion zone temperature	The 3-hour average combustion zone temperature at or above the operating value established during the initial emission test.
2. High-efficiency air filter or fiber bed filter.	a. Inlet gas temperature, and	The 3-hour average inlet gas temperature at or below the operating value established during the initial emission test.
	b. Pressure drop across device	The 3-hour average pressure drop across device at or below the operating value established during the initial emission test.
3. Electrostatic precipitator (ESP)	Voltage to the ESP	The 3-hour average ESP voltage at or above the operating value established during the initial emission test.
4. Process equipment management whereby no add-on control device is required.	Approved process monitoring parameters.	The monitoring parameters within the operating values established during the initial emission test.

[a] The operating limits specified in Table 4 are applicable if you are monitoring control device operating parameters to demonstrate continuous compliance. If you are using a CEMS, you must maintain emissions below the value established during the initial performance test. If you are using process modifications in lieu of a control device, you must maintain the approved process monitoring parameters below the values established during the initial performance test.

[b] The 3-hour averaging period applies during operating conditions other than startup, shutdown, and malfunction (SSM), as defined in § 63.2. For an hour within which an SSM event occurs, a 24-hour average may be used for all 24 hour periods that include that hour. For all periods that do not include an hour within which an SSM event occurs, the 3-hour average must be used.

TABLE 5 TO SUBPART AAAAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAAAA

Citation	Subject	Applies to subpart AAAAAAA
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.

TABLE 5 TO SUBPART AAAAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAAAA—Continued

Citation	Subject	Applies to subpart AAAAAAA
§ 63.4	Prohibited Activities	Yes.
§ 63.5	Construction/Reconstruction	Yes.
§ 63.6(a)–(d)	Compliance With Standards and Maintenance Requirements	Yes.
§ 63.6(e)(1)(i)	Operation and Maintenance Requirements	No.
§ 63.6(e)(1)(ii)-(iii)	Operation and Maintenance Requirements	Yes.
§ 63.6(e)(2)	[Reserved]	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.6(f)(1)	Compliance with Nonopacity Emission Standards	No. The emission limits apply at all times.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance and Finding of Compliance.	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards	No. Subpart AAAAAAA does not contain opacity or VE standards.
§ 63.6(i)	Compliance Extension	Yes.
§ 63.6(j)	Presidential Compliance Exemption	Yes.
§ 63.7	Performance Testing Requirements	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Yes.
§ 63.8(a)(2)	Performance Specifications	Yes, if CEMS used.
§ 63.8(a)(3)	[Reserved]	
§ 63.8(a)(4)	Monitoring with Flares	Yes.
§ 63.8(b)(1)	Monitoring	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Yes.
§ 63.8(c)(1)(i)	CMS maintenance	Yes.
§ 63.8(c)(1)(ii)	Spare Parts for CMS Malfunction	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	CMS Requirements	No; § 63.11563 specifies the CMS requirements.
§ 63.8(c)(5)	COMS Minimum Procedures	No. Subpart AAAAAAA does not contain opacity or VE standards.
§ 63.8(c)(6)	CMS Requirements	No; § 63.11563 specifies the CMS requirements.
§ 63.8(c)(7)–(8)	CMS Requirements	Yes.
§ 63.8(d)	CMS Quality Control	No; § 63.11563 specifies the CMS requirements.
§ 63.8(e)–(g)	CMS Performance Evaluation	Yes.
§ 63.9	Notification Requirements	Yes.
§ 63.10	Recordkeeping and Reporting Requirements	Yes.
§ 63.11	Control Device and Work Practice Requirements	Yes.
§ 63.12	State Authority and Delegations	Yes.
§ 63.13	Addresses of State Air Pollution Control Agencies and EPA Regional Offices.	Yes.
§ 63.14	Incorporations by Reference	Yes.
§ 63.15	Availability of Information and Confidentiality	Yes.
§ 63.16	Performance Track Provisions	No.

[FR Doc. E9–16260 Filed 7–8–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FDMS Docket No.: EPA–R04–RCRA–2008–0900; FRL–8922–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by The Valero Refining Company—Tennessee, L.L.C. (Valero) to exclude or ''delist'' a certain sediment generated by its Memphis Refinery in Memphis, Tennessee from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the potential impact of the petitioned waste on human health and the environment. EPA bases its proposed decision to grant the petition based on an evaluation of waste-specific information provided by Valero (the petitioner). This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

This exclusion would be valid only when the Storm Water Basin Sediment is disposed of in a Subtitle D landfill that is permitted, licensed, or registered by a State to manage industrial solid waste.

If finalized, EPA would conclude that Valero's petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors that would cause the waste to be hazardous.

DATES: EPA will accept public comments on this proposed decision until August 10, 2009. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Any person may request a hearing on this proposed decision by filing a request to EPA by July 24, 2009. The request must contain

the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2008–0900, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: lippert.kristin@epa.gov.*
3. *Fax:* (404) 562–8566.
4. *Mail:* EPA–R04–RCRA–2008–0900, RCRA/OPA Enforcement and Compliance Branch, RCRA Division, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.
5. *Hand Delivery or Courier:* Kristin Lippert, RCRA/OPA Enforcement and Compliance Branch, RCRA Division, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. 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–RCRA–2008–0900. 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 RCRA/OPA Enforcement and Compliance Branch, RCRA Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. 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 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Lippert, North Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA/OPA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 or call (404) 562–8605 or via electronic mail at *lippert.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
A. What action is EPA proposing?
B. Why is EPA proposing to approve this delisting?
C. What are the terms for disposal of Valero's Storm Water Basin Sediment pursuant to this exclusion?
D. When would the proposed delisting exclusion be finalized?
E. How would this action affect States?
II. Background
A. What is the history of the delisting program?
B. What is a delisting petition, and what does it require of a petitioner?
C. What regulations allow a waste to be delisted?
D. What factors must the EPA consider in deciding whether to grant a delisting petition?
III. Valero's Petition to Delist Its Waste
A. What waste did Valero petition EPA to delist?
B. How is the petitioned waste generated?
C. What information did Valero submit in support of its petition?
IV. EPA's Evaluation of Valero's Petition
A. How did EPA evaluate the information submitted?
B. What did EPA conclude about this waste?
C. What other factors did EPA consider in its evaluation?
V. Conditions
A. With what conditions must Valero comply for its Storm Water Basin Sediment to be delisted?
B. What happens if Valero is unable to meet the terms and conditions of this delisting?
VI. Regulatory Impact
VII. Regulatory Flexibility Act
VIII. Paperwork Reduction Act
IX. Unfunded Mandates Reform Act
X. Executive Order 13045
XI. Executive Order 13084
XII. National Technology Transfer and Advancements Act
XIII. Executive Order 13132 Federalism

I. Overview Information

A. What action is EPA proposing?

Today EPA is proposing to grant the petition submitted by Valero to have its Storm Water Basin sediment generated at its Memphis Refinery in Tennessee excluded or delisted from the definition of a hazardous waste, contingent upon its disposal in a Subtitle D Landfill. This is a one-time exclusion for 2,700 cubic yards of sediment.

B. Why is EPA proposing to approve this delisting?

Valero's petition requests a delisting for the Storm Water Basin sediment from being considered a F037 waste. Valero believes that the Storm Water Basin sediment does not meet the original criteria for the hazardous waste listing. Valero also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See Section 3001(f) of RCRA at 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess

whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from Valero's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Memphis Refinery at the Tennessee facility.

C. What are the terms for disposal of Valero's Storm Water Basin Sediment pursuant to this exclusion?

If the petitioned waste is delisted, Valero must dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial waste.

D. When would the proposed delisting exclusion be finalized?

RCRA Section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion unless and until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA Section 3010(b)(1) at 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of RCRA Section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude States who have received authorization from EPA to make their own delisting decisions.

We allow States to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under RCRA Section 3009, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law. Delisting petitions approved by the EPA Administrator or his delegate under 40 CFR 260.22 are effective in the State of Tennessee after the final rule has been published in the **Federal Register**.

II. Background

A. What is the history of the delisting program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. EPA has amended this list several times and published it in the 40 CFR 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of 40 CFR part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to the EPA or an authorized State to exclude waste from the list of hazardous wastes pursuant to RCRA. The facility petitions EPA because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that the waste, generated at a particular facility, does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background documents for the listed waste. In addition, a petitioner must demonstrate pursuant to 40 CFR 260.22 that the waste does not exhibit any of the hazardous waste characteristics (ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste (see 40 CFR 260.22, 42 U.S.C. 6921(f), and the background documents for the listed waste).

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if the EPA has ''delisted'' the waste.

C. What regulations allow a waste to be delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), a generator may petition the EPA to remove its waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provisions of 40 CFR parts 260 through 266, 268, and 273 of 40 CFR.

D. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in 40 CFR 260.22(a) and Section 3001(f) of RCRA, 42 U.S.C. 6921(f), and information in the background documents for the listed waste, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste if a reasonable basis exists that the additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste (see 40 CFR 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively). These wastes are also eligible for exclusion and remain hazardous wastes until excluded (see 66 FR 27266, May 16, 2001).

III. Valero's Petition To Delist Its Waste

A. What waste did Valero petition EPA to delist?

On July 25, 2008, Valero petitioned EPA to exclude from the lists of

hazardous waste contained in 40 CFR 261.31 and 261.32, F037 Storm Water Basin sediment generated from its facility located in Memphis, Tennessee. The F037 listing is for a petroleum refinery primary oil/water/solids separation sludge. This sediment has collected in the bottom of the Storm Water Basin since 1993 and is between three (3) to four (4) feet deep. The sediment originates from storm water flows (*i.e.,* wet weather flows) and may have occurred from flows during non-storm events (*i.e.,* dry weather flows). This sediment waste stream is classified as hazardous waste due to ''carry over'' of waste codes resulting from the RCRA's ''mixture'' and ''derived-from'' rules and/or a conservative interpretation for the assignment of hazardous waste code F037. The waste conservatively falls under the classification of listed waste under 40 CFR 261.3. Specifically, in its petition, Valero requested that EPA grant a one-time exclusion for 2,700 cubic yards of the F037 Storm Water Basin sediment.

B. How is the petitioned waste generated?

Valero generates hazardous and nonhazardous industrial solid wastes as a result of refinery and chemical processes, wastewater treatment, refinery/chemical plant feed, product storage and distribution. The sediment in the Storm Water Basin originates from storm water flow associated with the Memphis Refinery as well as Martin Luther King Jr. Park that is north of and upgradient to the refinery. Accounting for the existing sediment depth of three to four feet, the basin has a remaining capacity of roughly 600,000 gallons with overall dimensions of approximately 200 feet by 100 feet.

In addition to storm water (*i.e.,* wet weather flows) entering the Storm Water Basin, some flows during non-storm events (*i.e.,* dry weather flows) may have occurred from sources that could be viewed as ''oily''. Therefore, the sediment could carry the EPA hazardous waste code of F037. In the absence of definitive information regarding these dry weather flows and their classification, Valero has elected to conservatively assume that sediment in the Storm Water Basin bears EPA hazardous waste code F037.

C. What information did Valero submit in support of its petition?

To support its petition, Valero submitted: (1) Facility information on production processes and waste generation processes including analytical data from twelve (12) samples collected on August 7, 2007, in the Storm Water Basin; (2) Results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCB for the sampling on August 7, 2007; (3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals for the sampling on August 7, 2007; (4) Analytical constituents of concern for F037 for the sampling on August 7, 2007; (5) Results from total oil and grease analyses for the sampling on August 7, 2007; and (6) Summary of the July 2006 Sediment Data (Highest Results from Detections).

EPA believes that the Valero analytical characterization demonstrates that the Storm Water Basin sediment is nonhazardous. Analytical data for the F037 Storm Water Basin sediment samples were used in the Delisting Risk Assessment Software. The data summaries for detected constituents are presented in Table I. EPA has reviewed the sampling procedures used by Valero and has determined that they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the F037 Storm Water Basin sediment. The data submitted in support of the petition show that constituents in Valero's waste are presently below health-based levels used in the delisting decision-making. EPA believes that Valero has successfully demonstrated that the F037 Storm Water Basin sediment is nonhazardous.

TABLE I—MAXIMUM TOTAL AND TCLP CONCENTRATIONS AND MAXIMUM

[Allowable Delisting Concentration Levels, Storm Water Basin F037 Sediment, Valero's Memphis Refinery, Memphis, Tennessee]

Constituent	Maximum total constituent analysis (mg/kg)	Maximum TCLP constituent analysis (mg/L)	Maximum allowable delisting concentration level (mg/L)
Acenaphthene	0.464	<0.008	N/A
Antimony	7.86	0.309	1.13
Anthracene	0.833	<0.008	N/A
Arsenic	26	0.092	0.205
Barium	236	1.53	160
Benz(a)anthracene	5.79	<0.008	N/A
Benzo(a)pyrene	5.32	<0.008	0.00177
Benzo(b)fluoranthene	2.73	<0.008	0.016
Benzo(g,h,i)perylene	2.22 J	<0.008	N/A
Benzo(k)fluoranthene	3.26	<0.008	N/A
Beryllium	0.358	<0.01	9.12
Bis(2-ethylhexyl)phthalate	1.7 J	0.406	2.5
Cadmium	0.908	<0.005	1.23
Chromium^{+6}	34.0	<0.01	3.82
Chromium	N/A	<0.01	8,440
Chrysene	11.2	<0.008	3.04
Chloroform	0.0182	0.0182	5.33
Cobalt	11.0	0.069	N/A
Copper	45.5	N/A	23,100
Cyanide	<1	N/A	29.6
Dibenz(a,h)anthrancene	1.2 J	<0.008	0.000833
Hepta-dioxins (totals)	6.12E–04	N/A	N/A
Hexa-dioxins (totals)	1.3E–04	N/A	N/A
Penta-dioxins (totals)	2.8E–05	N/A	N/A

TABLE I—MAXIMUM TOTAL AND TCLP CONCENTRATIONS AND MAXIMUM—Continued

[Allowable Delisting Concentration Levels, Storm Water Basin F037 Sediment, Valero's Memphis Refinery, Memphis, Tennessee]

Constituent	Maximum total constituent analysis (mg/kg)	Maximum TCLP constituent analysis (mg/L)	Maximum allowable delisting concentration level (mg/L)
Tetra-dioxins (totals)	1.16E–05	N/A	N/A
Ethylbenzene	1.56	0.0133	N/A
Fluoranthene	1.52	<0.008	3.53
Fluorene	1.01	<0.008	12.2
Hepta-furans	2.08E–04	N/A	N/A
Hexa-furans	1.83E–04	N/A	N/A
Penta-furans (totals)	2.05E–04	N/A	N/A
Tetra-furans (totals)	4.01E–05	N/A	N/A
1,2,3,4,6,7,8-HpCDD	0.242E–03 B	N/A	N/A
1,2,3,4,6,7,8-HpCDF	6.67E–05	N/A	N/A
1,2,3,4,7,8,9-HpCDF	2.11E–05	N/A	N/A
1,2,3,4,7,8-HxCDD	5.38E–06	N/A	N/A
1,2,3,6,7,8-HxCDD	1.16E–05	N/A	N/A
1,2,3,7,8,9-HxCDD	1.39E–05	N/A	N/A
1,2,3,4,7,8-HxCDF	1.62E–05	N/A	N/A
1,2,3,6,7,8-HxCDF	8.55E–06	N/A	N/A
1,2,3,7,8,9-HxCDF	0.577E–06 J	N/A	N/A
2,3,4,6,7,8-HxCDF	6.1E–06	N/A	N/A
Indeno(1,2,3-cd)pyrene	0.749	<0.008	N/A
Lead	46.8	0.015	1,640
Mercury	1.04	<0.001	0.178
2-Methylnaphthalene	5.89	<0.008	N/A
Naphthalene	1.36	<0.008	N/A
Nickel	57.9	0.248	61.9
OCDD	4.34E–03 EB	N/A	N/A
OCDF	1.45E–04	N/A	N/A
1,2,3,7,8-PeCDD	3.44E–06 J	N/A	N/A
1,2,3,7,8-PeCDF	3.25E–06 JK	N/A	N/A
2,3,4,7,8-PeCDF	4.63E–06	N/A	N/A
Phenanthrene	4.24	<0.008	N/A
n-propylbenzene	1.04	<0.01	N/A
Pyrene	7.40	<0.008	2.71
Selenium	<5.0	<0.05	4.77
Silver	<2.5	<0.005	8.41
Sulfide	736	N/A	N/A
2,3,7,8-TCDD	0.847E–06 J	N/A	4.48E–08
2,3,7,8-TCDF	3.69E–06 C	N/A	N/A
Thallium	<2	N/A	0.29
Tin	6.16	N/A	N/A
1,3,5-Trimethylbenzene	8.10	0.0282	N/A
Vanadium	94.6	0.391	46.3
Xylenes, Total	8.99	0.0737	N/A
Zinc	742	2.34	615

Notes:

(A) These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

(B) Based on DRAS modeling with a target risk of 10–5 and a target HI of 0.1. One-time sediment volume of 2,700 cy.

IV. EPA's Evaluation of Valero's Petition

A. How did EPA evaluate the information submitted?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.,* ground water, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in an unlined Subtitle D landfill is the most reasonable, worst-case disposal scenario for Valero's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000) to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of Valero's petitioned waste on human health and the environment. A copy of this software can be found on the Internet at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.* In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10–5 and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and EPA health-based numbers. Using the

maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in an unlined landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.,* volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed.

EPA believes that the descriptions of Valero hazardous waste process and analytical characterization, which illustrate the presence of toxic constituents at lower concentrations in these waste streams, provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of the DRAS results and maximum TCLP and Totals concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products above the delisting levels.

B. What did EPA conclude about this waste?

The descriptions of Valero's hazardous waste process and analytical characterization provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see Table I). We believe the short-term and long-term threats posed to human health and the environment are minimized from the petitioned waste due to the low levels of hazardous constituents present in the waste.

It is EPA's position that we should grant Valero an exclusion for the F037 Storm Water Basin sediment. The data submitted to EPA in support of the petition show Valero's F037 Storm Water Basin sediment is nonhazardous.

We have reviewed the sampling procedures used by Valero and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the F037 Storm Water Basin sediment. The data submitted in support of the petition show that constituents in Valero's waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. EPA believes that Valero has successfully demonstrated that the F037 Storm Water Basin sediment is nonhazardous.

EPA therefore proposes to grant an exclusion to Valero Memphis Refinery Memphis, Tennessee, for the F037 Storm Water Basin sediment described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the F037 Storm Water Basin sediment.

If we finalize the proposed rule, EPA will no longer regulate the petitioned waste under 40 CFR parts 262 through 268 and the permitting standards of part 270.

EPA concluded, after reviewing Valero's processes, that no other hazardous constituents of concern, other than those for which Valero tested, are likely to be present or formed as reaction products or by-products in the wastes. In addition, on the basis of explanations and analytical data provided by Valero, pursuant to 40 CFR 260.22, EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22 and 261.23, respectively. Neither did it show the toxicity characteristic.

C. What other factors did EPA consider in its evaluation?

During the evaluation of Valero's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.,* air emissions and surface runoff). EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Valero's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Valero's F037 Storm Water Basin sediment. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Valero's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Valero's waste under the modeled disposal conditions. EPA also considered the potential impact of the petitioned waste via a surface water route. EPA believes that containment structures at Class I Landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this notice due to the aggressive acidic medium used for extraction in the TCLP. EPA believes that, in general, the F037 Storm Water Basin sediment is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the

potential impacts on surface water if Valero's waste were released from a Class I Landfill through runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). EPA therefore concluded that Valero's F037 Storm Water Basin sediment is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

V. Conditions

A. With what conditions must Valero comply for its Storm Water Basin Sediment to be delisted?

The petitioner, Valero, must comply with the requirements in 40 CFR part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements. (1) Reopener: The purpose of Paragraph 1 is to require Valero to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires Valero to report differing site conditions or assumptions used in the petition (*i.e.,* if the wastes begin to leach at higher concentrations than predicted) within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at 40 CFR 268.6.

It is EPA's position that we have the authority under RCRA and the Administrative Procedure Act (APA), 5 U.S.C. 551 (1978) *et seq.,* to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delistings is merited in light of EPA experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458, where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA Sec. 553 (b). (2) Notification Requirements: In order to adequately track wastes that have been delisted, EPA is requiring that Valero provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Valero must provide this notification within 60 days of commencing this activity.

B. What happens if Valero is unable to meet the terms and conditions of this delisting?

If Valero violates the terms and conditions established in the exclusion, EPA will initiate procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects Valero to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraph (1) of the exclusion.

VI. Regulatory Impact

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This exclusion may not be effective in States that have received EPA's authorization to make their own delisting decisions.

Under Section 3009 of RCRA, EPA allows States to impose their own non-RCRA regulatory requirements that are more stringent than EPA's. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Valero manages the Storm Water Basin Sediment in any State with delisting authorization, Valero must obtain delisting authorization from the State before it can manage the Storm Water Basin Sediment as nonhazardous in that State.

Under Executive Order 12866, the EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, EPA hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. Section 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal

mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for the EPA rules, under Section 205 of the UMRA the EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must develop under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector.

EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA Section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have ''meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, *etc.*) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that EPA provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Section 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: January 21, 2009.

G. Alan Farmer,

Director, RCRA Division, Region 4.

Editorial Note: This document was received in the Office of the Federal Register on July 6, 2009.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261, it is proposed to add the following wastes in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under 40 CFR §§ 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * *
The Valero Refining Company—Tennessee, L.L.C.	Memphis, TN	Storm Water Basin sediment (EPA Hazardous Waste No. F037) generated one time at a volume of 2,700 cubic yards [insert publication date of the final rule] and disposed in a Subtitle D landfill. This is a one time exclusion and applies to 2,700 cubic yards of Storm Water Basin sediment. (1) Reopener. (A) If, anytime after disposal of the delisted waste, Valero possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If Valero fails to submit the information described in paragraph (A) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Division Director determines that the reported information does require EPA action, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (C) or (if no information is presented under paragraph initial receipt of information described in paragraphs (A) or (B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (2) Notification Requirements: Valero must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification, if they ship the delisted waste to a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * *

[FR Doc. E9–16261 Filed 7–8–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2009–0108; SW FRL–8922–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Occidental Chemical Corporation (OxyChem) to exclude (or delist) a certain solid waste generated by its Ingleside, Texas, facility from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) Version 3.0 in the evaluation of the impact of the petitioned waste on human health and the environment.

DATES: We will accept comments until August 10, 2009. We will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by July 24, 2009. The request must contain the information prescribed in 40 CFR 260.20(d) (hereinafter all CFR cites refer to 40 CFR unless otherwise stated).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2009–0108 by one of the following methods:

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

2. *E-mail: jacques.wendy@epa.gov.*

3. *Mail:* Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–F, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier.* Deliver your comments to: Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–F, 1445 Ross Avenue, Dallas, TX 75202.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2008–0456. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic 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 Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy RCRA regulatory docket for this proposed rule, EPA–R06–RCRA–2009–0108, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket or the OxyChem facility petition, contact Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–F, 1445 Ross Avenue, Dallas, TX 75202, by calling 214–665–7395 or by e-mail at *jacques.wendy@epa.gov*.

Your requests for a hearing must reach EPA by July 24, 2009. The request must contain the information described in § 260.20(d).

SUPPLEMENTARY INFORMATION: OxyChem submitted a petition under 40 CFR 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of §§ 260 through 266, 268 and 273. Section 260.22 (a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude the petitioned waste from this facility is non-hazardous with respect to the original listing criteria and that the waste process used will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that the processes minimize short-term and long-term threats from the petitioned waste to human health and the environment.

The information in this section is organized as follows:

I. Overview Information
A. What action is EPA proposing?
B. Why is EPA proposing to approve this delisting?
C. How will OxyChem manage the waste, if it is delisted?
D. When would the proposed delisting exclusion be finalized?
E. How would this action affect states?
II. Background
A. What is the history of the delisting program?
B. What is a delisting petition, and what does it require of a petitioner?
C. What factors must EPA consider in deciding whether to grant a delisting petition?
III. EPA's Evaluation of the Waste Information and Data
A. What waste did OxyChem petition EPA to delist?
B. Who is OxyChem and what process do they use to generate the petition waste?
C. What information did OxyChem submit to support this petition?
D. What were the results of OxyChem's analysis?
E. How did EPA evaluate the risk of delisting this waste?
F. What did EPA conclude about OxyChem's analysis?
G. What other factors did EPA consider in its evaluation?
H. What is EPA's evaluation of this delisting petition?
IV. Next Steps
A. With what conditions must the petitioner comply?
B. What happens, if OxyChem violates the terms and conditions?
V. Public Comments
A. How may I as an interested party submit comments?
B. How may I review the docket or obtain copies of the proposed exclusion?
VI. Statutory and Executive Order Reviews

I. Overview Information

A. What action is EPA proposing?

EPA is proposing to grant the delisting petition submitted by OxyChem to have its wastewater treatment biosludge (K019, K020, F025, F001, F003, and F005 listed hazardous waste) excluded, or delisted, from the definition of a hazardous waste.

B. Why is EPA proposing to approve this delisting?

OxyChem's petition requests a delisting for the wastewater treatment biosludge derived from the treatment of hazardous wastewater listed as K019, K020, F025, F001, F003, and F005. OxyChem does not believe that the petitioned waste meets the criteria for which EPA listed it. OxyChem also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency

to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from the facility is based on the information submitted in support of this rule, including descriptions of the waste and analytical data from the OxyChem, Ingleside, Texas facility.

C. How will OxyChem manage the waste, if it is delisted?

OxyChem will dispose of the wastewater treatment biosludge in a Subtitle D landfill.

D. When would the proposed delisting exclusion be finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion unless and until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1), at 42 USCA 6930(b)(1), allows rules to become effective in less than six months after EPA addresses public comments when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect the states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows the states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law. Delisting petitions approved by EPA Administrator under 40 CFR 260.22 are effective in the State of Texas only after the final rule has been published in the **Federal Register**.

II. Background

A. What is the history of the delisting program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in §§ 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not believe the wastes should be hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See Part 261 and the background documents for the listed waste.

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists to determine that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What waste did OxyChem petition EPA to delist?

OxyChem petitioned EPA on September 20, 2007, to exclude from the lists of hazardous waste contained in § 261.31, the wastewater treatment biosludge from its wastewater treatment plant.

The wastewater treatment biosludge is generated from the OxyChem facility located in Ingleside, Texas. The wastewater treatment biosludge is listed under EPA Hazardous Waste No. K019, K020, F025, F001, F003, and F005, because it is generated in the bioreactors that can, on occasion, treat incinerator offgas treatment water. Specifically, in its petition, OxyChem requested that EPA grant exclusion for 7,500 cubic yards per calendar year of K019, K020, F025, F001, F003, and F005 waste resulting from the treatment of waste waters from the manufacturing processes at its facility.

B. Who is OxyChem and what process do they use to generate the petition waste?

OxyChem produces ethylene dichloride (EDC), vinyl chloride monomer (VCM), chlorine, and caustic. The facility is comprised of the Chlor-Alkali plant which produces chlorine and caustic, and the EDC/VCM plant. Other processes with the VCM unit include vent incineration, wastewater treatment, VCM storage and loading (railcar and ship), EDC and intermediate storage and loading, cooling towers and refrigeration and compressors.

The manufacturing processes that contribute waste and vent gases to the incinerators are the VCM plant and the support plants (shop and rail loading, product storage tanks, RCRA tank and wastewater storage tanks). The former EDC unit in the Chlor-Alkali Plant once contributed waste streams, but was idled in 2002.

OxyChem intends to dispose of the delisted wastewater treatment biosludge at a Subtitle D Landfill. Treatment of the waste waters, which result from the manufacturing process, generates the wastewater treatment biosludge that is classified as K019, K020, F025, F001, F003, and F005 listed hazardous wastes pursuant to 40 CFR 261.31. The 40 CFR Part 261 Appendix VII hazardous constituents which are the basis for listing K019, K020, F025, F001, F003, and F005 hazardous wastes are: K019—ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-tricholoroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, and vinylidene chloride; K020—ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-tricholoroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, and vinylidene chloride; F025—chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3-cholopropene), dichloropropane, dichloroprene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, benzene, chlorobenzene, dichlorobenzene, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, and naphthalene; F001—tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; F003—N.A.; F005—toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, and 2-nitropropane.

C. What information did OxyChem submit to support this petition?

To support its petition, OxyChem submitted:

(1) Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for four wasterwater treatment biosludge samples;

(2) Analytical results from multiple pH leaching of metals; and

(3) Description of the wastewater treatment process.

D. What were the results of OxyChem's analysis?

EPA believes that the descriptions of OxyChem's waste, and the analytical data submitted in support of the petition show that the wastewater treatment biosludge is non-hazardous. Analytical data from OxyChem's wastewater treatment biosludge samples were used in the Delisting Risk Assessment Software (DRAS). The data summaries for detected constituents are presented in Table 1. EPA has reviewed the sampling procedures used by OxyChem and has determined that they satisfy EPA's criteria for collecting representative samples of the variations in constituent concentrations in the wastewater treatment biosludge. The data submitted in support of the petition show that constituents in OxyChem's wastes are presently below health-based risk levels used in the delisting decision-making. EPA believes that OxyChem has successfully demonstrated that the wastewater treatment biosludge is non-hazardous.

TABLE 1—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE WASTEWATER TREATMENT BIOSLUDGE [1]

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/l)
Antimony	0.349	0.00263	0.111
Acetone	0.069	0.170	533
Arsenic	3.62	0.0265	0.178
Barium	27.7	0.204	36.9
Benzoic Acid	<0.170	0.0024	2370
Beryllium	0.0623	<0.0100	0.0799
Bis(2-ethylhexyl)phthalate	<0.170	0.0095	6.15
Cadmium	0.124	0.000616	0.0933
Chromium	10.4	0.0304	2.32
Cobalt	0.787	0.00744	14.00
Copper	44.1	0.274	26.5
Ethylbenzene	<0.005	0.048	11.1
Lead	2.70	0.00220	0.719
Mercury	0.00813	0.00005	0.0696
Methylene Chloride	0.0058	0.0058	0.0809
Naphthalene	<0.0066	0.00066	0.0335
Nickel	25.1	0.290	13.8
Phenanthrene	<0.0066	0.00028	2.72
Selenium	0.633	0.00770	0.912
Silver	0.0981	<0.0100	5.0

TABLE 1—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE WASTEWATER TREATMENT BIOSLUDGE [1]—Continued

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/l)
Silvex (2,4,5,-TP)	0.011	<0.0001	0.789
Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8-	3.86E–04	5.92E–08	4.30E–05 mg/kg
Thallium	0.0962	0.00203	0.0851
Tin	1.59	<0.0100	3.97E+07
Toluene	<0.005	0.001	15.5
Trichloroethane	0.0018	0.008	11900
Trichloroethylene	<0.005	0.012	0.0794
Vanadium	6.62	0.00586	1.00
Xylenes	<0.015	<0.001	9.79
Zinc	44.1	0.240	202

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
< # Denotes that the constituent was below the detection limit.

E. How did EPA evaluate the risk of delisting this waste?

The worst case scenario for management of the wastewater treatment biosludge was modeled for disposal in a landfill. EPA used such information gathered to identify plausible exposure routes (*i.e.,* ground water, surface water, soil, air) for hazardous constituents present in the wastewater treatment biosludge. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for OxyChem's wastewater treatment biosludge. EPA applied the DRAS described in 65 FR 58015 (September 27, 2000), 65 FR 75637 (December 4, 2000) and 73 FR 28768 (May 19, 2008), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of OxyChem's petitioned waste on human health and the environment. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health and/or the environment. The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.,* volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, no representative data exists. Therefore, EPA has determined that it would be unnecessary to request ground water monitoring data.

EPA believes that the descriptions of OxyChem's wastewater treatment biosludge and analytical characterization which illustrate the presence of toxic constituents at lower concentrations in these waste streams provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents in the wastewater treatment biosludge are presented in Table 1. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table 1, the petitioned waste should be delisted because no constituents of concern are likely to be present or formed as reaction products or by products in OxyChem's waste.

F. What did EPA conclude about OxyChem's analysis?

EPA concluded, after reviewing OxyChem's processes that no other hazardous constituents of concern, other than those for which OxyChem tested, are likely to be present or formed as reaction products or by-products in OxyChem's wastes. In addition, on the basis of explanations and analytical data provided by OxyChem, pursuant to

§ 260.22, EPA concludes that the petitioned waste, wastewater treatment biosludge, does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24 respectively.

G. What other factors did EPA consider in its evaluation?

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (*i.e.,* air emissions and surface runoff) for the wastewater treatment biosludge. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the wastewater treatment biosludge under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the wastewater in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the wastewater treatment biosludge.

H. What is EPA's evaluation of this delisting petition?

The descriptions by OxyChem of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Table 1). EPA believes that the wastewater treatment biosludge generated by OxyChem contains hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes that it should grant to OxyChem an exclusion from the list of hazardous wastes for the wastewater treatment biosludge. EPA believes that the data submitted in support of the petition show the OxyChem's wastewater treatment biosludge to be non-hazardous.

EPA has reviewed the sampling procedures used by OxyChem and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the wastewater treatment biosludge. The data submitted in support of the petition show that constituents in OxyChem's wastes are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that OxyChem has successfully demonstrated that the wastewater treatment biosludge is non-hazardous.

EPA, therefore, proposes to grant an exclusion to OxyChem for the wastewater treatment biosludge described in its September 2007 petition. EPA's decision to exclude this waste is based on analysis performed on samples taken of the wastewater treatment biosludge.

If EPA finalizes the proposed rule, EPA will no longer regulate 7,500 cubic yards/year of wastewater treatment biosludge from OxyChem's Ingleside facility under Parts 262 through 268 and the permitting standards of Part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, OxyChem, must comply with the requirements in 40 CFR Part 261, Appendix IX, Table 2 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituent concentrations for which OxyChem wastewater treatment biosludge, below which these wastes would be considered non-hazardous.

EPA selected the set of inorganic and organic constituents specified in paragraph (1) and listed in 40 CFR Part 261, Appendix IX, Table 2, based on information in the petition. EPA compiled the inorganic and organic constituents list from descriptions of the manufacturing process used by OxyChem, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the leachable concentrations of the wastewater treatment biosludge.

(2) Waste Holding and Handling

Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) has occurred for four consecutive weekly sampling events. For example, if OxyChem is issued a final exclusion in August, the four weekly samples can be collected in September. If EPA deems that the four representative composite samples meet all the indicator constituent delisting limits, classification of the waste as non-hazardous can begin in October. If constituent levels in any annual sample (and retest, if applicable) taken by OxyChem exceed any of the delisting levels set in paragraph (1), OxyChem must: (i) notify EPA in accordance with paragraph (6), and (ii) manage and dispose of the wastewater treatment biosludge as hazardous waste generated under Subtitle C of RCRA.

(3) Verification Testing Requirements

OxyChem must complete a verification testing program on the wastewater treatment biosludge to assure that the wastes do not exceed the maximum levels specified in paragraph (1). If EPA determines that the data collected under this paragraph does not support the data provided in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The initial part of the verification testing program consists of testing four composite samples from four consecutive weeks of wastewater treatment biosludge for specified indicator parameters as described in paragraph (1). Levels of constituents measured in the samples of the wastewater treatment biosludge that do not exceed the levels set forth in paragraph (1) can be considered non-hazardous after all four sets of sampling data meet the levels listed in paragraph (1).

The second part of the verification testing program is the annual testing of a representative composite sample of the wastewater treatment biosludge for all constituents specified in paragraph (1). If any delisting levels are not met in an annual test sample, then a second composite sample shall be collected within 10 days of becoming aware of the failure, and it must be analyzed expeditiously for the TCLP constituent(s) that exceeded Delisting Levels.

If the annual testing of the wastes, and the retest, do not meet the delisting levels in paragraph (1), OxyChem must notify EPA according to the requirements in paragraph (6). EPA will then take the appropriate actions necessary to protect human health and the environment as described in paragraph (6). OxyChem must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

The exclusion is effective upon publication in the **Federal Register** but the change in waste classification as ''non-hazardous'' cannot begin until the four weekly initial verification samples

comply with the levels specified in paragraph (1). The waste classification as ''non-hazardous'' is also not authorized, if OxyChem fails to perform the testing as specified herein. Should OxyChem conduct the yearly testing as specified herein, then disposal of wastewater treatment biosludge as delisted waste may not occur in the following year(s) until OxyChem obtains the written approval of EPA.

(4) Changes in Operating Conditions

Paragraph (4) would allow OxyChem the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, OxyChem must prove the effectiveness of the modified process and request approval from EPA. OxyChem must manage wastes generated during the new process demonstration as hazardous waste through verification sampling within 30 days of start-up.

(5) Data Submittals

To provide appropriate documentation that the OxyChem facility is correctly managing the wastewater treatment biosludge, OxyChem must compile, summarize, and keep delisting records on-site for a minimum of five years. OxyChem must keep all analytical data obtained pursuant to paragraph (3), including quality control information, for five years. Paragraph (5) requires that OxyChem furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, then it will apply only to 7,500 cubic yards per calendar year of wastewater treatment biosludge generated at the OxyChem facility after successful initial verification testing.

EPA would require OxyChem to submit additional verification data under any of the following circumstances:

(a) If OxyChem significantly alters the waste treatment system except as described in paragraph (4).

(b) If OxyChem uses any new manufacturing or production process(es), or significantly changes the current process(es) described in its petition; or

(c) If OxyChem makes any changes that could significantly affect the composition or type of waste generated.

OxyChem must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. EPA will publish an amendment to the exclusion if the changes are acceptable.

OxyChem must manage waste volumes greater than 7,500 cubic yards of wastewater treatment biosludge as hazardous waste until EPA grants a revised exclusion. When this exclusion becomes final, the management by OxyChem of the wastewater treatment biosludge covered in this petition would be relieved from Subtitle C jurisdiction. OxyChem may not classify the waste as non-hazardous until the revised exclusion is finalized.

(6) Reopener

The purpose of paragraph (6) is to require OxyChem to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. OxyChem must also use this procedure if the waste sample (and retest, if applicable) in the annual testing fails to meet the levels found in paragraph (1). This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which it based the decision to see if it is still correct or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires OxyChem to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.,* to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delisting is merited in light of EPA's experience. See the **Federal Register** notice regarding Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations into the environment than the concentrations predicted when conducting the TCLP, leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA 553(b)(3)(B).

B. What happens if OxyChem violates the terms and conditions?

If OxyChem violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects OxyChem to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

V. Public Comments

A. How may I as an interested party submit comments?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Chief, Corrective Action and Waste Minimization Section, Multimedia Permitting and Planning Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Industrial Hazardous Waste Permits Division, Technical Evaluation Team, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711–3087. Identify your comments at the top with this regulatory docket number: EPA–R06–RCRA–2009–0108. You may submit your comments electronically to Wendy Jacques at *jacques.wendy@epa.gov.*

B. How may I review the docket or obtain copies of the proposed exclusion?

You may review the RCRA regulatory docket for this proposed rule at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, TX 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages and at fifteen cents per page for additional copies.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and

therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. 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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: June 10, 2009.

Troy C. Hill,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* *	* *	* * *
OxyChem Corporation	Ingleside, TX	Wastewater treatment biosludge (EPA Hazardous Waste Number K019, K020, F025, F001, F003, F005) generated at a maximum rate of 7,500 cubic yards per calendar year after [publication date of the final rule]. For the exclusion to be valid, OxyChem must implement a verification testing program that meets the following paragraphs: (1)(A) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Wastewater treatment biosludge Leachable Concentrations (mg/l): Antimony—0.111; Acetone—533; Arsenic—0.178; Barium—36.9; Bis(2-ethylhexyl)phthalate—6.15; Chromium—2.32; Copper—26.5; Ethylbenzene—11.1; Methylene Chloride—0.0809; Naphthalene—0.0355; Nickel—13.8; Phenanthrene—2.72; Toluene—15.5; Trichloroethane—11900; Trichloroethylene—0.0794; Vanadium—1.00; Zinc—202. (B) Total Concentration Limits in mg/Kg: Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8 Equivalent—4.3E–05. (2) Waste Holding and Handling:

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for wastewater treatment biosludge has occurred for four consecutive weekly sampling events. (B) If constituent levels in any annual sample and retest sample taken by OxyChem exceed any of the delisting levels set in paragraph (1) for the wastewater treatment biosludge, OxyChem must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose the wastewater treatment biosludge as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, OxyChem must perform analytical testing by sampling and analyzing the wastewater treatment biosludge as follows: (A) Initial Verification Testing: (i) Collect four representative composite samples of the wastewater treatment biosludge at weekly intervals after EPA grants the final exclusion. The first composite sample may be taken at any time after EPA grants the final approval. Sampling must be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) indicates that the wastewater treatment biosludge must continue to be disposed as hazardous waste in accordance with the applicable hazardous waste requirements until such time that four consecutive weekly samples indicate compliance with delisting levels listed in paragraph (1). (iii) Within sixty (60) days after taking its last weekly sample, OxyChem will report its analytical test data to EPA. If levels of constituents measured in the samples of the wastewater treatment biosludge do not exceed the levels set forth in paragraph (1) of this exclusion for four consecutive weeks, OxyChem can manage and dispose the non-hazardous wastewater treatment biosludge according to all applicable solid waste regulations. (B) Annual Testing: (i) If OxyChem completes the weekly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), OxyChem must begin annual testing as follows: OxyChem must test a representative composite sample of the wastewater treatment biosludge for all constituents listed in paragraph (1) at least once per calendar year. If any measured constituent concentration exceeds the delisting levels set forth in paragraph (1), OxyChem must collect an additional representative composite sample within 10 days of being made aware of the exceedence and test it expeditiously for the constituent(s) which exceeded delisting levels in the original annual sample. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the OxyChem wastewater treatment biosludge are representative for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report should include the total amount of delisted waste in cubic yards disposed during the calendar year.

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(4) Changes in Operating Conditions: If OxyChem significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. OxyChem must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: OxyChem must submit the information described below. If OxyChem fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). OxyChem must: (A) Submit the data obtained through paragraph 3 to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD–ROM or comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) Reopener. (A) If, anytime after disposal of the delisted waste OxyChem possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If either the annual testing (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, OxyChem must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(C) If OxyChem fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from receipt of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) *Notification Requirements:* OxyChem must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update one-time written notification, if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

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[FR Doc. E9–16272 Filed 7–8–09; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1490; MB Docket No. 09–115; RM–11543]

Television Broadcasting Services; Fond du Lac, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by WWAZ License, LLC (''WWAZ''), the licensee of station WWAZ–DT, DTV channel 44, Fond du Lac, Wisconsin. WWAZ requests the substitution of DTV channel 5 for DTV channel 44 at Fond du Lac.

DATES: Comments must be filed on or before July 24, 2009, and reply comments on or before August 3, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Kathleen Victory, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: David J. Brown, *david.brown@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 09–115, adopted June 29, 2009, and released July 1, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of

2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Wisconsin is amended by adding DTV channel 5 and removing DTV channel 44 at Fond du Lac.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau, Federal Communications Commission.

[FR Doc. E9–16088 Filed 7–8–09; 8:45 am]

BILLING CODE 6712–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 704, 713, 714, 715, 744, and 752

RIN 0412–AA63

Partner Vetting in USAID Acquisitions

AGENCY: United States Agency for International Development.

ACTION: Proposed rule; correction.

SUMMARY: This document makes corrections to the preamble and clause of a proposed rule published in the **Federal Register** of June 26, 2009, regarding Partner Vetting in USAID Acquisitions. This correction corrects the fax number provided in the **ADDRESSES** section of the rule and a paragraph reference in the definitions section of clause 752.204–71.

FOR FURTHER INFORMATION CONTACT: Jennifer Norling, 202–712–1807.

Corrections

In proposed rule FR Doc. E9–15012, beginning on page 30494 in the issue of June 26, 2009, make the following corrections:

1. In the **ADDRESSES** section, on page 30494 in the 2nd column, correct the Fax number in the third bullet to read ''*Fax:* 202–216–3395''.

2. In line 2 of the 48 CFR 752.204–71(b) definition of ''Vetting Official'', on page 30498 in the 2nd column, correct the paragraph reference to read ''paragraph (d) of this clause''.

Dated: June 26, 2009.

Diane Howard,

Chief, Policy Division, Office of Acquisition and Assistance, U.S. Agency for International Development.

[FR Doc. E9–16227 Filed 7–8–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R8-ES-2009-0019; MO9221050083]

RIN 1018-AV91

Endangered and Threatened Wildlife and Plants; Listing Casey's June Beetle (*Dinacoma caseyi*) as Endangered and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list Casey's June beetle (*Dinacoma caseyi*) as endangered under the Endangered Species Act and propose to designate approximately 777 acres (ac) (314 hectares (ha)) of land as critical habitat for Casey's June beetle in south Palm Springs, Riverside County, California. This species inhabits desert chaparral plant communities associated with gently sloping, depositional surfaces formed at the base of the Santa Rosa Mountains in the Coachella Valley region. This proposed rule, if made final, would implement Federal protection provided by the Act.

DATES: We will accept comments received or postmarked on or before September 8, 2009. We must receive requests for public hearings, in writing at the address shown in **FOR FURTHER INFORMATION CONTACT** August 24, 2009.

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

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

• U.S. mail or hand-delivery: Public Comments Processing, Attn: [FWS- R8-ES-2009-0019]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone: 760–431–9440; facsimile: 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule from the public, tribes, other concerned governmental agencies, the scientific community, industry, or any other interested parties. We particularly seek comments concerning:

(1) Any available information on known or suspected threats and proposed or ongoing projects with the potential to threaten Casey's June beetle, specifically: (a) The present or threatened destruction, modification or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; and (e) other natural or manmade factors affecting its continued existence;

(2) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and

whether that increase in threat outweighs the benefit of designation, such that the designation of critical habitat is not prudent;

(3) Additional information concerning the range, distribution, and population size of this species, including the locations of any additional populations of this species;

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic, national security, or other relevant impacts resulting from the proposed critical habitat designation and, in particular, any impacts to small entities, and the benefits of including or excluding areas that exhibit these impacts;

(6) The proposed designation of tribal lands owned by the Agua Caliente Band of Cahuilla Indians in light of Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2); and

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying 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. We will post all hardcopy comments on *http://www.regulations.gov*. Please include sufficient information with your comment to allow us to verify any scientific or commercial data you submit.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the proposed listing of Casey's June beetle as endangered and proposed designation of critical habitat. For more detailed information on the taxonomy, biology, and ecology of Casey's June beetle, please refer to the 90–day finding on the petition to list the species under the Act, published in the **Federal Register** on August 8, 2006 (71 FR 44960), and the 12–month finding, published in the **Federal Register** on July 5, 2007 (72 FR 36635). These documents are available on the Internet at *http://www.fws.gov/Carlsbad*.

Species Information

Life History and Habitat

Casey's June beetle (*Dinacoma caseyi*) was first collected in the City of Palm Springs, California, in 1916 and later described by Blaisdell (1930, pp. 174–176) based on male specimens. This species measures 0.55 to 0.71 inch (in) (1.4 to 1.8 centimeters (cm)) long, with dusty brown or whitish coloring, and brown and cream longitudinal stripes on the elytra (wing covers and back).

Casey's June beetles emerge from underground burrows sometime between late March and early June, with abundance peaks generally occurring in April and May (Duff 1990, p. 3; Barrows 1998, p. 1). Females are always observed on the ground and are considered flightless (Duff 1990, p. 4; Hovore 1995, p. 7; Hovore 2003, p. 3). It is unknown how far females can disperse, or if they may disperse by other than terrestrial crawling (such as incidental movement by birds). Flightless adult June beetles are not likely to be dispersed by the wind or larger animals. It is likely adult or larval females are moved by water flow in wash areas, although it is unclear what their survival rate is under such circumstances. Females display an accentuated sexual dimorphism characterized by an enlarged abdomen, reduced legs and antennae, and metathoracic wing reduction and venation. During the active flight season, males emerge from the ground and begin flying near dusk (Hovore 2003, p. 3). Males are reported to fly back and forth or crawl on the ground where a female beetle has been detected (Duff 1990, p. 3). After mating, females return to their burrows or dig a new burrow and deposit eggs. Excavations of adult emergence burrows revealed pupal exuviae (casings) at depths ranging from approximately 4 to 6 in (10 to 16 cm) (Hovore 1995, p. 6).

The larval cycle for the species is likely 1 year, based on the absence of larvae (grubs) in burrows during the adult flight season (La Rue 2004, p. 1). The food source for Casey's June beetle larvae while underground is unknown, but other species of June beetles are known to eat ''plant roots or plant detritus and associated decay organisms'' (La Rue 2004, p.1).

La Rue (2006, p.1) stated that all *Dinacoma* species populations are ecologically associated with alluvial sediments. Casey's June beetle habitat is typically associated with broad, gently sloping, depositional surfaces that form at the base of the Santa Rosa Mountains in the dry Coachella Valley region by the overlapping or converging of individual alluvial fans (bajada) (Bates and Jackson 1987, p. 52).

Casey's June beetle is most commonly associated with Carsitas gravelly sand series soil (CdC), described by the United States Department of Agriculture (USDA on-line Geographic Information System (GIS) database 2000; USDA 1980, pp. 11–12) as gravelly sand on 0 to 9 percent slopes. This soil series is associated with alluvial fans, rather than areas of aeolian or windblown sand deposits. Hovore (2003, p. 2) described soils where Casey's June beetle occurs or occurred historically as, ''* * * almost entirely carsitas series, of a CdC type, typically gravelly sand, single grain, slightly effervescent, moderately alkaline (pH 8.4), loose, non-sticky, non-plastic, deposited on 0 to 9 percent slopes. On alluvial terraces and where they occur within washes, these soils show light braiding and some organic deposition, but [most years] do not receive scouring surface flows.'' Although Casey's June beetles have primarily been found on CdC soils, the beetles are also associated with Riverwash (RA), and possibly Carsitas cobbly sand (ChC), soils in the Palm Canyon Wash area (Anderson and Love 2007, p. 1). Their burrowing habits would suggest that Casey's June beetles need soils that are not too rocky or compacted and not difficult to burrow into.

Species Distribution and Status

Casey's June beetle distribution is confined to an area of less than 800 acres (324 hectares (ha)) in southern Palm Springs, California. According to information reported in the 12–month finding (72 FR 36635: July 5, 2007), known occurrences of Casey's June

beetles are restricted to locations within the Palm Canyon alluvial floodplain. Additional information on the species' distribution was brought to our attention following the publication of our 12–month finding. Surveys conducted by Bruyea in 2006 discovered a total of 13 individual Casey's June beetles at a new location east and south of Palm Canyon Wash, adjacent to East Palm Canyon Drive. This location, not known to us at the time of the publication of our 12–month finding, represents a slight eastern extension for the known range of the species (Bruyea 2006, p. 10).

We consider all known occurrences of Casey's June beetle to constitute a single population based on currently available data. However, additional studies are needed to confirm this assumption. Casey's June beetle population status is represented by a small population that has exhibited a significant decline in its habitat and distribution. Unfortunately, no empirical information is available to determine the finite rate of population change for Casey's June beetle. However, small, declining, and peripheral (disjunct or connected) populations are more vulnerable to demographic, genetic, and environmental stochastic events and natural catastrophes. Genetic stochastic events can further influence population demography via inbreeding depression and genetic drift. In a seminal work, Allee (1931) suggested small, single populations disappear when opportunities for reproduction dissipate because of reduced opportunity to find each other (Allee effect or depensation). Stephens *et al.* (1999, pp. 185–190) and Dennis (2002, pp. 389–401) suggest comparable definitions indicating that the Allee effect is a density-dependent event that is inversely related to population size. Courchamp *et al.* (2008, pp. 160–170) further notes that habitat loss and fragmentation may exacerbate Allee effects by further decreasing the size or density of small populations. Although no empirical information is available to determine the rate of population change for Casey's June beetle, the population has decreased over the past 10 years, even when locations of new sightings of scattered individuals are considered.

For the purposes of determining current range in relation to our proposed critical habitat designation, we assume all suitable habitat areas are occupied adjacent to and between areas where Casey's June beetles have been detected. We determined this assumption is reasonable based on the presence of the primary constituent elements (PCEs) in these areas and the dispersal capabilities of males during flight season, with reasonable potential for male movement throughout all suitable habitat areas.

For more information about the distribution and historic range of the species, please refer to the 12–month finding (72 FR 36635; July 5, 2007).

Previous Federal Action

This proposed listing with critical habitat is in response to our warranted but precluded 12–month finding that was published in the **Federal Register** on July 5, 2007 (72 FR 36635). For more information on previous Federal actions related to Casey's June beetle, please refer to our July 5, 2007, 12–month finding.

Casey's June beetle was precluded from listing in our July 5, 2007, finding (72 FR 36635) because of the lack of funding for the large number of candidate species. In Fiscal Year 2007, we had more than 120 species with a Listing Priority Number (LPN) of 2, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assigned each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the LPN, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprised a list of approximately 40 candidate species (''Top 40''). These 40 candidate species have the highest priority to receive funding to work on a proposed listing determination. Casey's June beetle, composed of one biological population, ranked as critically endangered (G1), and with substantial threats, was included in the Top 40. Although funding was not available at the time of the 12–month finding, we subsequently received funding for development of a proposed listing rule for this Top 40 species.

Proposed Listing of Casey's June Beetle

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to Federal Lists of Threatened and Endangered Wildlife and Plants. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. The five listing factors are: (a) The present or threatened destruction, modification or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; and (e) other natural or manmade factors affecting its continued existence.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range.

Casey's June beetle is part of a family of beetles that have naturally restricted ranges (LaRue 2006, p. 1). This beetle is adapted to specialized habitat and soil types found in the Palm Canyon Wash area of Palm Springs, California. We do not know the exact historical range of Casey's June beetle due to general location descriptions from early collection records (see discussion in the 90–day finding (71 FR 44962; August 8, 2006)). Based on this anecdotal information, we used soils data as the principle component to estimate that 97 percent of the historical range of Casey's June beetle has been converted to development. Of the 777 ac (314 ha) of land remaining as extant habitat, 343 ac (139 ha) are tribal lands and 323 ac (131 ha) are in private ownership. Tribal land consists of approximately 86 ac (35 ha) in tribal trust, 67 ac (28 ha) in fee-title, and 193 ac (78 ha) in allotment. The remaining 14 percent (111 ac (45 ha)) is owned by local entities (City of Palm Springs and County Flood Control) for roads, flood control, and water facilities. All tribal lands are at risk of development, as are any undeveloped portions of the lands owned by local governments and private landowners.

The population of the City of Palm Springs has increased from 42,805 to 47,251 between 2000 and 2008, an increase of 10 percent (CDF 2008, Table 1, Table E-1). The city is predicted to grow by 25 percent between 2000 and 2020 (SCAG 2004, table 2004GF). The current growth rate has increased development pressure for residential and commercial property that encroaches upon Casey's June beetle habitat.

We analyzed suburban development within southern Palm Springs from 2003 to 2007 to determine habitat impacts of completed and pending projects as cited in the petition and referenced in the July 5, 2007, 12–month finding (72 FR 36635). We were unable to identify all projects cited in the petition (and the 90–day finding; 71 FR 44962, August 8, 2006), as the petitioners did not provide specific geographic descriptions, and the extent of area of proposed development projects cited did not exactly match calculations in our most recent analysis. However, based on site visits and digital aerial photographs, we identified at least seven projects that removed or impacted occupied and likely occupied habitat, within the distribution described above, in the past 5 years. The Monte Sereno project north of Bogart Trail adjacent to Palm Canyon Wash (tribal lands) impacted approximately 39 acres (16 ha) of occupied habitat. Impacts to Casey's June beetle were expected to be mitigated by payment of $600 per acre ($240 per ha) (total of $24,780) to the City of Palm Springs or a habitat conservation entity designated by the City for 41 ac (17 ha) of ''potential'' Casey's June beetle habitat (Dudek and Associates 2001, p. 24). However, to our knowledge, no appropriate habitat has yet been conserved for Casey's June beetle to offset the Monte Sereno project impacts (Dudek and Associates 2001, p. 24).

In 2006, the City of Palm Springs issued a mitigated negative declaration for Smoke Tree Ranch Cottages (City of Palm Springs 2006, p. 2) (''Casitas'' development cited in the 90–day finding (71 FR 44960; August 8, 2006)), finding ''no significant impact'' to Casey's June beetle. However, at least 7 ac (3 ha) of occupied habitat was proposed for development (Cornett 2004, pp. 18–27). The Smoke Tree Commons shopping center impacted approximately 18 ac (7 ha) of habitat for Casey's June beetle. The project's Environmental Impact Report (EIR) stated that the City of Palm Springs was responsible for enforcing and monitoring Casey's June beetle mitigation measures prior to issuing a grading permit to the developer, including recording a conservation easement and developing a management plan for Casey's June beetle on conserved habitat (Pacific Municipal Consultants 2005, p. 9). A conservation easement was established; however, a management plan was not drafted prior to issuance of the grading permit, and monitoring and management activities for Casey's June beetle are not assured (Ewing 2007, p. 1).

The other four projects identified that removed or impacted occupied and likely occupied habitat are: (1) The 2-ac (1-ha) Desert Water Agency wells and pipeline project in the Smoke Tree Ranch development; (2) the 34-ac (14-ha) Alta project north of Acanto Drive and west of Palm Canyon Wash on tribal lands; (3) the 24-ac (10-ha) Estancias subdivision north of Acanto Drive; and (4) the 3-ac (1-ha) Palm Canyon project at South Palm Canyon Drive and Murray Canyon Drive. These seven projects resulted in the loss of, or impacts to, approximately 126-ac (51-ha) of occupied and likely occupied Casey's June beetle habitat from 2003 to 2008. An additional 5 ac (2 ha) of Casey's June beetle habitat has been impacted by small projects (for example, single home lots, pipeline development). Hovore (2003, p. 4) hypothesized that the destruction and isolation of occupied habitat caused by the Monte Sereno and Alta projects in 2003 ''* * * overall may reduce the known range and extant population of [Casey's June beetle] by about one third.''

We conducted an analysis for the 12–month finding (72 FR 36635) that used available digital aerial photographs at intervals from 1991 to 2005 (Anderson and Love 2007, pp. 1–2) and 2006 field surveys (Anderson 2006b, pp. 1–36), which determined that Casey's June beetle experienced an approximate 25 percent reduction in contiguous habitat from 770 ac (312 ha) in 1991 to 576 ac (233 ha) in 2006. Since 2006, new biological surveys and information have been provided to us that results in a larger area that we now consider as occupied habitat. With this new information and 2008 digital aerial photographs, we determined that there was approximately 1,001 ac (405 ha) of habitat in 1991. Therefore, our new analysis shows that Casey's June beetle has experienced approximately 22 percent reduction in habitat from 1,001 ac (405 ha) in 1991 to 777 ac (314 ha) in 2008. Our updated calculations account for these additional acres and reveal that habitat was lost at a rate of 1.6 percent per year from 1991 to 1996, at a rate of 0.6 percent per year from 1996 to 2003, at a rate of 3.8 percent per year from 2003 to 2005, and at a rate of 0.7 percent per year from 2005 to 2008. The rate of habitat loss could be accelerated as remaining parcels of habitat are developed or impacted in blocks; thus, any or all remaining habitat could be developed/lost or impacted within a given year.

Since publication of the July 5, 2007, 12–month finding (72 FR 36635), the City of Palm Springs completed the California Environmental Quality Act (CEQA) environmental review process for the 80- to 100-ac (32- to 40-ha) Eagle Canyon residential development project planned on tribal lands (Davis 2007, p. 1; Park 2007, p. 1) in the area containing CdC soils west of South Palm Canyon Drive near Bogert Trail and Acanto Drive (tentative tract number 30047) (City of Palm Springs 2008, p. 14). Our analysis (Anderson and Love 2007, pp. 1–3) indicates that this project may alter the drainage system maintaining soil moisture levels in approximately 54 ac (22 ha) by disrupting the water source maintaining suitable soil moisture levels and directly impacting CdC soils likely to be occupied. This in turn could potentially decrease the 777 ac (314 ha) of remaining extant, suitable habitat by 7 percent. Limited surveys conducted on the Eagle Canyon project, where occupancy was previously documented, were inconclusive in determining the likelihood of current habitat occupancy (Osborne 2008b, p. 3).

Extant habitat estimations include wash habitat where Casey's June beetle may not be able to maintain occupancy following severe flood events (Cornett 2004, p. 14; Hovore 2003, p.11). Of the total 777 ac (314 ha) estimated remaining habitat, only 523 ac (212 ha) is upland habitat (approximately 6 ac (2.4 ha) of this upland habitat is proposed to be impacted by the Eagle Canyon project). Upland habitat refers to any upland terrace area that is outside of the wash and does not occur on Riverwash (RA) soils. According to the Coachella Valley General Plan data (Riverside County 2005), all remaining upland habitat within Smoke Tree Ranch and on tribal land north of Acanto Drive is projected to be developed at a density of two homes per acre (0.8 per ha) by the year 2020, even though some parcels are designated as parks and recreation in the 2020 General Plan (code GP2020 = ''1145'') and are presently developed with three homes per acre (1.2 per ha). Undeveloped habitat on tribal land south of Acanto Drive has the same initial land use designation as adjacent land north of Acanto Drive (LU93 = ''3100'') (Riverside County 2005, pp. 94–120) in the East Bogert Trail area, except that it

is outside the city limit of Palm Springs (code GP2020 = ''58''). Some of these lands are developed at a density of one home or more per acre (0.4 per ha). Code GP2020 = ''58'' is designated as tribal land or open space in the General Plan. However, lands in this area with this designation have been developed at a density as high as three homes per acre, indicating that planning designations on tribal land do not ensure the final land use. Land use projections (Riverside County 2005) indicate most of the 523 ac (212 ha) of remaining upland Casey's June beetle habitat (where the species would not be exposed to scouring floods) could be eliminated by development.

Development is the greatest threat to habitat in upland CdC soils that are believed to support Casey's June beetle; however, development threats are not limited to upland terrace habitat. For example, entire sections of Palm Canyon Wash east of occupied habitat near Gene Autry Trail have been converted to golf course landscaping (Anderson and Love 2007, p. 3). La Rue (2006, p. 2) emphasized the magnitude of development threats to *Dinacoma* spp. population survival: ''Most *Dinacoma* [spp.] have experienced range reduction because of unprecedented habitat destruction and modification for recreational, residential and urban development resulting in serious distributional fragmentation throughout [their] former already naturally limited ranges. Consequently, several populations [of the genus *Dinacoma*] have been extirpated, especially those that once existed in Los Angeles County (for example, Glendale, Eaton Canyon).'' Therefore, habitat modification for recreational, residential, and urban development reduces an already limited range for Casey's June beetle and poses a substantial threat to this species' survival.

However, we note that although undeveloped and undisturbed lands are essential to the survival of Casey's June beetle, Smoke Tree Ranch represents the largest remaining habitat patch and largest occurrence of the species, and may represent a community where the spatial scale of human disturbance or fragmentation can coexist with this species' occupancy, as Hanski (Hanski *et al.* 2005, pp. 21–28) models for butterflies, and others identify with neutral models (Doak *et al.* 1992, pp. 315–336; With and Crist 1995, pp. 2446–2459). Although Smoke Tree Ranch represents the largest known remaining habitat patch, Allee effects as a function of fragmentation may be expressed on this segment of the population (Courchamp *et al.* 2008, pp. 160–170).

In addition to the threat of direct conversion of remaining habitat, analysis of 2008 aerial photography in Palm Canyon Wash indicates numerous land-disturbance activities affecting occupied wash habitat managed by the Riverside County Flood Control and Water Conservation District. In the vicinity of the State Route 111 bridge and Araby Drive, there appears to be road maintenance and flood control activities, as well as unregulated off-road vehicle disturbance. Cornett (2003, p. 12) noted similar off-road vehicle (ORV) impacts during Casey's June beetle surveys on a nearby site adjacent to Whitewater Wash and the Palm Springs Airport. Off-road vehicles impact desert soils and associated biota by increasing erosion (Snyder *et al.* 1976, pp. 29–30; Rowlands 1980, p. 169), reducing both plant and vertebrate diversity (Bury *et al.* 1977, Table 4, Figure 6; Rowlands 1980, pp. 63–74; Lathrop 1983, pp. 153–166; Cornett 2004, p. 15), and changing soil density through compaction, which may also influence soil water retention capacity (Lathrop and Rowlands 1983, pp. 144–145; Webb 1983, pp. 51–79, Adams *et al.* 1982, pp. 167–175). Indirect evidence suggests that land disturbance impacts the species' burrows and larvae that occur in the soil and the flightless females when they rest at the top of the burrows (Cornett 2004, p. 15). Any activities that cause direct adult mortality, compact or disturb soils when adult beetles are active, or affect soils to a depth where immature stages or resting adults are found, may affect the species' persistence in those areas or dispersal to adjacent areas. Land practices that disc the soil as a means of fire prevention or control may also impact habitat, as well as frequent use for horseback riding by local riding clubs. Therefore, land disturbance activities pose a significant threat to species' survival.

Casey's June beetle habitat in Palm Springs has been increasingly fragmented by development in recent years (see above development discussion). Continued fragmentation of already limited, remnant habitat compromises the ability of various species to disperse and establish new, or augment declining, populations (Collinge 2000, p. 2211–2226; Freemark 2002, pp. 58–83; Driscoll and Weir 2005, pp. 182–194) and can isolate segments of a population (Picket and White 1986, pp. 189–192). Isolated population segments lead to increased chances of extirpation by stochastic events, and elimination of dispersal areas that would have provided for population expansion (Hanski *et al.* 1995, pp. 21–28; Collinge pp. 2000, 2211–2226). This process, as it applies to Casey's June beetle, is evident in the development history of the City of Palm Springs and the distribution of populations (Cornett 2004, pp. 11, 14). Casey's June beetle is especially impacted by habitat fragmentation because females are flightless and unable to move between fragmented patches (Hovore 1995, p. 7). Although male beetles can move between habitat patches, thereby maintaining genetic mixing on a local scale, fragmented patches that no longer support any female Casey's June beetles may be attractive sinks to male beetles. The risk of local extinction is widely noted to increase as the fraction of occupied habitat patches, occupied patch area, and density of occupied patches decrease (Foreman and Godron, 1989, 87–91; Hanski 1991, pp. 17–38; Hanski *et al.* 1995, pp. 21–28; Hokit and Branch 2003, pp. 1060–1068).

Hovore (2003, p. 3) indicated population movement would be ''slow and indirect,'' and suggested the population structure for Casey's June beetle in any given area could be described as multiple mini-colonies or ''clusters of individuals around areas of repeated female emergence.'' Females located in habitat edge patches may be most at-risk due to their placement in the landscape. This would, in Hovore's (2003, p. 4) assessment, make the species ''susceptible to extirpation resulting from land use changes that would remove or alter surface features'' that isolate colonies into non-contiguous patches. Although fragmentation of habitat within a population still allows mixing of genes by male flight, it would preclude recolonization of a site should all flightless female individuals be eliminated. Fragmentation of suitable habitat into smaller patches increases the amount of habitat edge and, therefore, increases the risk of colony loss and decreases the probability of species' survival.

Summary of Factor A

Twenty-two percent (193 ac (78 ha)) of the 1,001 ac (405 ha) of contiguous suitable habitat for Casey's June beetle identified in 1991 has been lost to development. The rate of habitat loss has continued to increase since the early 1990's. From 2003 to 2005 the greatest loss of Casey's June beetle habitat occurred at a rate of 3.8 percent per year. Although the rate of habitat loss since 2005 is less than 3.8 percent per year, development and habitat impact

trends are continuing (see above discussion of Eagle Canyon project approved by the City of Palm Springs), and we anticipate additional upland habitat for the beetle may be impacted or lost in the foreseeable future. Based on recent information and calculations, we believe that the estimated amount of undeveloped habitat currently available for the species is approximately 777 ac (314 ha) (including all non-contiguous habitat containing all soil types used by the species) with some of these areas possibly serving as biological sinks for the species. Projecting development at current rates within the extant range of the beetle suggests that in 20 years almost all remaining habitat may be lost on private or tribally owned land. Based on current projected development and habitat impact trends, the loss of historically occupied locations, the limited distribution of Casey's June beetle, habitat fragmentation, and land use changes associated with urbanization, we find that Casey's June beetle is in danger of extinction by the present and threatened destruction, modification, and curtailment of its habitat.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any information regarding overutilization of Casey's June beetles for commercial, recreational, scientific, or educational purposes and do not consider collection for these activities to be a threat to the species at this time.

Factor C. Disease or Predation

We are not aware of any information regarding threats of disease or predation to Casey's June beetle and do not consider disease or predation to be a threat to the species at this time.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms that could provide some protection for Casey's June beetle include: (1) State laws and regulations; and (2) local land use processes and ordinances (for example, tribal environmental policies). However, these regulatory mechanisms are not preventing continued habitat modification and fragmentation. There are no regulatory mechanisms that specifically or indirectly address the management or conservation of essential habitat for Casey's June beetle. Additionally, there are no regulatory protections for other species that may provide incidental benefit to Casey's June beetle. The following section discusses the above-mentioned regulatory protections.

State Laws

The California Environmental Quality Act (CEQA) requires disclosure of potential environmental impacts resulting from public or private projects carried out or authorized by all non-Federal agencies in California. The CEQA guidelines require a finding of significance if a project has the potential to ''reduce the number or restrict the range of an endangered, rare or threatened species'' (CEQA Guideline 15065). As a candidate species for Federal listing, Casey's June beetle is considered rare under CEQA Guideline 15380. The lead agency can either require mitigation for unavoidable significant effects or decide that overriding considerations make mitigation infeasible (CEQA Guideline 21002); such overrides are rare. In the case of overrides, projects may be approved that cause significant environmental damage, such as destruction of listed endangered species or their habitat. Therefore, protection of listed species through CEQA is dependent upon the discretion of the agency involved.

The California Endangered Species Act (CESA) provides protections for many species of plants, animals, and some invertebrate species. However, insect species, such as Casey's June beetle, are not afforded protection under CESA. Therefore, this is an existing regulatory mechanism that does not provide for the protection of Casey's June beetle or its habitat.

Existing Tribal Regulatory Mechanisms

Lands of the Agua Caliente Band of Cahuilla Indians, included in the draft Tribal Habitat Conservation Plan (HCP), encompass 343 ac (139 ha) or approximately 45 percent of the estimated extant Casey's June beetle habitat (RA and CdC soils) according to our 2009 habitat analysis. Based on soil and species collection records, we estimate that historically (pre-European settlement), Casey's June beetle potentially occupied 5,834 ac (2,361 ha) (18 percent) of land currently owned by the Tribe. All post-1996 development of occupied habitat, with the exception of the 17-ac (7-ha) Smoke Tree Commons project, has occurred on Agua Caliente Band of Cahuilla Indians land. The remaining 273 ac (111 ha) of upland habitat on the Agua Caliente Band of Cahuilla Indians land is relatively flat and adjacent to, or surrounded by, recent development (Anderson and Love 2007, pp. 1–3), and some of these lands are approved for development by the City of Palm Springs and will likely be developed (please refer to the discussion of the Eagle Canyon project under ''Factor A'' above).

In a letter to the Carlsbad Fish and Wildlife Office's Field Supervisor dated October 10, 2006, the Tribe stated they had '' * * * enacted a Tribal Environmental Policy Act to, among other things, ensure protection of natural resources and the environment. See Tribal Ordinance No. 28 at I.B., (2000).'' The referenced Tribal Environmental Policy Act (Tribal Act) (Tribe 2000) states that the Agua Caliente Band of Cahuilla Indians is the lead agency for preparing environmental review documents, and that tribal policy is to protect the natural environment, including ''all living things.'' According to the Tribal Act (Tribe 2000, p. 4), the Tribe will consult with any Federal, State, and local agencies that have special expertise with respect to environmental impacts.

Several projects implemented on tribal lands since the enactment of the Tribal Act have impacted Casey's June beetle habitat. Casey's June beetle occupancy of the Bogert Trail site in the vicinity of South Palm Canyon Drive on tribal land (Duff 1990, pp. 2–3, 4; Barrows and Fisher 2000, p. 1; Cornett 2004, p. 3; Hovore 1997, p. 4; Hovore 2003, p. 4) has been greatly reduced, if not eliminated, by development since our receipt of the petition in 2004 (see Factor A above). The Alta and Monte Sereno development projects eliminated most of the species' upland habitat outside of Smoke Tree Ranch estimated to be occupied in 2003. Hovore (2003, p. 4) estimated that grading for the Alta project near South Palm Canyon Drive and Bogert Trail in May 2003 reduced the extant Casey's June beetle population size by ''about one-third.''

No Federal, State, or local agencies that have special expertise with respect to environmental impacts to Casey's June beetle were consulted and no review documents were prepared by the Tribe prior to the recent development of the Alta and Monte Sereno projects in occupied Casey's June beetle habitat; therefore, our understanding is that the Tribal Act does not effectively protect the species' habitat. The Chief Planning and Development Officer for the Tribe (Davis 2007, p. 1) affirmed that the Tribal Act does not apply to all tribal reservation lands; for example, the currently planned Alturas development project (see Factor A above) is not covered, because it is ''fee land.'' Although State environmental review documents (CEQA Environmental Impact Reports) were prepared by private consultants and reviewed by the

City of Palm Springs for the Eagle Creek development project, the Tribe did not participate in the review or comment with regard to Casey's June beetle (Davis 2007, p. 1).

Our analysis indicates that although some tribal environmental policy does exist (Tribe 2000), it is a non-specific guidance document that does not contain mandates or adequately protect Casey's June beetle and its habitat. Therefore, we do not believe that existing tribal regulatory documents ensure conservation of Casey's June beetle. The Service will continue to work with the Tribe to obtain any other information that illustrates how tribal actions or policies would help conserve Casey's June beetle habitat and protect the species. Currently, we do not have information documenting how occupied or potentially occupied habitat for Casey's June beetle is protected from development and other impacts on tribal lands. The Agua Caliente Band of Cahuilla Indians prepared and submitted a draft HCP to the Service, which has undergone public review in accordance with the National Environmental Policy Act (72 FR 58112). Although the Casey's June beetle was proposed as a ''Covered Species'' in the draft HCP, the Tribe informed the Carlsbad Fish and Wildlife Office that they have ''decided to remove Casey's June beetle from the list of species for which it is seeking take authority under its Tribal Habitat Conservation'' plan (ACBCI 2008, p. 1). In discussions regarding preparation of our final permit decision documents for the HCP, we asked the Tribe to reconsider their decision, and we continue to work with them to address Casey's June beetle and other species that may be impacted by land development activities on their tribal lands.

Coachella Valley Multiple Species Habitat Conservation Plan

Some non-Federal lands within the purported historical range of Casey's June beetle are proposed for management under the Coachella Valley Multiple Species Habitat Conservation Plan (Coachella Valley MSHCP). The Service issued a single incidental take permit (TE-104604-0) under section 10(a)(1)(B) of the Act to 19 permittees under the Coachella Valley MSHCP for a period of 75 years on October 1, 2008. Although Casey's June beetle was initially considered for coverage under the Coachella Valley MSHCP, the September 2007 release of the final MSHCP, final EIR, and final implementing agreement, permitted on October 1, 2008, did not include Casey's June beetle as a covered species. Because it is not a covered species, the MSHCP does not provide specific measures for the protection or conservation of the species and its habitat.

Summary of Factor D

Existing regulatory mechanisms are not adequate to protect remaining Casey's June beetle habitat or the species itself. Occupied habitat continues to be lost to development projects, such as those in the Bogert Trail area, which were constructed without any Casey's June beetle mitigation. Because existing regulatory mechanisms do not provide protection for this species or its habitat, we believe this presents a significant threat to the survival of Casey's June beetle.

Factor E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species.

The Casey's June beetle population may be threatened by other natural or anthropogenically influenced factors, such as climate change, increased intensity and frequency of scouring events in wash habitat, and indirect effects associated with adjacent development. However, there is little species-specific scientific information describing or predicting the potential for these threats to be realized, and these issues should be the subject of future research.

Past and ongoing development adjacent to Palm Canyon Wash, channelization of the wash to protect development, and development of associated flood-control levees are all likely to increase Casey's June beetle mortality during flood events. Urban development adjacent to natural creek beds or washes concentrates stream flow by constraining channel width, thereby increasing the speed of water flowing past a given location (hydrograph; cubic feet per second) (Poff *et al.*1997, p. 772). Therefore, scouring events occur more frequently than would have occurred prior to development that has already occurred around Palm Canyon Wash. Scouring events may temporarily eliminate Casey's June beetles within Palm Canyon Wash (Hovore 2003, p.9; Cornett 2004, p. 14). After scouring events, the wash would be slowly repopulated by females from neighboring occupied habitat outside the wash (for example, Smoke Tree Ranch) or from refugia within the wash. However, if scouring events continue to increase in frequency, there may be a point when the ability of and time needed for females to emigrate from surrounding occupied habitat or higher-elevation refugia into the wash will be longer than the scouring frequency. We do not know how far or how fast females can emigrate from upland refugia; however, we expect that travel across land would be relatively slow and occur over short distances compared to males that can fly. If this point is reached, Casey's June beetles may become extirpated from Palm Canyon Wash. We determined that the increased frequency of scouring events due to indirect effects of development adjacent to the wash may be a significant threat to Casey's June beetle.

Casey's June beetle is sensitive to changes in climate factors, such as wind, temperature (for example, drying of alluvial soils), precipitation, and catastrophic flood events (Noss *et al.* 2001, p. 42; La Rue 2006, p. 2). As discussed above, increased intensity and frequency of flooding and scouring events in Palm Canyon Wash is of particular concern for Casey's June beetle. The global frequency of heavy precipitation events has increased since 1960, consistent with warming and observed increases of atmospheric water vapor, and it is ''very likely'' (90 percent confidence) that heavy precipitation will generally become even more frequent over most land areas (IPCC 2007, pp. 2 and 8–9). A review of literature and historic climate data specific to the area of Casey's June beetle (Anderson 2007, pp. 1–6) indicates Coachella Valley precipitation, peak stream flow (NWIS 2008), and other weather patterns since 1950 in Palm Canyon, are locally consistent with these global patterns predicted by the IPCC (2007 p. 2, pp. 8–9, and 15). General Circulation Models predict a 1 to 3 degree Fahrenheit (0.5 to 1.7 degree C) rise in temperature and at least a 25 percent increase in precipitation by 2050, to as much as a 50 percent increase in precipitation as early as 2030 for California (Field *et al.* 1999, pp. 5–10; Giorgi *et al.* 1994, pp. 375–399), and increasing intensity of flood and drought events (Dessens 1995, pp. 1241–1244; Giorgi *et al.* 1994, pp. 375–399). Other models predict as much as a 100 percent increase in summer monsoonal precipitation for portions of the southwestern United States (Arritt *et al.* 2000, pp. 565–568). Therefore, it is likely the severity and frequency of heavy precipitation events will increase in the area.

Insect surveys using light traps have recorded male Casey's June beetles traveling up to 328 feet (ft) (100 meters (m)) to artificial light sources (Osborne 2008a. p. 2) during surveys. Such artificial light sources as black lights or mercury vapor lights may draw males in

a line-of-sight radius from existing habitat (Hovore 2003, p. 3). As males fly in search of female pheromone plumes (Domek *et al.* 1990, pp. 271–276), they may become distracted by light sources that attract them to sites that are out of suitable habitat for this species where they are preyed upon, or to local swimming pools where they end up in pool skimmers and often drown. Swimming pools are one common source for male Casey's June beetle specimens (Barrows 1998, p. 1; Barrows and Fisher 2000, p. 1; Cornett 2004, p. 5) and may serve as a genetic sink for this species. If large numbers of male Casey's June beetles are lost to these indirect effects of development, there could be reduced genetic diversity in males available for mating. Male beetles located at habitat patch edges closer to light sources would be more susceptible to distraction than those located at the center of patches. The loss of large numbers of these male Casey's June beetles would reduce or eliminate genetic segments of the population and diminish the overall genetic diversity of the population. We believe that loss of male beetles due to the indirect effects of development adjacent to upland habitat may be a significant threat to Casey's June beetle.

Summary of Factor E

Casey's June beetle is negatively affected by increased intensity and frequency of catastrophic flood events, changing climatic patterns, and loss of individuals due to their attraction to adjacent light sources. Although the Palm Springs area is too small from a climate modeling perspective to have specific climate change models, climate change is likely to reduce Casey's June beetle population densities by increasing scouring events and water retention in the soil. Additional development within or adjacent to Casey's June beetle habitat will likely include external lighting and swimming pools, both of which may result in additional losses and will continue to affect existing populations. Therefore, we find that other natural or manmade factors are likely to be a significant threat the continued existence of Casey's June beetle.

Determination

We carefully assessed the best available scientific and commercial information regarding the past, present, and future threats to Casey's June beetle. Section 3(5)(C)(6) of the Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' This species' extremely low numbers, slow dispersal rate, and highly restricted geographic range make it particularly susceptible to extinction at any time from random events, such as 100–year floods, scouring events, or isolation of known occurrences.

As described in detail above, projections for human population growth extend out to 2030 in Palm Springs (SCAG 2004). Such projections frame our analysis as they help us understand what factors can reasonably be anticipated to meaningfully affect the species' future conservation status. We updated our original analysis by Anderson and Love (2007, pp. 1–2) to determine rates of habitat loss in southern Palm Springs from 1991 to 2008. During that time, Casey's June beetle experienced an approximate 22 percent reduction in contiguous, undeveloped habitat from 1,001 ac (405 ha) in 1991 to 777 ac (314 ha) in 2008. Habitat loss was greatest in the 2003 to 2005 time period, and impacts have continued to occur. Habitat has been lost at a rate of 1.6 percent per year from 1991 to 1996, at a rate of 0.6 percent per year from 1996 to 2003, at a rate of 3.8 percent per year from 2003 to 2005, and at a rate of 0.7 percent per year from 2005 to 2008.

In summary, the most significant threat to Casey's June beetle, as listed in Factor A, is loss of its habitat. This species faces immediate and continuing threats from development of habitat and habitat fragmentation and degradation. At the rate of habitat loss since 1996, we estimate that nearly all remaining upland habitat on private or tribally owned land will be lost by 2020. Additionally, a variety of localized threats factors (which fall under Factors A, D, and E) continue to negatively affect the species (including attraction to artificial light sources, swimming pools, and changes in soil hydrology). Furthermore, as described in Factor D, existing regulatory mechanisms provide little direct protection of Casey's June beetle habitat, the loss of which is the most significant threat to the species. This single remaining known population may already have reached the point where it is not naturally sustainable and may require management of remaining occupied habitat and population augmentation to prevent extinction.

Therefore, based on the best available scientific and commercial information, we find that Casey's June beetle is in danger of extinction throughout all of its range. Consequently, we are proposing to list Casey's June beetle as an endangered species under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed under the Act, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape altering activities on Federal lands administered by the Department of Defense, U.S. Fish and Wildlife Service, and U.S. Forest Service; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; leases on Tribal Trust lands that require Bureau of Indian Affairs approval; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The

prohibitions, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened or endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species. You may obtain permits for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species and

(b) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it is listed must contain the physical and biological features that are essential to the conservation of a species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (areas on which are found those PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species). We can designate areas outside the geographical area occupied by the species at the time of listing only when we determine that the best available scientific data demonstrate that the designation of such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act, (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Any areas that support populations, but are outside the critical habitat designations, will continue to be subject to conservation actions Federal agencies implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by section 9 and the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the Federal agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Regulations under 50 CFR 424.12(a)(1) state that the designation of

critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

There is no documentation that disclosing Casey's June beetle locations would cause harm to this species. Casey's June beetle locations are already available in public literature, and designation of critical habitat would not increase risk to this species. Further, we find that there are benefits to a critical habitat designation. The potential benefits include: (1) Triggering consultation under section 7 of the Act and (2) providing education benefits to State or county governments or private entities (which may help to focus conservation efforts and awareness).

The primary regulatory effect of critical habitat is the requirement under section 7(a)(2) of the Act that Federal agencies refrain from taking action that destroys or adversely modifies critical habitat. Casey's June beetle occurs solely on Agua Caliente Band of Cahuilla Indians land, local government lands, and private lands. Nevertheless, tribal and private lands may be subject to Federal actions that trigger the section 7 consultation process, such as granting Federal monies for conservation projects or the need for a Federal permit for projects subject to section 404 of the Clean Water Act. There may also be some education or information benefits to the designation of critical habitat. Education benefits include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of this species. In the case of Casey's June beetle, these aspects of critical habitat designation would benefit the conservation of the species. Since we have determined that the designation of critical habitat will not likely increase the degree of human threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for Casey's June beetle.

Methods

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas that contain the features essential to the conservation of Casey's June beetle. This includes information from the 90–day finding (71 FR 44960; August 8, 2006) and the12–month finding (72 FR 36665; July 5, 2007), information and survey observations published in published peer-reviewed literature and provided in academic theses and agency reports; location data and survey information provided in agency status and monitoring reports and on GIS maps; regional GIS coverages; correspondence (for example, unpublished observations and data) from species experts; and data provided as part of the Coachella Valley MSHCP. Additionally, we reviewed available information about the historical and current distribution, ecology, life history, and habitat requirements for Casey's June beetle. This included data and reports submitted by species experts; research published in peer-reviewed scientific publications; museum records; technical reports, and unpublished field observations by Service, State, and other experienced biologists; additional notes and communications with qualified biologists and experts; and regional GIS coverages.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific PCEs required for Casey's June beetle from its biological needs.

Space for Individual and Population Growth and for Normal Behavior

Casey's June beetle is associated with native vegetation of Sonoran (Coloradan) desert scrub located on desert alluvial fans and bajadas at the base of the Santa Rosa Mountains in the Coachella Valley, Riverside County, California. Sonoran desert scrub habitat is characterized as scattered assemblages of broad-leaved microphyll shrubs with an open canopy (Mayer and Laudenslayer 1988, p. 114). The open canopy provides space for male beetles to fly in search of females and fulfill normal life-history activities. This scrub habitat type also provides the micro-habitat space inhabited by Casey's June beetle. Individual shrubs provide refugia for the underground stage of the beetle's life history, protecting emergence holes from anthropogenic disturbance.

Habitats utilized by Casey's June beetles are varied as a result of areas that are known to undergo anthropogenic disturbances. In general, the species uses soil surfaces to burrow and deposit eggs. After beetles emerge, emergence holes are easily detectable beneath shrub canopies where they are protected from human activity. However, many emergence holes that occur in the open are apparently destroyed or disturbed by ''equestrians, vehicles, and other human activities'' (Hovore 2003, p. 3). Therefore, the habitat where subterranean larvae and females waiting on the surface for mates are protected from human impacts is clustered around trees and shrubs where there is intact crustal soil (Hovore 2003, p. 3). These individual shrubs are refugia for the underground and reproductive stages of the beetle's life history, which protect them from anthropogenic disturbance. The undisturbed soil may not reflect the entire distribution of the emergence holes (the primary indicator of occupancy) because disturbance easily destroys evidence of the hole, but instead represent the remaining intact holes observable following a disturbance (Hovore 2003, p. 3). Individual shrubs also provide the subterranean space required for reproduction and to maintain larval development. See the ''*Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements*'' section for more specific information on soil characteristics and nutritional requirements.

In addition to anthropogenic disturbance, Casey's June beetle habitat undergoes natural disturbance. Palm Canyon Wash experiences intense flooding and scouring about once every 10 years (Cornett 2004, p.14), with turbulence that can excavate and unearth sand where the species may occur (Wright 2003, p.3; NWIS 2008). These events are likely to extirpate Casey's June beetles from locations within the wash; however, these areas may subsequently be recolonized by beetles from surrounding upland areas or local refugia. It is hypothesized that

the wash serves as a sink area (an area that is often extirpated) for Casey's June beetle (Cornett 2004, p.14), but wash habitat may also serve as a source area when population densities are high between flooding events. If correct, these concepts indicate the need to conserve both upland and wash habitat to achieve conservation of the species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Vegetation, soil, and climate contribute to the nutritional and physiological requirements of Casey's June beetle. It is hypothesized that beetle larvae feed on organic matter and detritus below ground (Hovore 2003, p. 2; LaRue 2004, p. 1). Observations of adult Casey's June beetles feeding underground have not yet occurred (Hovore 1995, p. 2); however, accumulation of leaves around shrubs contribute to surface litter and subsurface detritus. Additionally, co-occurring annual plants and grasses using these desert scrubs as nurse plants or refugia also contribute to surface litter and likely provide an additional food source as radiculum (plant rootlets (LaRue 2004, p. 1, Simpson 1968, p. 500)). Although Casey's June beetle distribution is not likely correlated with the distribution of a specific plant host, proximity of observed emergence holes to Sonoran (Coloradan) desert scrub plants indicate these plants may be important as a direct or indirect food source (Wright 2004, p.6).

The Palm Springs area has slightly higher precipitation than surrounding areas in the eastern Coachella Valley, due to its proximity to the base of the San Jacinto and Santa Rosa Mountains (LaRue 2006, p. 2). This precipitation keeps the underlying soil damp, which is an important component for Casey's June beetle life history because they, like many other subterranean scarab beetles, prefer the interface between surface soil and damp subsoil (Hovore 1995, p. 6; LaRue, 2008, p. 1). The depth of the damp soil is generally between 10 cm (3.94 in) to 20 cm (7.87 in) (Hovore 1995, p. 5) and averages 72 to 78 degrees Fahrenheit (22 to 26 degrees Celsius) (USDA 1980, p. 11). This depth coincides with the depth at which larvae are usually found (5 cm (1.97 in) to 20 cm (7.87 in) (LaRue 2004, p. 1). Individual scrub plant architecture has developed for maximum capture of precipitation, channeling water along stems to the central root system. Moisture in the soil layer prevents desiccation of larvae and eggs and maintains a constant temperature (LaRue 2008, p. 1). Additionally, areas with higher soil moisture are associated with a higher density of vegetation and microorganisms, such as fungi and bacteria believed to provide a more diverse food source for beetle larvae (LaRue 2008, p. 1).

The Sonoran desert scrub plant community endemic to the Palm Canyon Wash and adjacent terraces also serve to maintain habitat consistency. The Carsitas series soils have a water table located from 2 to 6 ft (0.6 to 1.9 m) deep. Shrubs are important in water and nutrient cycling in desert ecosystems (Sala *et al.* 1989, pp. 501–505; McAuliffe 1994, pp. 111–148). Desert shrubs have deeper root systems that bring water from lower levels up to higher levels, cycle nutrients through the soil, and mediate diurnal temperature variations. Midday temperatures are lower near the center of desert scrub patches than in areas outside the canopy (Pickett and White 1985, pp. 174–176). The combination of moisture cycling, diurnal temperature variation, and seasonal climate change (Rosenburg 1974, pp. 66–74) may provide beetle larvae with a gradient of micro-environments to inhabit in the subsoil through the year, thereby allowing them to maintain optimal body temperature and humidity levels. Therefore, the precipitation of the Palm Canyon area, and its influence on the local plant community, may be a unique factor critical for Casey's June beetle.

Soils associated with known occurrences of Casey's June beetles are described by Hovore (2003, p. 2) as almost entirely of the Carsitas Series, (CdC), typically gravelly sand, single grain, slightly effervescent, moderately alkaline (pH 8.4), loose, non-sticky and non-plastic, and deposited on 0 to 9 percent slopes. These soils show light braiding and some organic deposition on alluvial terraces and where they occur within washes, although they generally do not receive scouring surface flows (Hovore 2003, p. 2). Additionally, Casey's June beetle is associated with Riverwash (RA) and Carsitas cobbly sand (ChC) series of soils (Anderson 2007, p.1), usually occurring in these soils when they are contiguous with CdC series soil. The CdC type soils may also contain small inclusions of fine or coarse soils, such as Myoma (MaB) fine sand and Coachella (CpA) fine sand (USDA 1980, pp. 11–12, 16, and 23).

Alluvial soil (RA) is also an important component to Casey's June beetle habitat requirements. Organic matter and vegetation may be uprooted, redistributed, and buried in the wash during low-frequency, high-magnitude floods. Debris deposited by these hydrological processes and periodic flooding are essential to maintain alluvial soils in Palm Canyon Wash and may serve as new or re-conditioned habitat.

Cover or Shelter

The upland terraces and Palm Canyon Wash are the remaining areas known to be inhabited by Casey's June beetle. The upland terraces offer the only known shelter from flooding and scouring events, or ORV impacts since vehicles tend to remain within the wash. Since the Palm Canyon Wash experiences periodic flooding and scouring that is likely to impact the species during flood events, the upland terraces are essential to the conservation of Casey's June beetle for long-term maintenance of the population because they act as a potential source of females for recolonization of the wash. Systematic surveys in the wash indicate that this area is important to the long-term survival of the species. Both the upland terraces and Palm Canyon Wash contain soil types conducive to burrowing and maintain plant communities that support the nutritional and physiological processes essential for the species.

Sites for Breeding, Reproduction, and Rearing (or Development) of Offspring

Casey's June beetle breeding and dispersal mechanisms require specific habitat important to species' reproduction. Because female Casey's June beetles are flightless, the species' breeding system and the ability of females to disperse (which is uncertain but much reduced compared to flight-capable males and likely less than 1,000 ft (305 m)) is restricted geographically to a relatively small area. During breeding, adults of the species are most active at dusk. Females emit pheromones to attract males to burrows for the purposes of mating. Breeding success depends on males' ability to detect pheromones and ability to maneuver to remain in contact with the pheromone plume (Domek *et al.* 1990, pp. 271–276). The southern Palm Springs area is surrounded by mountains and ridges that protect the area from the high winds that are frequent in the Coachella Valley (Wright 2004, p.4), thus providing conditions that are conducive to successful male flight, and pheromone detection and tracking. Therefore, successful reproduction depends on shelter provided by the surrounding mountains and ridges.

Dispersal of Casey's June beetle is also limited by the flightlessness of females. This adaptation significantly hinders this species' ability to disperse or

recolonize an area. Females appear to emerge from burrows and remain on the surface nearby and then either re-enter these burrows or dig new burrows to lay eggs. If an isolated portion of the population were extirpated, then it would be difficult for females to quickly recolonize that area (Driscoll and Weir 2005, pp. 192–193; de Vries *et al.* 1996, pp. 332–342) because flightless females disperse by crawling and likely by water flow in wash areas (although it is unclear what the survival rate would be under water flow dispersal). Because male Casey's June beetles cannot repopulate an area by themselves, and females are flightless, habitat fragmentation and isolation are significant threats to gene flow in this species. Therefore, connectivity of suitable habitats that provides for dispersal over multiple generations is essential to the conservation of the species.

Undisturbed suitable habitat is also essential to Casey's June beetle. As stated above, the adults of this species burrow in alluvial soils to lay eggs and the larval stages are known to live out this life stage in alluvial soil as well. The presence of undisturbed soil is crucial to Casey's June beetle. Such artificial, nonnative surfaces as concrete or highly manipulated ornamental landscaping cannot serve the same function as native habitat. Casey's June beetles are documented to occur in abundance within the residential community of Smoke Tree Ranch (Cornett 2004, Table 1). Cornett (2004, p. 14) hypothesized this abundance could be attributed to the landscape irrigation system in the community (creating high soil moisture), native vegetation landscaping, its location on an upland terrace, and widely spaced houses with open space. Driscoll and Weir (2005, pp. 182–194) reported that habitat fragmentation had a smaller effect on beetle species' abundance in Australia than patch size in disturbed landscapes, but individual species that were flightless or lived underground were most at-risk from the effects of fragmentation. While undeveloped and undisturbed lands are essential to the survival of Casey's June beetle, Smoke Tree Ranch represents the largest remaining habitat patch and largest occurrence of the species and may represent a community where the spatial scale of human disturbance or fragmentation can coexist with this species' occupancy, as Hanski (Hanski *et al.* 2005, pp. 21–28) models for butterflies.

Habitats Protected from Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

As stated in the 12–month finding for Casey's June beetle (72 FR 36635; July 5 2007), all remaining CdC or RA type soils in the southern part of the City of Palm Springs are important for this species' survival. Because the species is so restricted in its range (due to such factors as loss of suitable habitat and habitat fragmentation) and there has been substantial development throughout its historical range, we consider all occupied habitat, including habitat contiguous with or adjacent to habitat with known occurrences, to contain the physical and biological features essential to the conservation of Casey's June beetle.

Primary Constituent Elements for Casey's June beetle

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we determined that the Casey's June beetle PCEs are:

(1) Soils (regardless of disturbance status) of the Carsitas (CdC) gravelly sand soil series, soils of Riverwash (RA) and Carsitas cobbly sand (ChC) series adjacent and contiguous with CdC soil, and small inclusions of Myoma (MaB) and Coachella (CpA) fine sands adjacent to CdC soil, at or below 640 ft (195 m) in elevation associated with washes and alluvial fans deposited on 0 to 9 percent slopes providing space for population growth and reproduction, moisture, and food sources.

(2) Intact, native Sonoran (Coloradan) desert scrub vegetation and native desert wash vegetation that provide shelter and food for the species.

With this proposed designation of critical habitat, we define the physical and biological features that are essential to the conservation of the species through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life-history functions of the species. Because not all life-history functions require all the PCEs, there may be areas within the critical habitat unit that will not contain all of the PCEs. We are proposing one unit for designation based on sufficient PCEs being present to support at least one of the species' life-history functions.

Special Management Considerations or Protection

When designating critical habitat within the geographical area occupied by the species, we assess whether the physical and biological features essential to the conservation of the species may require special management considerations or protection. Major threats to Casey's June beetle include (1) Habitat disturbance; (2) habitat loss and fragmentation associated with development (such as grading, building roads and other infrastructure, and constructing commercial and residential structures); and (3) recreational activities (for example, ORV use and equestrian activities) as described in Factor A of the ''**Summary of Factors Affecting the Species**'' section, above.

Anderson and Love (2007) examined the rate of habitat loss since 1996, and additional analyses identified continuing habitat loss over the last two years. Because Casey's June beetle is now restricted to a relatively small area as compared to its probable historical range, and habitat fragmentation is a threat to the long-term viability of Casey's June beetle, special management considerations or protection of the essential physical and biological features may be needed to address development or urban expansion impacts. Local government planning departments should eliminate urban expansion within or adjacent to Casey's June beetle habitat and provide linkage corridors between habitat patches to address the protection necessary for this species at this time. Preserving habitat and corridors linking habitat patches have been shown to be vital landscape elements for the conservation of species.

Localized, small-scale impacts and incremental human disturbance, such as ORV activities, may have an insidious, cumulative impact on the essential features of Casey's June beetle habitat. The Service, in cooperation with local governments, can work to establish habitat restoration programs and restrict, fence, or post areas with signs to reduce land disturbance. Additionally, special management considerations or protection of the essential features may be needed to minimize the impacts of development or urban expansion to Casey's June beetle habitat. Designing open areas, maintaining or planting native vegetation, and irrigation appropriate for the vegetation, may be important programs for the conservation of this species. This should also include a program to monitor ongoing habitat loss and disturbance, and invasive plants. Management and monitoring plans could provide a uniform set of guidelines to assist local governments in this effort. However, habitat management guides and plans are

voluntary and may not provide for the long-term conservation of the species.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining the specific areas within the geographical area occupied by the species that contain the features essential to the conservation of species which may require special management considerations or protection, as well as when determining if any specific areas outside the geographical area occupied by the species are essential for the conservation of the species. We only designate areas outside the geographical area occupied by a species when the Secretary determines that a designation limited to a species' present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). For Casey's June beetle, we limited proposed critical habitat to the present range of the species, because the only potentially suitable habitat outside the present range occurs in small, disjunct areas that are remote in relation to the proposed critical habitat. It is unlikely that the flightless females would be able to reach these small, isolated areas, and we believe these locations would be population sinks due to their remoteness if Casey's June beetle was artificially introduced. We are proposing to designate critical habitat in areas that we determined are occupied and contain the physical and biological features essential to the conservation of the species.

We consider all known occurrences of Casey's June beetle to constitute a single population based on currently available data. However, additional studies are needed to confirm this assumption. Because of the limitations of surveys to detect insect occupancy, the population level is the appropriate scale at which to determine occupancy of areas proposed as critical habitat. Although an area may be occupied by Casey's June beetles at the population distribution scale, light-trapping surveys to detect male presence during a given flight season may not have detected any individuals, either because they were at low densities, or because environmental conditions were not suitable for beetle activity. Although no formal data, such as a genetic analysis, has indicated all known occupied areas are within the same population distribution, we assume they are, based on the potential for male movement among sites that contain the primary constituent elements. Additionally, we assume all suitable habitat areas are occupied adjacent and intermediate to areas where Casey's June beetle has been detected based on appropriate PCEs in place and dispersal capabilities of males during flight season, with reasonable potential for male movement throughout all areas delineated as critical habitat. Therefore, all areas we are proposing to designate as critical habitat are considered to be currently occupied.

We used the following data to delineate critical habitat: (1) Areas known to be occupied recently (1995–present); (2) all adjacent areas contiguous with occupied sites and on CdC soils or RA, ChC, MaB, and CpA soils when adjacent to CdC soils; (3) areas below 640 ft (195 m) in elevation (within 100 meters of the highest known elevation of an occurrence); (4) land dominated by native vegetation, but may contain some nonnative vegetation; and (5) areas that provide connectivity between occurrences (when possible) to provide for dispersal, recolonization, and genetic exchange. We also used information in our files and referred to expert opinion from Service biologists and outside experts who are knowledgeable about the species. The proposed critical habitat is designed to capture observed occurrences of Casey's June beetles and the soils and native vegetation needed for its long-term conservation.

We delineated the proposed critical habitat boundaries using the following steps:

(1) We mapped observations of Casey's June beetles from Bruyea (2006), Cornett (2004), Hovore (1997), Hovore (1995), Powell (2003), and Simonsen-Marchant (2000, 2001). These records were initially mapped over digital aerial photographs of the Palm Canyon area in Palm Springs, California, acquired in June 2005 with a ground resolution of 3.28 ft (1 m). We believe these surveys are the best available data on Casey's June beetle distribution, accurately depict the best locations of known occurrences within the species' range, and provide a logical starting point for the delineation of critical habitat.

(2) We incorporated digital soil data produced by the USDA Natural Resources Conservation Service for all soils in the Palm Canyon area. This data delineated CdC (Carsitas gravelly sand), RA (Riverwash), ChC (Carsitas cobbly sand), MaB (Myoma fine sand) and CpA (Coachella fine sand) soils. We selected areas where the CdC soils were adjacent to one of the other soil series and contiguous with occupied habitat. This mapping delineated the soils that are suitable for, and assumed occupied by, the beetle.

(3) After mapping the soils, we examined the elevations of all Casey's June beetle observations. Because the beetle is vulnerable to scouring flows that occur during rain events in washes at higher elevations, the species is normally found at elevations less susceptible to heavy water flows. We determined the highest elevation of an occurrence was 540 ft (165 m), and we extended the boundary elevation 100 ft (30.5 m) to account for soil gradients and any occurrences that may not have been observed. As a result, we are proposing as critical habitat the area below the 640 ft (195 m) contour with the best locations of known occurrences within the species' range and the appropriate soils.

(4) We utilized digital aerial photographs acquired in April 2008 with a ground resolution of 6 in (15 cm) to closely examine the area below the 640 ft (195 m) contour and ensure it captured the PCEs necessary to support life-history functions essential to the conservation of Casey's June beetle. Specifically, we removed areas that did not have native vegetation (such as golf course greens) or contained large denuded or graded areas to eliminate areas that likely do not and could not support Casey's June beetles.

(5) We added connective corridors between known occurrences to help address habitat fragmentation between segments of the population, which is a substantive threat to the species. As a result, we included undeveloped areas that contain suitable habitat (native vegetation and appropriate soils as identified above) to provide connectivity between known occurrences of Casey's June beetles.

When determining proposed critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas, such as lands covered by buildings, pavement, and other structures, because such lands lack essential features for Casey's June beetle. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed critical habitat are excluded by text in this proposed rule. Therefore, when the critical habitat designation is finalized, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action may affect adjacent critical habitat.

Proposed Critical Habitat Designation

We are proposing one unit as critical habitat that encompasses the geographical area occupied by the species and totals 777 ac (314 ha). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Casey's June beetle.

The approximate area of proposed critical habitat for Casey's June beetle totals 777 ac (314 ha), including 343 ac (139 ha) of tribal land, 111 ac (45 ha) of local government land, and 323 ac (131 ha) of private land. Area estimates reflect all land within the proposed critical habitat unit boundaries. Acre and hectare values were computer-generated using GIS software, rounded to nearest whole number, and then summed.

We present a brief unit description below and reasons why it meets the definition of critical habitat for Casey's June beetle. The unit is located in Riverside County, California, and extends from the confluence of Andreas Canyon Wash with Palm Canyon Wash northward along the toe of slope west of South Palm Canyon Drive to Murray Canyon Drive and northeastward (downstream) along Palm Canyon Wash, crossing East Palm Canyon Drive to South Gene Autry Trail.

The critical habitat unit consists of approximately 777 ac (314 ha) considered occupied by Casey's June beetle. The Unit includes areas west of South Palm Canyon Drive, Palm Canyon Wash, and Smoke Tree Ranch, and two areas east of Palm Canyon Wash and south of East Palm Canyon Drive. This unit contains all of the physical and biological features essential to the conservation of the species (PCEs 1 and 2), including alluvial soils of the CdC, RA, ChC, MaB and CpA soil series with Sonoran desert scrub and desert wash vegetation.

Habitat in the unit is threatened by development, persistent recreational activity, and periodic flash flooding. Specifically, urban expansion, in-fill development, and recreational activities continue to result in the loss of habitat on tribal and private land. Therefore, the features essential to the conservation of the species in this unit likely require special management considerations or protection to minimize impacts resulting from these threats (see ''**Special Management Considerations**'' section above).

Approximately 45 percent of this unit is on Agua Caliente Band of Cahuilla Indians land. The Agua Caliente Band of Cahuilla Indians removed the species from their proposed HCP and thus from consideration under existing development agreements with the local jurisdictions as of October 28, 2008 (ACBCI 2008, p. 1). Because the Agua Caliente Band of Cahuilla Indians has indicated that they are not planning to manage Casey's June beetle habitat, we determined that it is appropriate to include the tribal lands in the proposed critical habitat unit. However, we recognize the importance of Government-to-Government relationships with Tribes, and we are seeking public comment on the appropriateness of the inclusion of these lands in the final critical habitat designation (see ''**Public Comments**'' section above).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. Decisions by the Fifth and Ninth Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (Ninth Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (Fifth Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional to serve its intended conservation role for the species.

Under section 7(a)(2) of the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect Casey's June beetle or its designated critical habitat will require section 7(a)(2) consultation under the Act. Activities on State, tribal, local or private lands requiring a Federal permit (such as a Bureau of Indian Affairs approval of a lease, a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are examples of agency actions that may be subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal,

local or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for Casey's June beetle. Generally, the conservation role of Casey's June beetle's critical habitat unit is to support a viable self-sustaining population of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for Casey's June beetle include (but are not limited to) habitat disturbance, loss and fragmentation associated with development (for example, grading, building roads and other infrastructure, and constructing commercial and residential structures) and recreational activities (for example, ORV use and equestrian activities). Please see ''**Special Management Considerations or Protection**'' section for a more detailed discussion on the impacts of these actions to the listed species.

Exemptions and Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we must consider various factors in making a critical habitat designation. For example, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. We also consider whether landowners having proposed critical habitat on their lands have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social or other impacts that might occur because of the designation.

There are no HCPs or other management plans that we are considering for exclusion under section 4(b)(2) of the Act. The Agua Caliente Band of Cahuilla Indians prepared and submitted a draft HCP to the Service, which has undergone public review in accordance with the Act and the National Environmental Policy Act. Although the Casey's June Beetle was proposed as a ''Covered Species'' in the draft HCP, the tribe informed the Carlsbad Fish and Wildlife Office that they have ''decided to remove Casey's June beetle from the list of species for which it is seeking take authority under its Tribal Habitat Conservation'' plan (ACBCI 2008, p. 1). In discussions regarding preparation of our final permit decision documents for the HCP, we have asked the tribe to reconsider their decision, and we continue to work with them to address Casey's June beetle and other species impacted by land development activities on their tribal lands. Casey's June beetle is also not a covered species under the recently permitted Coachella Valley MSHCP. Therefore, the areas covered by these HCP efforts are not currently being considered or proposed for exclusion under section 4(b)(2) of the Act.

In preparing this proposed rule, we determined that the lands within the proposed designation of critical habitat for Casey's June beetle are not owned or managed by the Department of Defense and there are currently no HCPs for Casey's June beetle. At this time, we have not identified areas for which the benefits of exclusion outweigh the benefits of inclusion; therefore, we are not identifying any specific proposed exclusions for the designation of critical habitat for Casey's June beetle.

Economics

Under section 4(b)(2) of the Act, we must also consider economic impacts. We are preparing an analysis of the economic impacts of this proposed designation of critical habitat for Casey's June beetle. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov*, or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section). We may exclude areas from the final rule based on the information in the economic analysis.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are obtaining the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our proposed rule is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed rule.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to the person named in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review-Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant and has not reviewed this proposed rule under

Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

(1) 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.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

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

At this time, we lack the available economic information necessary for the areas being proposed to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. The draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce its availability in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

(1) This critical habitat designation will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not expect this critical habitat designation to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, as we conduct our economic analysis for the proposed critical habitat designation, we will further evaluate this issue and revise this assessment if appropriate.

Takings – Executive Order 12630

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for Casey's June beetle in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for Casey's June beetle does not pose significant takings implications for lands within or affected by the proposed designation.

Federalism – Executive Order 13132

In accordance with E.O. 13132 (Federalism), the proposed critical habitat designation does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of

the habitat necessary to the conservation of Casey's June beetle are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform – Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), it has been determined that the proposed critical habitat designation does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed critical habitat in accordance with the provisions of the Act. This proposed critical habitat designation uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of Casey's June beetle.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995. The rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et. seq.)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We identified tribal lands that meet the definition of critical habitat for Casey's June beetle, and have included them in this proposal. In a letter to the Carlsbad Fish and Wildlife Office dated October 28, 2008, the tribe stated that they have ''decided to remove Casey's June beetle from the list of species for which it is seeking take authority under its Tribal Habitat Conservation'' plan. The Aqua Caliente Band of Cahuilla Indians Tribe stated they are deferring to the Service to allow ''the Service to take the lead in addressing how to effectively conserve and protect this species'' (ACBCI 2008, p. 1). In discussions regarding preparation of our final permit decision documents for the HCP, we asked the tribe to reconsider their decision, and we continue to work with them to address the Casey's June beetle and other species impacted by land development activities on their tribal lands. At this time, we are proposing to designate the tribal lands as critical habitat.

We are requesting public comment on the proposed designation of tribal lands owned by the Agua Caliente Band of Cahuilla Indians in light of Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2). We will continue to coordinate with the tribe during the designation process.

Energy Supply, Distribution, or Use – Executive Order 13211

E.O. 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. Because there are no energy or distribution facilities within the area proposed as critical habitat, we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available on *http://www.regulations.gov* and upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this notice is staff from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) add an entry for ''Beetle, Casey's June'' in alphabetical order under ''INSECTS,'' to the List of Threatened and Endangered Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * * * *							
INSECTS							
* * * * * * *							
Beetle, Casey's June	*Dinacoma caseyi*	U.S.A. (CA)	Entire	E		17.95(d)	NA
* * * * * * *							

3. In § 17.95, amend paragraph (d) by adding an entry for ''Casey's June beetle (*Dinacoma caseyi*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Insects.*

* * * * *

Casey's June Beetle (*Dinacoma caseyi*)

(1) The critical habitat unit is depicted for Riverside County in California on the map below.

(2) Within this area, the primary constituent elements of critical habitat for Casey's June beetle are the habitat components that provide:

(a) Soils (regardless of disturbance status) of the Carsitas (CdC) gravelly sand soil series, soils of Riverwash (RA) and Carsitas cobbly sand (ChC) series adjacent and contiguous with CdC soil, and small inclusions of Myoma (MaB) and Coachella (CpA) fine sands adjacent to CdC soil, at or below 640 ft (195 m) in elevation associated with washes and alluvial fans deposited on 0 to 9 percent slopes providing space for population growth and reproduction, moisture, and food sources.

(b) Intact, native Sonoran (Coloradan) desert scrub vegetation and native desert wash vegetation that provide shelter and food for the species.

(3) Critical habitat does not include lands covered by man-made structures, such as buildings, aqueducts, airports, and roads, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) *Critical habitat map unit.* Data layers defining the map unit were created on a base of USGS 7.5' quadrangles, and the critical habitat unit was then mapped using Universal Transverse Mercator (UTM) coordinates zone 11, North American Datum (NAD) 1983 coordinates.

(5) *Note*: Map of critical habitat for Casey's June beetle follows:

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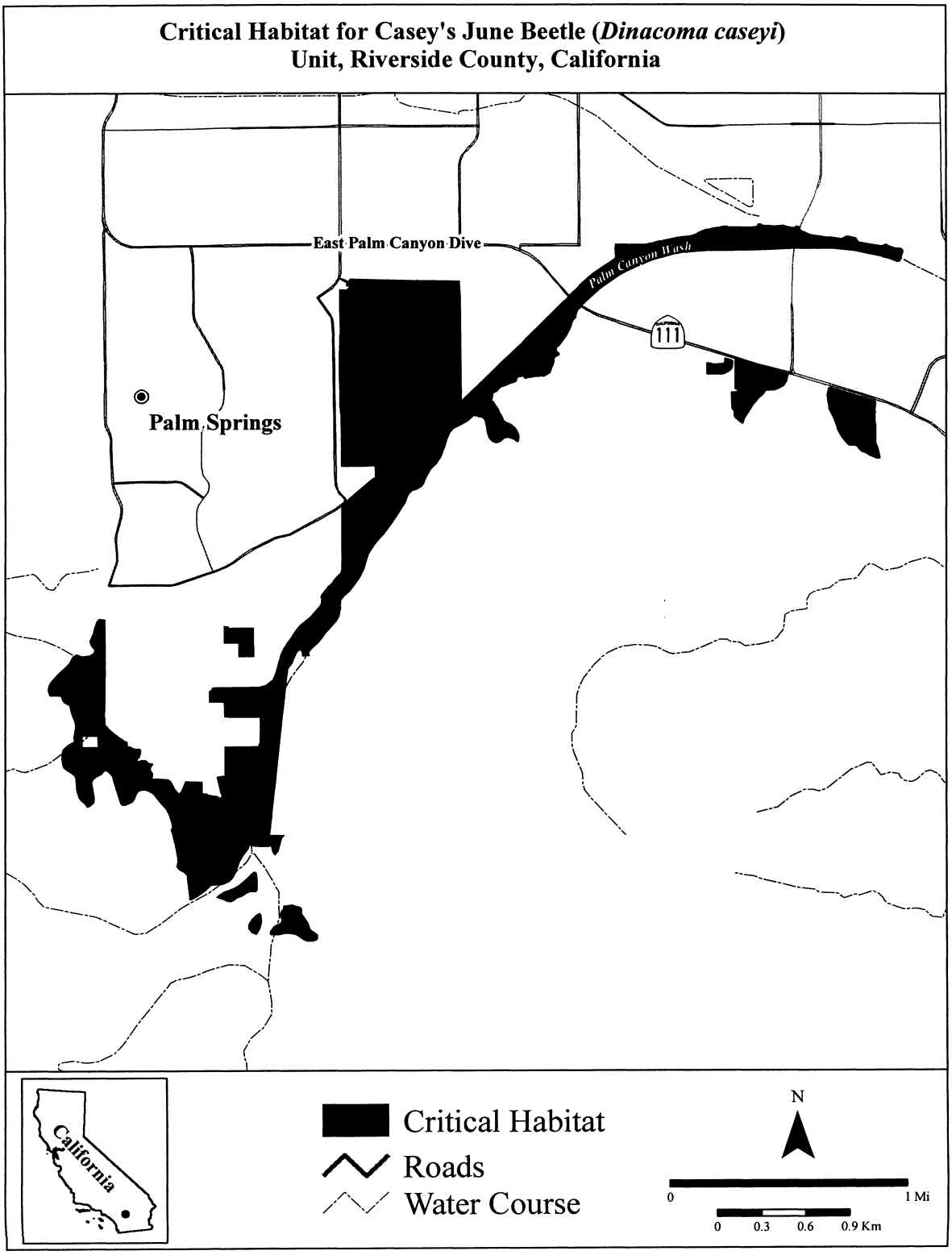

(6) [Reserved for textual description of unit.]

* * * * *

Dated: June 19, 2009

Jane Lyder,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–16282 Filed 7–8–09; 8:45 am]

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Notices

Federal Register

Vol. 74, No. 130

Thursday, July 9, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Missouri River Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Helena National Forest's Missouri River (formerly called the Lewis & Clark County Resource Advisory Committee) Resource Advisory Committee (RAC) will meet on Wednesday, July 29, 2009, from 6 p.m. until 8 p.m., in Helena, Montana. The purpose of the meeting is to conduct welcomes and introductions, discuss the status of the RAC charter and committee membership vacancies, review and discuss project proposals, make project approval and funding decisions, set a next meeting date and receive public comment on the meeting subjects and proceedings.

DATES: Wednesday, July 29, 2009, from 6 p.m. until 8 p.m.

ADDRESSES: The meeting will be held at the USDA–Helena Ranger District office located at 2001 Poplar, Helena, Montana 59601 (MT 59601).

FOR FURTHER INFORMATION CONTACT: Kathy Bushnell, Committee Coordinator, Helena National Forest, 2880 Skyway Drive, Helena, Montana 59602 Phone: 406–495–3747; E-mail: *kbushnell@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and introductions; (2) review and approve June meeting minutes; (3) briefly update committee on RAC charter and membership nomination process; (4) review, discuss and approve projects and funding; (5) set next meeting purpose, location, and date; (6) and receive public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time. *Reminder:* The Lewis & Clark County RAC recently expanded to include Broadwater County and renamed itself the Missouri River RAC to reflect the larger geographic area the committee now represents.

Dated: June 30, 2009.

Duane Harp,

Designated Federal Official.

[FR Doc. E9–16147 Filed 7–8–09; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing meeting and a planning meeting of the Connecticut Advisory Committee to the Commission will convene at 10:30 a.m. on Thursday, July 23, 2009 at the University of Connecticut, School of Law, Faculty Lounge, 55 Elizabeth Street, Hartford, Connecticut 06105. The purpose of the briefing meeting is to hear about anti-bias in the state. The purpose of the planning meeting is to plan a briefing on high school graduation rates.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by August 21, 2009. The address is Eastern Regional Office, 624 9th St., NW., Washington, DC 20425. Persons wishing to email their comments, or who desire additional information should contact Alfreda Greene, Secretary, at 202–376–7533 or by e-mail to: *ero@usccr.gov.*

Hearing-impaired persons who will attend the meetings and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meetings.

Records generated from these meetings may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 6, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–16259 Filed 7–8–09; 8:45 am]

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DEPARTMENT OF COMMERCE

[Docket No. 0906221081–91081–01]

RIN 0660–XA10

National Environmental Policy Act—Categorical Exclusions covering the Broadband Technology Opportunity Program (BTOP)

AGENCY: U.S. Department of Commerce, National Telecommunications and Information Administration.

ACTION: Notice and request for comments.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce (DOC) is adopting the following Categorical Exclusions (CEs) covering the Broadband Technology Opportunity Program (BTOP). The CEs would better align NTIA implementation of the Council for Environmental Quality (CEQ) National Environmental Policy Act regulations by providing for the efficient and timely environmental review of specific American Recovery and Reinvestment Act (ARRA) job preservation actions for BTOP. Although NTIA adopts these CE's as of the date of this notice, NTIA welcomes comments from the public on the appropriateness or scope of the CE's, and will consider whether any CE's should be revised based on comments received.

DATES: This Notice is immediately effective upon publication. All comments will be reviewed and considered to determine whether there is a need for potential amendment to the CEs. Comments on the list of categorical exclusions must be received by August 10, 2009 to ensure consideration prior to

implementation of the program. Late comments will be considered to the extent practicable.

ADDRESSES: All comments should be addressed to Office of Program Planning and Integration, National Oceanic and Atmospheric Administration, *Attn.:* Steve Kokkinakis, SSMC3—Room 15723, 1315 East-West Highway, Silver Spring, Maryland 20910. Comments may be sent by mail or hand-delivered to the above-listed address Monday—Friday between the hours of 9 a.m. and 4:30 p.m. Comments may also be sent by electronic mail to the following Internet address: *Strategic.planning@noaa.gov.*

The Administrative Record for the NTIA Broadband Technology Opportunity Program for the categorical exclusions is available at: http://www.nepa.noaa.gov/procedures.html under ''NTIA Broadband Technology Opportunity Program Categorical Exclusions and Administrative Record''. Written requests for a hard copy of the ''NTIA Broadband Technology Opportunity Program Categorical Exclusions and Administrative Record'' should be submitted to: Steve Kokkinakis, National Oceanic and Atmospheric Administration, Office of Program Planning & Integration, SSMC3, Room 15723, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: For further information contact: Steve Kokkinakis, National Oceanic and Atmospheric Administration, Office of Program Planning & Integration, SSMC3, Room 15723, 1315 East-West Highway, Silver Spring, MD 20910, phone: 301–713–1622 x189.

SUPPLEMENTARY INFORMATION:

I. National Environmental Policy Act (NEPA)

NEPA requires that Federal agencies prepare environmental impact statements for major Federal actions that may ''significantly affect the quality of the human environment.'' NEPA requirements apply to any federal project, decision, or action, including grants that might have an impact on the quality of the human environment. NEPA also established CEQ to provide guidance to federal agencies and to issue regulations implementing the procedural provisions of NEPA. Among other considerations, the CEQ regulations require Federal agencies to adopt their own implementing procedures to supplement the CEQ regulations, and to establish and use ''categorical exclusions'' to define categories of actions that do not individually or cumulatively have a significant effect on the human environment. These particular actions, therefore, do not require preparation of an environmental assessment or environmental impact statement as required by NEPA.

On May 26, 2008, the Department of Commerce published a notice in the **Federal Register** that solicited public comments on Department-wide CEs (74 FR 24782). The public comment period ended on June 15, 2009. Some of the CE's outlined in that notice address some aspects of BTOP, however, due to the similarity in project type, it was determined after consultation with the CEQ that the existing NEPA requirements of the US Department of Agriculture, Rural Utilities Services' (RUS) Telecommunication Program would serve as a better template for BTOP and the RUS Broadband Initiatives Program (BIP). Furthermore, the similarities between the two programs suggested that an alignment of the requirements documents and applicable CEs would streamline the application process and reduce confusion between similar applicants and future BTOP decisions.

Accordingly, NTIA in consultation with CEQ determined that it is in the best interest of the public to adopt the CEs effective immediately to ensure the efficient and timely environmental review of the BTOP ARRA job preservation actions. This notice supplements CEQ regulations and provides guidance to NTIA employees regarding procedural requirements for the application of NEPA provisions to the ARRA-funded BTOP grants.

II. Broadband Technology Opportunity Program (BTOP)

The American Recovery and Reinvestment Act of 2009, Public Law 111–5, (ARRA) authorized $4.37B for BTOP to accelerate broadband deployment to unserved and underserved areas, of which not less than $250M shall be available to increase sustained broadband adoption, not less than $200M to upgrade technology and capacity at public computing centers. Also, up to $350M is provided to develop and maintain a broadband inventory map of current U.S. broadband deployment. BTOP grants will provide funding to: (1) Acquire equipment, hardware and software, networking capability, and digital network technology for broadband services; (2) ensure access to broadband service by community organizations; (3) facilitate access to broadband service by low-income, aged and other vulnerable populations in order to provide educational and employment opportunities; and (4) construct and deploy broadband service related facilities and infrastructure.

Both NTIA and RUS will be funding similar projects entailing the construction and expansion of telecommunications infrastructure as described below:

- *Buried Plant/Facilities:* The construction of buried outside plant facilities generally consists of plowing or trenching cable at a depth of approximately 36″ to 48″ alongside the road usually in a utility corridor or within public road rights-of-way.
- *Aerial Plant/Facilities:* The construction of aerial facilities is either done by installing new poles and hanging cables on it on public rights-of-way or by installing cables using existing poles lines from a third party.
- *Buildings:* Building construction generally consists of installing small pre-fabricated buildings that are used for housing electronic equipment. These buildings are usually placed on concrete pads and generally require very minimal disturbance of the land. On extremely rare occasions, funds are also used for constructing a headquarters and/or warehouse building. The amount of land disturbance resulting from this type of construction can vary depending on the size of the proposed building.
- *Towers:* Tower construction is typically done by installing a concrete foundation and building the tower on it. The heights of the towers vary from 120 feet to 400 feet.

Due to the similarity in project type, it was determined after consultation with the CEQ that the NEPA program requirements for BTOP should align with the requirements of the RUS' Telecommunication Program and BIP. For decades, RUS has financed the installation of hundreds of telecommunication systems, including broadband systems across the United States. As a result, RUS has an understanding of the potential environmental impacts from installation of such systems on the environment in a variety of contexts. Furthermore, the similarities between the two programs suggest that an alignment of the requirements documents and applicable CEs would streamline the application process and reduce confusion between similar applicants.

Pursuant to CEQ's regulations (40 CFR 1507.3) RUS codified its environmental policies and procedures in 7 CFR 1794, Environmental Policies and Procedures. These regulations supplement the CEQ procedures and classify agency actions into classes of action, *i.e.,* Categorical Exclusions, Environmental Assessments, and Environmental Impact Statements. Section 1794.3 states that

''[t]he provisions of this part apply to actions by RUS including the approval of financial assistance pursuant to the Electric, Telecommunications, and Water and Waste Programs * * *.'' RUS' and NTIA's federal action is providing financial assistance for BIP and BTOP respectively. Therefore, pursuant to the regulations, prior to the approval of financial assistance, NTIA/RUS must complete the environmental review process established by NEPA, the CEQ procedures and the agency's environmental policies and procedures.

III. Development Process used to Establish BTOP CEs

The list of NTIA BTOP CEs was compiled through an inter-agency effort that included participation from CEQ, RUS, NTIA, DOC's Energy, Safety and Environment Division and the Office of General Counsel, and the NEPA Coordinator of the National Oceanic and Atmospheric Administration. Representatives from these organizations comprised the review panel responsible for determining appropriate CEs for the BTOP program. In light of the time constraints placed on ARRA project funding and the need to establish associated CEs as quickly as possible, it was determined that only CEs that are supported by an adequate Administrative Record would be included in this list. In some cases, Administrative Records have been incorporated from Agencies other than DOC. Also, in those cases where there is a CE developed by another agency that could apply to BTOP, that CE has been included in the list as written with no modification to the text. The CEs have been approved by the DOC Office of General Counsel and the designated Senior Agency Official for NEPA.

Each CE was reviewed and deliberated in concept, coverage, applicability, and wording. The review panel carefully examined the portion of the administrative record associated with each CE to ensure that the exclusion is consistent with the goal of balancing increased administrative efficiency with avoidance of misinterpretations and misapplications of exclusionary language that could lead to non-compliance with NEPA requirements.

The review panel noted that RUS has CE activities that are sufficiently descriptive as to establish for the review panel that those activities were similar in nature, scope, and impact on the human environment as those for BTOP. The NTIA administrative record includes RUS determinations that the potential for environmental impacts of the activities covered by these CEs and based on the agency's experience with these types of activities will not individually or cumulatively create a significant impact on the environment, and therefore do not require additional NEPA analysis and documentation unless extraordinary circumstances exist.

In addition, the review panel recognized that all Federal agencies, with very few exceptions, must meet the same requirements to protect the environment. The review panel determined from their experience in or on behalf of other Federal agencies that the characteristics of the activities performed by BTOP were no different than those performed by RUS. Due to the different review processes, BTOP may require more extensive information from the applicant in the application package. The review panel also determined that RUS' extensive history of granting loans under these types of projects have adequately demonstrated that there are no significant impacts on the human environment.

The panel's conclusions were further supported by the determinations made by other Federal agencies that have established CEs for activities similar in nature, scope and impact to those contemplated for BTOP. The review panel determined from their experience in or on behalf of other Federal agencies that the characteristics of the activities proposed under BTOP were no different than those performed by other Federal agencies. Having determined that each CE met these objectives, the review panel ultimately concluded that the actions contemplated by these exclusions encompassed activities have no inherent potential for an individual or cumulative significant impact on the human environment.

Notwithstanding these conclusions, the review panel noted that all projects involving a major federal action will be subject to evaluation by the joint BTOP/BIP NEPA Environmental Questionnaire. Any project that receives a ''YES'' answer in any category is not permitted to utilize the CE without further consultation with BTOP/RUS and additional NEPA documentation may be required to prepare an Environmental Assessment or an Environmental Impact Statement. Moreover, the National Historic Preservation Act requirements, if appropriate, still apply to all projects. The use of these CEs does not constitute a release from Section 106 consultation requirements.

IV. BTOP Categorical Exclusions

A. *General administrative/ministerial actions.* Certain types of actions undertaken by BTOP will not normally require the completion of the BTOP/BIP NEPA Environmental Questionnaire (EQ). These categorically excluded proposals are:

A.1: The issuance of bulletins and information publications that do not concern environmental matters or substantial facility design, construction, or maintenance practices.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions and Environmental Assessments from the U.S. Department of Agriculture, U.S. Department of Homeland Security, Federal Emergency Management Agency, U.S. Coast Guard, and the U.S. Air Force.

A.2: Procurement activities related to the operation of BTOP.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified categorical exclusions from U.S. Department of Agriculture, U.S. Department of Homeland Security, Federal Emergency Management Agency, U.S. Coast Guard, U.S. Air Force, U.S. Navy, General Services Administration, and the U.S. Department of Interior.

A.3: Personnel and Administrative Actions.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture, U.S. Department of Homeland Security, U.S. Coast Guard, U.S. Department of the Interior, U.S. Army and the U.S. Air Force.

A.4: Purchase of existing facilities or a portion thereof where use or operation will remain unchanged.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture, U.S. Department of Homeland Security, and The General Services Administration.

A.5: Internal modifications or equipment additions (*e.g.,* computer facilities, relocating interior walls) to structures or buildings.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of

Agriculture, U.S. Department of Homeland Security, and the Federal Emergency Management Agency.

B. *Broadband Activities.* Applications for financial assistance for the types of proposed actions covered in this section require the submission of an EQ. Applicants shall sufficiently identify all proposed actions so their proper classification can be determined. Detailed descriptions shall be provided for each proposal noted in this section. BTOP may require additional information in addition to a description of what is being proposed, to ensure that proposals are properly classified. Proposed actions within this classification are:

B.1: Construction of buried and aerial telecommunications lines, cables, and related facilities.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture, U.S. Department of the Interior, and the U.S. Department of Energy.

B.2: Construction of microwave facilities involving no more than five acres (2 hectares) of physical disturbance at any single site.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions and Findings of No Significant Impact on Environmental Assessments from the U.S. Department of Agriculture, the National Telecommunications and Information Administration, and the U.S. Department of Energy.

B.3: Construction of cooperative or company headquarters, maintenance facilities, or other buildings involving no more than 10 acres (4 hectares) of physical disturbance or fenced property.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions and Findings of No Significant Impact on Environmental Assessments from the U.S. Department of Agriculture, the U.S. Coast Guard, The U.S. Navy, the Economic Development Administration, and the National Oceanic and Atmospheric Administration.

B.4: Changes to existing transmission lines that involve less than 20 percent pole replacement, or the complete rebuilding of existing distribution lines within the same right of way. Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.5: Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to buildings or small structures requiring one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property.

This categorical exclusion is supported by a long-standing categorical exclusion and administrative record. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture, Rural Utilities Services. Based upon the extensive history of RUS application of these Categorical Exclusions and the lack of extraordinary circumstances associated with their application, this legacy Categorical Exclusion is determined to be applicable to BTOP projects.

B.6: Construction of substations, switching stations, or telecommunications switching or multiplexing centers requiring no more than five acres (2 hectares) of new physically disturbed land or fenced property.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.7: Changes or additions to microwave sites, substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare).

This categorical exclusion is supported by a long-standing categorical exclusion and administrative record from the U.S. Department of Agriculture, Rural Utilities Services Based upon the extensive history of RUS application of these Categorical Exclusions and the lack of extraordinary circumstances associated with their application, these legacy Categorical Exclusions are determined to be applicable to BTOP projects and appropriate justification for this Categorical Exclusion.

B.8: Ordinary maintenance or replacement of equipment or small structures (*e.g.* line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites).

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.9: The construction of telecommunications facilities within the fenced area of an existing substation, switching station, or within the boundaries of an existing electric generating facility site.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.10: Testing or monitoring work (*e.g.,* soil or rock core sampling, monitoring wells, air monitoring).

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.11: Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.12: Rebuilding of power lines or telecommunications cables where road or highway reconstruction requires the applicant to relocate the lines either within or adjacent to the new road or highway easement or right-of-way.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.13: Phase or voltage conversions, reconductoring or upgrading of existing

electric distribution lines, or telecommunication facilities.

This categorical exclusion is supported by long-standing categorical exclusions and administrative records. In particular, the review panel identified the legacy categorical exclusions from the U.S. Department of Agriculture and the U.S. Department of Energy.

B.14: Construction of standby diesel electric generators (one megawatt or less total capacity) and associated facilities, for the primary purpose of providing emergency power, at an existing applicant headquarters or district office, telecommunications switching or multiplexing site, or at an industrial, commercial or agricultural facility served by the applicant.

This categorical exclusion is supported by long-standing categorical exclusion and administrative record from the U.S. Department of Agriculture Rural Utilities Services. Based upon the extensive history of RUS application of these Categorical Exclusions and the lack of extraordinary circumstances associated with their application, this legacy Categorical Exclusion is determined to be applicable to BTOP projects.

The public is invited to submit comments on both the NTIA Broadband Technology Opportunity Program Categorical Exclusions and Administrative Record. See the **ADDRESSES** for instructions on submitting comments. The Administrative Record for the NTIA BTOP CEs is available at *http://www.nepa.noaa.gov/procedures.html* under ''NTIA Broadband Technology Opportunity Program Categorical Exclusions and Administrative Record.'' Hard copies may be obtained by contacting Steve Kokkinakis, as provided above.

Paperwork Reduction Act

This notice does not contain collection-of-information requirements subject to the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Notwithstanding any other provision of law, no person is required 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 PRA unless that collection of information displays a currently valid OMB control number.

A Paperwork package for the associated ''BTOP/BIP NEPA Environmental Questionnaire'' referenced in Section IV of the Supplementary Information has been submitted to the Office of Management and Budget (OMB) for review and approval. A Notice of Action in the **Federal Register** at the conclusion of OMB's review of the information collection.

Environmental Impact

This rule supplements CEQ regulations and Department of Commerce NEPA procedures and provides guidance to NTIA employees regarding procedural requirements for the application of NEPA provisions to BTOP decisions including grants and funding applicant actions. CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3

Dated: June 23, 2009.

Paul N. Doremus,

NOAA NEPA Coordinator, Office of Program Planning and Integration.

[FR Doc. E9–16151 Filed 7–8–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–813]

Polyethylene Retail Carrier Bags From Malaysia: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from an interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Malaysia. The review covers one manufacturer/exporter. The period of review is August 1, 2007, through July 31, 2008. We have preliminarily determined that sales have been made below normal value by the company subject to this review. We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument a statement of each issue and a brief summary of the argument.

DATES: *Effective Date:* July 9, 2009.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Yang Jin Chun, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0180 and (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, we published in the **Federal Register** the antidumping duty order on PRCBs from Malaysia. See *Antidumping Duty Order: Polyethylene Retail Carrier Bags From Malaysia,* 69 FR 48203 (August 9, 2004). On August 1, 2008, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on PRCBs from Malaysia. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 73 FR 44966 (August 1, 2008). Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners), requested an administrative review of the antidumping duty order on PRCBs from Malaysia with respect to Euro Plastics Malaysia Sdn. Bhd. (Euro Plastics) on September 2, 2008. On September 30, 2008, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of the order. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 73 FR 56795 (September 30, 2008). We are conducting the administrative review of the order in accordance with section 751(a) of the Act. The period of review is August 1, 2007, through July 31, 2008.

Scope of the Order

The merchandise subject to the order is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trash-can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.00.85 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Duty-Absorption Determination

On October 30, 2008, the petitioners requested that the Department determine whether antidumping duties have been absorbed by Euro Plastics pursuant to 19 CFR 351.213(j). In making a duty-absorption determination, the Department will determine whether antidumping duties have been absorbed by a producer or exporter subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such producer or exporter. See section 751(a)(4) of the Act and 19 CFR 351.213(j). Because we published the order in 2004 and this administrative review covers all or part of a period falling between the third or fourth anniversary of the publication of an antidumping duty order, under 19 CFR 351.213(j), the petitioners may request the Department to determine whether Euro Plastics absorbed antidumping duties. Because Euro Plastics made constructed export-price (CEP) sales to the United States during the period of review, a duty-absorption determination is relevant with respect to Euro Plastics CEP sales. The Department presumes that a respondent under the allegation of duty absorption will absorb the duties for its U.S. sales that have been made at prices below normal value. The respondent has the burden to rebut the presumption of duty absorption. See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349 (March 17, 2009), and the accompanying Issues and Decision Memorandum (I&D Memo) at Comment 5, Section C.

The burden is on the respondent to demonstrate that it did not absorb antidumping duties because the respondent is the only party to the review able to provide such evidence. In this review, Euro Plastics is the party that possesses the information relevant to duty absorption. In our May 21, 2009, supplemental questionnaire, we asked Euro Plastics to respond to the petitioners' allegation of duty absorption. Euro Plastics did not provide information to rebut the allegation. Therefore, we preliminarily find that Euro Plastics has absorbed duties for the CEP sales it made during the period of review.

Export Price and Constructed Export Price

To determine whether sales of PRCBs from Malaysia to the United States were made at prices less than normal value, we compared the U.S. price to the normal value. For the price of sales by Euro Plastics to the United States, we used export price (EP) and CEP as defined in sections 772(a) and (b) of the Act, respectively. We calculated EP and CEP for Euro Plastics based on the prices of the subject merchandise sold to unaffiliated customers in, or for exportation to, the United States. See section 772(c) of the Act. We made deductions for discounts as appropriate. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. Consistent with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities that occurred in the United States. These selling expenses include direct and indirect selling expenses. In accordance with sections 772(d)(3) and (f) of the Act, we also deducted the profit allocated to expenses deducted under section 772(d)(1) of the Act. In accordance with section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

For certain U.S. sales, Euro Plastics reported shipment dates which preceded the date of invoice. For these sales, Euro Plastics reported the date of invoice as the date of sale. In accordance with 19 CFR 351.401(i), the Department may use a date other than the date of invoice as the date of sale if ''a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' It is the Department's normal practice to use the earlier of the shipment date or the date of invoice as the date of sale. See, *e.g., Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 18074, 18079–80 (April 10, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part,* 72 FR 4486 (January 31, 2007); see also *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part,* 72 FR 62630 (November 6, 2007), and the accompanying I&D Memo at Comment 2. Consistent with our normal practice, for all U.S. sales Euro Plastics reported, we used the earlier of the date of invoice or the shipment date as the date of sale.

Comparison-Market Sales

In order to determine whether there was a sufficient volume of sales in the comparison market to serve as a viable basis for calculating the normal value, we compared the volume of home-market sales of the foreign like product to the volume of the U.S. sales of the subject merchandise in accordance with section 773(a) of the Act. Based on this comparison of the aggregate quantities of sales in the comparison market (*i.e.,* Malaysia) and United States and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of the foreign like product sold by Euro Plastics in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a)(1) of the Act. Thus, we determined that the home market was viable during the period of review. See section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value for the respondent on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual

commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the U.S. sales.

Cost of Production

In accordance with section 773(b) of the Act, we disregarded below-cost sales in the last completed segment of this proceeding with regard to Euro Plastics. See *Polyethylene Retail Carrier Bags from Malaysia: Final Results of Antidumping Duty Administrative Review,* 72 FR 44825, 44826 (August 9, 2007). Therefore, for this review, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, we conducted a COP investigation of sales in the home market by Euro Plastics.

In accordance with section 773(b)(3) of the Act, we calculated COP for Euro Plastics based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the comparison-market sales and COP information provided by the respondent in its questionnaire responses and revised the COP data in several ways.

We revised the reported direct material cost to reflect a single period-of-review average cost for each resin type identified in the physical characteristics we use to determine identical and similar merchandise (*i.e.,* high-density resin, low-density resin, and linear low-density resin). For each resin type we calculated an average per-unit resin amount and applied it to each product identified by control number based on the actual usage. See the July 2, 2009, memorandum to Neal M. Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Euro Plastics Malaysia Sdn. Bhd.''

In the normal course of business, Euro Plastics explained in its response, it does not weigh finished products. Production quantities are recorded in its books and records by cartons, and Euro Plastics uses a standard conversion formula to calculate the quantity of bags in kilograms. Euro Plastics weighs the finished products only before shipping. Euro Plastics reported two different cost databases. In one cost database, Euro Plastics used production quantities calculated as the actual weight of shipped products adjusted for the changes in standard inventory weights. Euro Plastics based the second database on production quantities by cartons converted to kilograms using the standard conversion formula. For the preliminary results, we have used the actual-weight database because it represents most closely the actual quantity of products produced during the period of review.

After calculating the COP, we tested whether comparison-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. See section 773(b)(2) of the Act. In order to determine whether the sales were made at below-cost prices, we compared model-specific COPs to the reported comparison-market prices less any applicable movement charges, discounts, and rebates. See section 773(b) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the period of review were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined preliminarily that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the period of review were at prices less than the COP, we disregarded the below-cost sales because we determined preliminarily that they were made in substantial quantities within an extended period of time, pursuant to sections 773(b)(2)(B) and (C) of the Act. Based on comparisons of prices to weighted-average COPs for the period of review, we determined preliminarily that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. See Euro Plastics Preliminary Results Analysis Memorandum dated July 2, 2009. Based on this test, we disregarded the respondent's below-cost sales and used the remaining sales as the basis for determining normal value in accordance with section 773(b)(1) of the Act.

Euro Plastics relied on its 2007 financial statements to calculate the COP because its audited 2008 financial statements were not yet available. The period of review covers five months in 2007 and seven months in 2008; therefore, we requested that Euro Plastics recalculate its general and administrative (G&A) expense and financial-expense rates using the audited 2008 financial statements. Euro Plastics stated that, as soon as the audited 2008 financial statements become available, the company will resubmit the calculation of the G&A and financial-expense rates. Accordingly, for the final results, we intend to use G&A and financial-expense rates based on the audited 2008 financial statements.

Model-Matching Methodology

In making our comparisons of U.S. sales with sales of the foreign like product in the home market, we used the following methodology. If an identical comparison-market model with identical physical characteristics as listed below was reported, we made comparisons to weighted-average comparison-market prices that were based on all sales which passed the COP test of the identical product during a contemporaneous month. If there were no contemporaneous sales of an identical model, we identified the most similar comparison-market model. To determine the most similar model, we matched the foreign like product based on the physical characteristics reported by the respondent in the following order of importance: (1) Quality, (2) bag type, (3) length, (4) width, (5) gusset, (6) thickness, (7) percentage of high-density polyethylene resin, (8) percentage of low-density polyethylene resin, (9) percentage of low linear-density polyethylene resin, (10) percentage of color concentrate, (11) percentage of ink coverage, (12) number of ink colors, (13) number of sides printed.

Normal Value

We based normal value for Euro Plastics on the prices of the foreign like products it sold to its home-market customers. We made adjustments for differences in packing expense in accordance with section 773(a)(6)(A) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses incurred on home-market sales from, and adding U.S. direct selling expenses to, normal value. For comparisons to CEP, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses from normal value. In

accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on sales at the same level of trade as the EP or the CEP. See the ''Level of Trade'' section below.

We did not deduct from the calculation of normal value certain taxes and inland-freight expenses which Euro Plastics claimed for its home-market sales. In its home-market sales database, Euro Plastics reported a variable named TAXH. Euro Plastics explained that TAXH contains combined amounts for import duties and sales taxes that Euro Plastics incurred on its home-market sales. Because the statute allows for deduction of any taxes imposed directly upon the foreign like product which have not been collected on the subject merchandise in accordance with section 773(6)(B)(iii) of the Act but the statute does not allow such a deduction for import duties, we requested Euro Plastics to report the sales tax separately from the import duties. In response to our request, Euro Plastics reported that the amount under TAXH is a combination of import duties, sales taxes, and transporter charges but the company did not report the sales tax separately under a separate variable as we had requested. In addition, Euro Plastics did not provide sufficient supporting documentation to justify the deduction of TAXH from the gross unit price in its claim for amounts under TAXH.

Euro Plastics calculated its inland-freight expense from the factory to the place of delivery based on a period-of-review average. Euro Plastics explained that, because its freight carriers made multiple stops during their delivery runs, it is not feasible to calculate this expense in a more specific manner. Record evidence indicates, however, that Euro Plastics could employ a more specific methodology to calculate this expense but Euro Plastics did not do so.

A respondent seeking a decision in its favor has the burden to produce and present information to support its claim. See 19 CFR 351.401(b)(c). The burden of evidentiary production belongs to ''the party in possession of the necessary information.'' See, *e.g., Zenith Elecs. Corp.* v. *United States,* 988 F.2d 1573, 1583 (CAFC 1993). A respondent has the burden to present the information in the first instance with its request for a decision in its favor. See *NTN Bearing Corp. of Am.* v. *United States,* 997 F.2d 1453, 1458 (CAFC 1993). Because Euro Plastics did not respond with sufficient information that we requested with respect to its claims for deductions in its favor, we have denied the claims by Euro Plastics for adjustments to normal value for the amounts reported under TAXH and the inland-freight expense at issue. See Euro Plastics Preliminary Analysis Memorandum dated July 2, 2009, for more detail.

Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no usable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, U.S. packing expenses, and profit in the calculation of constructed value. We made the same adjustment to constructed value concerning resin costs as outlined in the ''Cost of Production'' section above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Euro Plastics in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

We made adjustments to constructed value in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for circumstance-of-sale differences. For comparisons to EP, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses from, and adding U.S. direct selling expenses to, constructed value. For comparisons to CEP, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses from constructed value. We calculated constructed value at the same level of trade as the EP or CEP.

Level of Trade

Section 773(a)(1)(B)(i) of the Act provides that, to the extent practicable, the Department will calculate normal value based on sales at the same level of trade as the EP and CEP. The normal-value level of trade is that of the starting-price sales in the comparison market before any adjustments. See section 773(a)(1)(B)(i) of the Act. Euro Plastics reported identical selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison and U.S. markets. We have reviewed the selling functions Euro Plastics reported including sales forecasting, order input/processing, direct sales personnel, sales/marketing support, freight and delivery, and packing. We examined them in relation to a number of expenses Euro Plastics reported in its responses and found no discrepancies. Therefore, we determined that Euro Plastics made all comparison-market sales at one level of trade, all U.S. sales at one level of trade, and all comparison-market sales at the same level of trade as the CEP sales and EP sales. See sections 773(a)(1)(B)(i) and 773(a)(7) of the Act. See Euro Plastics Preliminary Analysis Memorandum dated July 2, 2009, for more detail.

Euro Plastics claimed a CEP offset in this review. In accordance with 19 CFR 351.412(f)(1), the Department will grant a CEP offset if normal value is compared to CEP price, normal value is at a more advanced level of trade than the CEP level of trade, and information on the record does not provide a basis to determine whether the difference in level of trade affects price comparability. Because we find that the home-market level of trade is not more advanced than the CEP level of trade and because Euro Plastics did not demonstrate that there is a difference in level of trade between the home-market and CEP sales, we have denied the claim by Euro Plastics for a CEP offset to normal value for these preliminary results. See the Euro Plastics Preliminary Analysis Memorandum dated July 2, 2009, for more detail.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the weighted-average dumping margin on PRCBs from Malaysia for the period August 1, 2007, through July 31, 2008, for Euro Plastics is 43.07 percent.

Disclosure and Public Hearing

We will disclose the calculations used in our analysis to parties to this review within five days of the date of publication of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) The party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed.

Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. See 19 CFR 351.310(c). Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after

the time limit for filing the case briefs or comments. See 19 CFR 351.309(d)(1) and 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2). The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs not later than 120 days after the date of publication of this notice. See section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. With respect to EP sales, we divided the total dumping duties (calculated as the difference between normal value and EP) for each importer or customer by the total number of units Euro Plastics sold to that importer or customer. We will direct CBP to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries during the review period.

For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries during the review period. See 19 CFR 351.212(b).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the period of review produced by Euro Plastics for which it did not know its 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).

We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of PRCBs from Malaysia entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for Euro Plastics will be the rate established in the final results of review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value 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; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 84.94 percent, as established in the less-than-fair-value investigation, which is the all-others-rate for this proceeding. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importer

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–16283 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: July 2, 2009

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–1757.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on polyethylene retail carrier bags from the People's Republic of China for the period August 1, 2007, through July 31, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56795 (September 30, 2008). On April 16, 2009, we extended the due date for the completion of the preliminary results of review by 60 days. See *Polyethylene Retail Carrier Bags From Malaysia, Thailand, and the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews*, 74 FR 17633 (April 16, 2009). Currently, the preliminary results of review are due no later than July 2, 2009.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of administrative review by the current deadline of July 2, 2009, for several reasons. Specifically, the Department has granted the respondent several extensions to respond to the original and supplemental questionnaires. Accordingly, the Department needs additional time to review and analyze the responses submitted by the respondent. Further, the Department requires additional time to analyze corrected data and verification findings. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the preliminary results of this review for an additional 20 days until July 22, 2009.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 2, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–16292 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Polyethylene Retail Carrier Bags from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: July 2, 2009

FOR FURTHER INFORMATION CONTACT: Kristin Case, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3174.

Background

At the request of interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand for the period August 1, 2007, through July 31, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56795, 56796 (September 30, 2008). On April 16, 2009, we extended the due date for the completion of the preliminary results of review by 60 days. See *Polyethylene Retail Carrier Bags From Malaysia, Thailand, and the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews*, 74 FR 17633 (April 16, 2009). Currently, the preliminary results of review are due no later than July 2, 2009.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of administrative review by the current deadline of July 2, 2009, for several reasons. Specifically, the Department has granted a respondent several extensions to respond to the original and supplemental questionnaires. Accordingly, the Department needs additional time to review and analyze the responses submitted by the respondent. Further, the Department needs additional time to analyze minor corrections and verification findings. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the preliminary results of this review for an additional 32 days until August 3, 2009.

This notice is published in accordance with sections 751(a)(3)(A) and 777 (i)(1) of the Act.

Dated: July 2, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–16285 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* July 9, 2009.

SUMMARY: The Department of Commerce (''Department'') is currently conducting the 2007/2008 administrative review of the antidumping duty order on silicon metal from the People's Republic of China (''PRC''). The period of review (''POR'') is June 1, 2007, through May 31, 2008. We have preliminarily determined that Shanghai Jinneng International Trade Co., Ltd. (''Shanghai Jinneng''), and Jiangxi Gangyuan Silicon Industry Company, Ltd. (''Jiangxi Gangyuan'') made sales to the United States of the subject merchandise at prices below normal value. Furthermore, we are preliminarily rescinding the review with respect to Datong Jinneng Industrial Silicon Co., Inc. (''Datong Jinneng''); S. AU Trade Co., Ltd. (''AU Trade''), and Lao Silicon Co., Ltd. (''Lao Silicon''). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise from the POR.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Bobby Wong, Susan Pulongbarit, or Jerry Huang, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0409; (202) 482–4031 and (202) 482–4047, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request from Petitioner, Globe Metallurgical Inc. (''Petitioner''), in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on silicon metal from the PRC of five companies: AU Trade, Datong Jinneng, Jiangxi

Gangyuan, Lao Silicon, and Shanghai Jinneng (collectively, ''Respondents''). On July 30, 2008, the Department published a notice of initiation of an antidumping duty administrative review on silicon metal from the PRC, in which it initiated a review of these Respondents. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review* (''Initiation Notice''), 73 FR 44220 (July 30, 2008).

On September 23, 2008, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (''Act''), the Department selected Jiangxi Gangyuan and Shanghai Jinneng for individual examination in this review since they were the two largest exporters by volume during the POR based on CBP data of U.S. imports. *See* Memorandum to James C. Doyle, Director, Office 9, from Susan Pulongbarit, International Trade Analyst, ''Selection of Respondents for 2007–2008 Antidumping Duty Administrative Review of Silicon Metal from the People's republic of China,'' dated September 23, 2008.

Between October 24, 2008, and April 22, 2009, Jiangxi Gangyuan, Shanghai Jinneng, and Shanghai Jinneng's affiliated producer, Datong Jinneng, responded to the Department's original and supplemental questionnaires. Pursuant to 19 CFR 351.307(b)(iv), the Department conducted verification of Shanghai Jinneng and its affiliated producer, Datong Jinneng, from May 4–8, 2009, and Jiangxi Gangyuan from May 11–14, 2009. *See* Memo to the File through Scot Fullerton, Program Manager, Office 9, Paul Walker, Senior International Trade Analyst and Jerry Huang, International Trade Analyst, ''2007–2008 Administrative Review of Silicon Metal from the People's Republic of China: Verification of Datong Jinneng Industrial Silicon Co., Inc.'' (''Datong Jinneng Verification Report''), dated June 29, 2009; Memo to the File through Scot Fullerton, Program Manager, Office 9, from Paul Walker, Senior International Trade Analyst and Jerry Huang International Trade Analyst, ''2007–2008 Administrative Review of Silicon Metal from the People's Republic of China: Verification of Shanghai Jinneng International Trade Co., Ltd.'' (''Shanghai Jinneng Verification Report''), dated June 29, 2009; and Memo to the File through Scot Fullerton, Program Manager, Office 9, from Susan Pulongbarit, International Trade Analyst, ''2007–2008 Administrative Review of Silicon Metal from the People's Republic of China: Verification of Jiangxi Gangyuan Silicon Industry Company, Ltd.'' (''Jiangxi Gangyuan Verification Report''), dated June 29, 2009.

On June 8, 2009, Petitioner submitted comments containing recommendations regarding the preliminary results. *See* June 8, 2009 letter from Petitioner to Secretary of Commerce, Regarding: Silicon Metal From the People's Republic of China; 2007–08 Administrative Review; Preliminary Results Comments (''Jiangxi Gangyuan and Shanghai Jinneng Preliminary Results Comments''). On June 11, 2009, Jiangxi Gangyuan and Shanghai Jinneng submitted comments containing recommendations regarding the preliminary results. *See* June 11, 2009 letter from Respondents, to Secretary of Commerce, Regarding: Silicon Metal from the People's Republic of China.

Scope of the Order

The product covered by the order is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight, and silicon metal with a higher aluminum content containing between 89 and 96 percent silicon by weight. The subject merchandise is currently classifiable under item numbers 2804.69.10 and 2804.69.50 of the *Harmonized Tariff Schedule of the United States* (''HTSUS'') as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to this order. This order is not limited to silicon metal used only as an alloy agent or in the chemical industry. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''Sparklers'') and accompanying Issues and Decisions Memorandum at Comment 1. In this review, we received an untimely filing of AU Trade's Separate Rate Application on December 2, 2008, after the September 28, 2008 deadline. Consequently, we preliminarily determine that AU Trade will remain part of the PRC-wide entity for the purposes of this review, as the Department did not a conduct a review of its separate rate eligibility.

Preliminary Partial Rescission of 2007/2008 Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that Lao Silicon and Datong Jinneng made no shipments of subject merchandise during the POR of this administrative review. In making this determination, the Department examined PRC silicon metal shipment data maintained by CBP. *See* Letter from the Department of Commerce, ''2007–2008 Administrative Review of the Antidumping Duty Order of Silicon Metal from the People's Republic of China: CBP Data for Respondent Selection,'' dated August 4, 2008. Based on the information obtained from CBP, we found no entries of subject merchandise during the POR exported by Lao Silicon or Datong Jinneng to the United States. The Department also issued no-shipment inquiries to CBP in June 2009 asking CBP to provide any information contrary to our findings of no entries of subject merchandise for merchandise manufactured and shipped by Lao Silicon and Datong Jinneng during the POR. We did not receive any response from CBP, thus indicating that there were no entries of subject merchandise into the United States exported by these companies. *See* Memorandum to The File, from Susan Pulongbarit, International Trade Analyst, AD/CVD Operations, Office 9, regarding 2007–2008 Administrative Review of Silicon Metal from the People's Republic of China: CBP No Shipment Email Inquiries (June 9, 2009). Consequently, as neither company made exports of subject merchandise during the POR, we are preliminarily rescinding the review, in part, with respect to Datong Jinneng and Lao Silicon.[1]

Normal Value Comparisons

To determine whether the respondents' sales of the subject merchandise to the United States were made at prices below normal value, we compared their U.S. sales prices to normal values, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

[1] Although we have preliminarily determined to rescind the review with respect to Datong Jinneng, we will continue to review factors of production (''FOP'') data submitted by the mandatory respondent Shanghai Jinneng, which is Datong Jinneng's affiliated exporter.

U.S. Price

Export Price

For Jiangxi Gangyuan and Shanghai Jinneng, we based U.S. price on export price (''EP'') in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and reliance upon constructed export price (''CEP'') was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States.

Export Tax and Value-Added Tax (''VAT'')

Pursuant to Section 772(c)(2)(B) of the Act, the Department shall reduce the U.S. price by ''the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States * * *.'' As record evidence clearly indicates that both companies reported U.S. sales prices are inclusive of an export tax, we are making deductions to both companies' U.S. sales prices to account for the export tax. See Memorandum to the File through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Jerry Huang, International Trade Analyst, AD/CVD Operations, Office 9, regarding ''Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Shanghai Jinneng International Trade Co., Ltd. Program Analysis for the Preliminary Determination,'' dated June 29, 2009, and Memorandum to the File through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Susan Pulongbarit, International Trade Analyst, AD/CVD Operations, Office 9, regarding ''Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Jiangxi Gangyuan Silicon Industry Company, Ltd. Program Analysis for the Preliminary Determination,'' dated June 29, 2009.

Although Petitioner has submitted comments suggesting that the Department adjust U.S. price to account for VAT on export sales of silicon metal to the United States during the POR, we have not determined whether such an adjustment is appropriate within the context of the Act. Therefore, for the preliminary results, the Department has not adjusted U.S. price to account for VAT imposed on export sales. However, subsequent to the issuance of these preliminary results, the Department intends to place laws with respect to the PRC'S VAT system on the record and will invite additional factual information submissions with respect to this issue, in order for interested parties to provide comment in case briefs on the appropriate treatment of VAT for purposes of the final results.

Normal Value

Non-Market-Economy Status

Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 70488 (December 18, 2003). None of the parties to these reviews has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value (''NV''), in most circumstances, on the NME producer's FOP valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the ''Normal Value'' section below.

The Department's practice with respect to determining economic comparability is explained in *Policy Bulletin 04.1,*[2] which states that the Department's ''OP {Office of Policy} determines per capita economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank).'' The Department considers the five countries identified in its Surrogate Country List as ''equally comparable in terms of economic development.'' *See Policy Bulletin 04.1* at 2. Thus, we find that India, Indonesia, the Philippines, Colombia, and Thailand are all at an economic level of development equally comparable to that of the PRC.

Second, *Policy Bulletin 04.1* provides some guidance on identifying comparable merchandise and selecting a producer of comparable merchandise. As stated in the *Policy Bulletin,* ''comparable merchandise'' is not defined in the statute or the regulations, since it is best determined on a case-by-case basis. *See id.* As further stated in *Policy Bulletin 04.1,* in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise. *Id.* Based on the data provided by parties, we find that India is a producer of comparable merchandise, as both parties have provided financial statements of multiple Indian producers of silicon metal. *See* April 3, 2009 Letter From Martin Schaeffermeier of DLA Piper to Secretary of Commerce, Regarding Submission of Surrogate Value Data; *see also* April 3, 2009 Letter From Sydney Mintzer of Mayer Brown to Secretary of Commerce, Regarding Silicon Metal from the People's Republic of China.

The Policy Bulletin also provides some guidance in identifying significant producers of comparable merchandise and selecting a producer of comparable merchandise. The Policy Bulletin notes that any determination of what constitutes ''significant production'' should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics). *See Policy Bulletin 04.1* at 3. Since these characteristics are specific to the merchandise in question, the standard for ''significant producer'' will be determined by the Department on a case-by-case basis, and fixed standards for making this determination have not been adopted. *Id.*

With respect to data considerations in selecting a surrogate country, it is the Department's practice that, ''* * * if more than one country has survived the selection process to this point, the

[2] *See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process,* (March 1, 2004), (''Policy Bulletin 04.1'') from the October 20, 2008 Letter from the Department, To All Interested Parties, Regarding *Antidumping Duty Order on Silicon Metal From the People's Republic of China* at Attachment II, also available at *http://ia.ita.doc.gov/policy/bull04-1.html.*

country with the best factors data is selected as the primary surrogate country.'' *See id.* at 4. Currently, the record contains surrogate value information, including possible surrogate financial statements, only from India.

Thus, the Department is preliminarily selecting India as the surrogate country on the basis that: (1) It is at a comparable level of economic development to the PRC, pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the factors of production. Therefore, we have calculated normal value using Indian prices, when available and appropriate, to value Shanghai Jinneng and Jiangxi Gangyuan's factors of production. See Memorandum to the File through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Bobby Wong, Senior International Trade Analyst, and Jerry Huang, International Trade Analyst, AD/CVD Operations, Office 9, regarding ''Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Selection of Factor Values,'' dated June 29, 2009 (''Surrogate Value Memorandum'').

In accordance with 19 CFR 351.301(c)(3)(ii), for the final determination in an antidumping administrative review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of the preliminary determination.[3]

Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the FOP data reported by Shanghai Jinneng and Jiangxi Gangyuan for the POR. To calculate NV, we multiplied the reported-per-unit factor consumption rates by publicly available Indian values.

With respect to the application of the by-product offset to NV, consistent with the Department's determination in the antidumping duty investigation of diamond sawblades from the PRC, because our surrogate financial statements contain no references to the treatment of by-products and because both companies reported that they sold their by-products, we will deduct the surrogate value of the by-product from NV. This is consistent with accounting principles based on a reasonable assumption that if a company sells a by-product, the by-product necessarily incurs expenses for overhead, selling, general & administrative expenses (''SG&A''), and profit. *See e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006) and accompanying Issues and Decisions Memorandum at Comment 9, unchanged in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 35864 (June 22, 2006).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision Memorandum at Comment 6; *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 5. When we used publicly available import data from the Ministry of Commerce of India (Indian Import Statistics) for June 2007 through May 2008 to value inputs sourced domestically by PRC suppliers, we added to the Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the closest seaport to the factory. This adjustment is in accordance with the CAFC's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1408 (Fed. Cir. 1997). When we used FOPs sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. In instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (*i.e.,* Indonesia, South Korea, and Thailand) from our surrogate value calculations. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part,* 66 FR 57420 (November 15, 2001) and accompanying Issues and Decision Memorandum at Comment 1. *See* ''Memorandum to the File: Factors of Production Valuation Memorandum for the Preliminary Results of Antidumping Duty Administrative Review of Floor-standing, Metal-top Ironing Tables and Certain Parts Thereof (Ironing Tables) from the People's Republic of China (PRC),'' dated August 31, 2006 (Factor Valuation Memo), for a complete discussion of the import data that we excluded from our calculation of surrogate values. This memorandum is on file in the Central Records Unit (''CRU'').

Where we could not obtain publicly available information contemporaneous with the POR to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index (''WPI'') as published in the International Financial Statistics of the International Monetary Fund, for those surrogate values in Indian rupees. We made currency conversions, where necessary, pursuant to 19 CFR 351.415, to U.S. dollars using the daily exchange rate corresponding to the reported date of each sale. We relied on the daily exchanges rates posted on the Import Administration Web site (*http://www.trade.gov/ia/*). *See* Surrogate Value Memorandum. We valued the FOPs as follows:

The Department used Indian Import Statistics to value the raw material and packing material inputs that Shanghai Jinneng and Jiangxi Gangyuan used to produce the merchandise under review during the POR, except where listed below. For a detailed description of all surrogate values used for respondents, *see* Surrogate Value Memorandum.

We valued quartz using Grade I quartz with a silicon dioxide content of 98% or higher using the Indian Bureau of Mines' publication: 2007 edition of the Indian Minerals Yearbook (''IBM Yearbook''). We inflated the value for quartz using the POR average WPI rate. *Id.*

[3] In accordance with 19 CFR 351.301(c)(1), for the final determination of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

We find that Grade A coal is most closely matched to the coal specifications submitted by Respondents in this instant review. We valued coal using Grade A coal values obtained from the IBM Yearbook. We inflated the value for coal using the POR average WPI rate. *Id.* We continued to value charcoal using Indian Import Statistics. *Id.* To value polyethylene/polypropylene (''PE/PP'') bags, we used Indian Import Statics. *Id.*

We valued electricity using data published in *Electricity Tariff & Duty and Average rates of Electricity Supply in India,* dated 2006, by the Central Electricity Authority of the Government of India. We inflated the value using the POR average WPI rate. *Id.*

To value the surrogate value ratios for factory overhead, SG&A, and profit, the Department used publicly available information to review the financial statements of five Indian companies, placed on the record by interested parties. We find that Balasore Alloys Limited, Rohit Ferro Tech Ltd., and Maharashtra Elektrosmelt Limited received countervailable subsidies. Therefore, we have valued SG&A using the 2007–2008 annual reports and accounts from the remaining two companies, Sharp Ferro Alloys Limited (''Sharp Alloys'') and Sova Ispat Alloys (Mega Projects) Limited (''Sova Ispat Alloys''), both of which were included in Shanghai Jinneng and Jiangxi Gangyuan's submission on April 3, 2009, at Exhibit 26. The annual reports cover the period April 1, 2007, through March 31, 2008, encompassing 10 months of the POR. We determine that the financial statements of Sharp Alloys and Sova Ispat Alloys are appropriate for use in calculating surrogate value ratios for SG&A because both companies are producers of comparable merchandise. *See* Surrogate Value Memorandum.

Because of the variability of wage rates in countries with similar levels of per capita gross domestic product, 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. Therefore, to value the labor input, we used the PRC's regression-based wage rate published by Import Administration on its Web site, *http://www.trade.gov/ia/. See* Surrogate Value Memorandum.

To value truck freight, we calculated a per-unit average rate from data based on publicly available information from *http://www.infobanc.com/logistics/logtruck.htm,* an international trade resource Web site. *See* Surrogate Value Memorandum.

To value rail freight, we calculated a per-unit average rate from data based on publicly available information from *http://www.indianrailways.gov.in*, the Indian Ministry of Railways Web site. *See* Surrogate Value Memorandum.

Shanghai Jinneng and Jiangxi Gangyuan both claimed silica fume as by-product offsets as each produced silica fume and sold a portion of this production during the POR. To value silica fume, the Department has calculated the surrogate value using data obtained from WTA Indian import statistics only for countries that have significant quantities and demonstrable imports of silica fume/microsilica based on information contained in Infodrive India data, provided by Petitioner in its April 3, 2009, submission. For a more detailed discussion, *see* Surrogate Value Memorandum.

Further, we are preliminarily granting a by-product offset to Shanghai Jinneng and Jiangxi Gangyuan for silica fume based on production volumes, as opposed to POR sales, of silica fume. Shanghai Jinneng and Jiangxi Gangyuan stated that when silica fume is produced it enters a finished goods inventory account and a value is assigned to that inventory in their books. Moreover, each claims that there is no question that all of the silica fume produced during POR has been or will be sold. *See* Jiangxi Gangyuan and Shanghai Jinneng Preliminary Comments at 12–13. In other words, there is no indication that any of the silica fume produced is not ultimately sold. Under such a circumstance, the practice of using the ''lower of'' the quantity of by-product produced or sold in each POR may lead to an inconsistent result over multiple review periods. The Department notes that granting the by-product offset based on total production volume during the POR is a change from past NME practice, *i.e.,* in which by-product offsets were based on its total POR sales of the by-product that were also produced during the POR. *See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* 68 FR 37116 (June 23, 2003) and accompanying Issues and Decisions Memorandum at Comment 12. However, this change brings our NME practice into line with normal accounting principles which recognizes and records the economic value of a by-product when it is produced. We are hereby notifying parties of this change in practice for NME cases and we invite interested parties to provide comments in their case briefs.

Jiangxi Gangyuan also claimed slag as a by-product offset. However, Jiangxi Gangyuan stated that it does not maintain an inventory of slag in its books because, due to the lack of demand for slag, it sells it when it can. Furthermore Jiangxi Gangyuan was unable to provide source documentation for payment of slag sales during verification. Therefore, we have not granted a by-product offset for slag generated by Jiangxi Gangyuan in the course of its production of silicon metal.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist for the period June 1, 2007, through May 31, 2008:

SILICON METAL FROM THE PRC

	Percent
Shanghai Jinneng International Trade Co., Ltd	41.81
Jiangxi Gangyuan Silicon Industry Company, Ltd	55.25

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Any interested party may request a hearing within 30 days of publication of this notice. Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. Case briefs from interested parties may be submitted not later than 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis.* The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) For Shanghai Jinneng and Jiangxi Gangyuan, the cash deposit rate will be established in the final results of this review; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 139.49 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: June 29, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–16281 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before July 29, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09–038. Applicant: University of Texas at Austin, 10100 Burnet Rd., Bldg. 131, Austin, TX 78758. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used for high resolution cathodoluminescence imaging of quartz and carbonate cements in sandstones and carbonate rocks. The instrument will allow the highest spatial imaging resolutions with X–ray spectroscopy and CL. Justification for Duty–Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: June 17, 2009.

Docket Number: 09–039. Applicant: National Institutes of Health, 903 S. 4th St., Hamilton, MT 59840. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to study protein complexes on viral surfaces, internal core structures, viral docking sites on host cells or tissues, 3–dimentional structures of intact viruses and high–containment bacteria, intracellular relationships between viruses and bacteria as they enter, replicate and exit cells. Justification for Duty–Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: June 17, 2009.

Docket Number: 09–040. Applicant: Stanford University, 450 Serra mall, Stanford, CA 94305. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to study the nanostructure of materials. Justification for Duty–Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: June 18, 2009.

Dated: July 1, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9–16286 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–DS–S

U.S. DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1629]

Approval for Manufacturing Authority, Foreign–Trade Zone 106, Industrial Gasket, Inc. d/b/a International Group (Metal Fabrication), Mustang, Oklahoma

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port Authority of the Greater Oklahoma City Area, grantee of Foreign–Trade Zone 106, has requested manufacturing authority on behalf of Industrial Gasket, Inc. d/b/a International Group (IG), within FTZ 106 in Mustang, Oklahoma (FTZ Docket 37–2008, filed 5/28/2008);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 31811–31812, 6/4/2008) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures within FTZ 106 on behalf of IG, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of June 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–16280 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Consolidated Decision on Applications for Duty–Free Entry of Electron Microscopes; U.S. Food and Drug Adminsitration, et al.

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW, Washington, D.C.

Docket Number: 09–015. Applicant: U.S. Food and Drug Administration, Laurel, MD 20708. Instrument: Electron Microscope. Manufacturer: JEOL, Japan. Intended Use: See notice at 74 FR 27017, June 5, 2009.

Docket Number: 09–023. Applicant: Florida State University, Tallahassee, FL 32306. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 74 FR 27017, June 5, 2009.

Docket Number: 09–024. Applicant: National Institutes of Health, Bethesda, MD 20895–3210. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 74 FR 27017, June 5, 2009.

Docket Number: 09–025. Applicant: University of Virginia, Charlottesville, VA 22908. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 74 FR 27017, June 5, 2009.

Docket Number: 09–026. Applicant: Yale University School of Medicine, New Haven, CT 06520. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 74 FR 27017, June 5, 2009.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational which was being manufactured in the United States at the time of order of each instrument.

Dated: July 1, 2009.

Christopher Cassel,

Acting Director Subsidies Enforcement Office Import Administration.

[FR Doc. E9–16290 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[University of Chicago, et al.]

Notice of Decision on Applications for Duty–Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. .106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 3705, U.S. Department of Commerce, 14th and Constitution Ave, NW, Washington, D.C.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 09–021. Applicant: University of Chicago, Argonne, Lemont, IL 60439. Instrument: Isolation Transformer. Manufacturer: Guth GmbH, Germany. Intended Use: See notice at 74 FR 27017, June 5, 2009. Reasons: A unique feature of this instrument is that it is capable of providing 110kVA AC power to an injector platform, and will operate at a positive voltage of up to 250kVDC at continuous operation. No domestic sources make devices with similar capabilities.

Docket Number: 09–028. Applicant: University of Texas at Austin, Austin, TX 78722. Instrument: Synchroslice. Manufacturer: Lohmann Research Products, Germany. Intended Use: See notice at 74 FR 27017, June 5, 2009. Reasons: This instrument is capable of performing serial section transmission electron microscopy, which is required in order to analyze the detailed structural changes involved. No domestic sources make devices with similar capabilities.

Docket Number: 09–035. Applicant: University of Minnesota Medical School, Minneapolis, MN 55455. Instrument: Muscle Research System. Manufacturer: Scientific Instruments, Germany. Intended Use: See notice at 74 FR 27017, June 5, 2009. Reasons: A unique feature of this instrument is that it requires a gradient maker and pump control in order to simultaneously measure the istometric force of skinned muscle fibers as a function of calcium concentration. Further, a laser system is needed to excite fluophores in order to simultaneously measure the force and measure the myosin ATPase. No

domestic sources make devices with the capability of making simultaneous measurements.

Dated: July 1, 2009.

Christopher Cassel,

Acting Director Subsidies Enforcement Office Import Administration.

[FR Doc. E9–16288 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–DS–S

U.S. DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1628]

Expansion of Foreign–Trade Zone 106, Oklahoma City, Oklahoma

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port Authority of the Greater Oklahoma City Area, grantee of Foreign–Trade Zone 106, submitted an application to the Board for authority to expand FTZ 106 to include a site in Mustang, Oklahoma, adjacent to the Oklahoma City Customs and Border Protection port of entry (FTZ Docket 36–2008, filed 5/28/2008);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 31811, 6/4/2008) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 106 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000–acre activation limit for the overall general–purpose zone project, and further subject to a time limit that will terminate authority for Site 14 on June 30, 2014, subject to extension upon review.

Signed at Washington, DC, this 26th day of June 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–16279 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a joint meeting, the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 Decennial Census, including the Integrated Communications Campaign, 2010 Partnerships, and other decennial activities. The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on July 20, 2009. Last-minute changes to the schedule are possible, which could prevent advance notification.

DATES: July 20, 2009. On July 20, the meeting will begin at approximately 8:30 a.m. and end at approximately 5 p.m.

ADDRESSES: The meeting will be held at the JW Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H162, 4600 Silver Hill Road, Suitland, Maryland 20746; telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The Committees provide an outside-user perspective and advice on research and design plans for the 2010 Decennial Census, the American Community Survey, and other related programs particularly as they pertain to an accurate count of these communities. The Committees also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users. The Committees are established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Dated: July 2, 2009.

Thomas L. Mesenbourg,

Acting Director, Bureau of the Census.

[FR Doc. E9–16289 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems; Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 29 and 30, 2009, 9 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 information systems equipment and technology.

Wednesday, July 29

Public Session

1. Welcome and Introduction.
2. Elections for Chair.
3. Working Group Reports.

4. Emerging Consumer Telecomm at 60 GHz.

5. Future Directions in Supercomputing at LLNL.

6. Telecomm vs Datacomm.

Thursday, July 30

Closed Session

7. 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 July 22, 2009.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent 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 Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on May 19, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) 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, call Yvette Springer at (202) 482–2813.

Dated: July 2, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9–16212 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on July 22, 2009, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Opening Remarks and Introductions.
2. Presentation of Papers and Comments by the Public.
3. Report on April 2009 Wassenaar Expert's Meeting.
4. Discussion on MPETAC proposals for 2010.
5. Report on proposed changes to the Export Administration Regulation.
6. Other Business.

Closed Session

7. 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 July 15, 2009.

A limited number of seats will be available for the public session. 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 the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on June 17, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting dealing with matters the disclosure of portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) 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, call Yvette Springer at (202) 482–2813.

Dated: July 2, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9–16211 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–JT–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 July 28, 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 July 21, 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 March 23, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 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: July 2, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9–16210 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of the Census

2010 Census Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a meeting of the 2010 Census Advisory Committee. The Committee will address policy, research, and technical issues related to 2010 Decennial Census Programs. Last-minute changes to the agenda are possible, which could prevent giving advance notification of schedule changes.

DATES: July 21, 2009. On July 21, the meeting will begin at approximately 8:30 a.m. and end at approximately 5 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Auditorium and Conference Center, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Suitland, Maryland 20746, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The 2010 Census Advisory Committee is composed of a Chair, Vice-Chair, and 20 member organizations—all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census, including the American Community Survey and related programs, and users' needs for information provided by the decennial census from the perspective of outside data users and other organizations having a substantial interest and expertise in the conduct and outcome of the decennial census. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section10(a)(b)).

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–3231 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: July 2, 2009.

Thomas L. Mesenbourg,

Acting Director, Bureau of the Census.

[FR Doc. E9–16291 Filed 7–8–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report for a Permit Application for the Proposed Berths 302–306 Container Terminal Improvements Project at the Port of Los Angeles, in Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of Intent (NOI).

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Corps) in conjunction with the City of Los Angeles Harbor Department (LAHD) is examining the feasibility of waterside terminal and transportation improvements at Berths 302–306 in the Port of Los Angeles. The Corps is considering the LAHD's application for a Department of the Army permit under section 10 of the River and Harbor Act and potentially section 404 of the Clean Water Act to construct wharf/docking facilities, perform dredging, construct container loading apparatus (*i.e.,* cranes), and other ancillary improvements within 100 feet land side of the waters' edge associated with the Berths 302–306 [American President Lines (APL)] Container Terminal Project (proposed project). Dredging up to 75,000 cubic yards (cy) may be required for the proposed project, and any proposed offshore disposal at the LA–2 disposal site would also trigger review under section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA).

The proposed project would improve the existing terminal, extend the existing concrete wharf by 1,250 linear feet (lf) to add a new berth (Berth 306), add new cranes to the Berths 302–305 and Berth 306, and expand the existing container terminal by approximately 56 acres. The landside developments include expansion, redevelopment, and construction of marine terminal facilities.

The primary Federal concerns are the work (including dredging) and addition of permanent structures in navigable waters of the U.S., potential discharges of fill material into waters of the U.S., potential transport and disposal of dredged material at an ocean disposal site, and potential significant impacts to the environment resulting from such in-water and over-water activities. Therefore, in accordance with the National Environmental Policy Act (NEPA), the Corps is requiring the preparation of an Environmental Impact Statement (EIS) prior to consideration of any permit action. The Corps may ultimately make a determination to permit or deny the above project, or permit or deny modified versions of the above project.

Pursuant to the California Environmental Quality Act (CEQA), the LAHD will serve as Lead Agency in preparing an Environmental Impact Report (EIR) for its consideration of development approvals within its jurisdiction. The Corps and the LAHD have agreed to jointly prepare a Draft EIS/EIR to optimize efficiency and avoid duplication. The Draft EIS/EIR is

intended to be sufficient in scope to address the Federal, State, and local requirements and environmental issues concerning the proposed activities and permit approvals.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding scoping of the Draft EIS/EIR may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division, Ventura Field Office, ATTN: CESPL–RG–N–2009–00226–SDM, 2151 Alessandro Drive, Suite 110, Ventura, California 93001, or *spencer.d.macneil@usace.army.mil.* Comments or questions can also be sent to Ms. Lena Maun-DeSantis, Port of Los Angeles, Environmental Management Division, 425 S. Palos Verdes St., San Pedro, CA 90731, or *LMaun-DeSantis@portla.org.* Dr. Spencer D. MacNeil can be reached at (805) 585–2152, and Ms. Lena Maun-DeSantis can be reached at (310) 732–3950. Comment letters sent via electronic mail should include the commenter's physical mailing address and the project title ''Berths 302–306 [APL] Container Terminal Project'' should be included in the electronic mail's subject line.

SUPPLEMENTARY INFORMATION:

1. *Project Site and Background Information:* The project site is located on Terminal Island, within an industrial area in the Fish Harbor region of the Port of Los Angeles. The site is within the Port of Los Angeles Community Plan area in the City of Los Angeles, which is adjacent to the communities of San Pedro and Wilmington, and approximately 20 miles south of downtown Los Angeles. The site is generally bounded on the north by Terminal Way; the Pier 300 Shallow Water Habitat on the east; Earle Street on the west; and the Pier 300 Channel on the south. Land uses in the project vicinity include the Terminal Island Treatment Plant and the vacant Los Angeles Export Terminal (LAXT) facility.

The basic purpose of the proposed project is improving marine shipping and maritime trade, which is a water-dependent activity. The overall goal and Clean Water Act project purpose is to optimize the container-handling efficiency and capacity of the Port at Berths 302–306, in order to accommodate projected increases in volume of containerized goods shipped through the Port.

To meet the overall project goal, the following objectives need to be accomplished:

- Optimize the use of existing land at Berths 302–306 and associated waterways in a manner that is consistent with the LAHD's public trust obligations;
- Improve the container terminal at Berths 302–306 to more efficiently work larger ships and to ensure the terminal's ability to accommodate increased numbers and sizes of container ships;
- Increase accommodations for container ship berthing, and provide sufficient backland area and associated improvements for optimized container terminal operations, at Berths 302–306;
- Incorporate modern backland design efficiencies into improvements to the existing vacant landfill area at Berths 305–306; and
- Improve the access into and out of the terminal, as well as internal terminal circulation, at Berths 302–306 to reduce the time for gate turns and to increase terminal efficiency.

2. *Proposed Action:* The LAHD as project applicant proposes to redevelop and expand an operating container terminal at Berths 302–306 on Terminal Island in the Port of Los Angeles. Eagle Marine Services (EMS) currently operates the existing approximately 260-acre APL container terminal at Berths 302–305 on Terminal Island under LAHD Permit No. 733. In addition, EMS operates an additional approximately 30 acres of backlands at the terminal under a month-to-month space assignment for a total of 290 overall acres. The proposed project would improve the existing terminal, extend the existing concrete wharf by 1,250 lf to add a new berth (Berth 306), add new cranes to the Berths 302–305 and Berth 306, and expand the existing container terminal by approximately 56 acres. As part of the proposed project, the current duration of Permit No. 733 would remain unchanged (1998 to 2027), but the permit would be amended to include the additional 56 acres.

At completion of project construction and delivery, EMS would operate approximately 316 acres under Permit No. 733, plus the 30 acres that it operates under the current space assignment for a total of 346 acres. The project includes improving and adding to the terminal approximately 41 acres of already constructed but unimproved fill behind Berths 305–306. In addition, the project includes redeveloping and adding to the terminal approximately 9 acres of existing land behind Berth 301 (EMS would operate the backlands behind Berth 301 but would not use the wharf at Berth 301 because it is not currently configured for container operations; the redevelopment and use of this upland area would occur independently of Berth 301), and 2 acres of existing land at the northeast corner of the main gate. Finally, the project includes adding approximately 4 acres of wharf deck to the terminal as a result of constructing the 1,250 lf of new wharf at Berth 306.

The proposed project consists of multiple components to expand the existing APL container terminal by approximately 56 acres and to modify various existing terminal elements. Proposed expansion-area components would:

- Improve approximately 41 acres of already constructed but unimproved fill as container terminal backland with electric rail mounted gantry (RMG) crane rows at Berths 305–306;
- Redevelop approximately 2 acres of the former LAXT conveyor right of way and approximately 7 acres of former LAXT backland behind Berth 301 into container terminal backland;
- Develop approximately 2 acres of existing land northeast of the current main gate for a new out-gate location;
- Construct approximately 1,250 lf (4 acres) of concrete wharf at Berth 306;
- Install up to 8 new cranes on the new wharf at Berth 306;
- Install Alternative Marine Power (AMP) along the new wharf at Berth 306; and
- Dredge Berth 306, with the dredge material (approximately 20,000 cubic yards) going to an approved upland disposal site.

Improvements to the existing terminal would:

- Relocate and modify the main gate;
- Modify the terminal entrance lanes;
- Modify the Earle Street gate;
- Install up to 4 additional, new cranes at Berths 302–305;
- Install AMP along the existing wharf at Berths 302–305;
- Expand the refrigerated container units (reefers) storage area;
- Demolish and re-construct the Roadability facility;
- Expand the Power Shop Building and construct second and third floors for Marine Office Facilities;
- Install utility infrastructure at various areas in the backlands (relocate light poles and install power at a new ''Meet and Greet'' booth at the backlands behind Berth 301, etc.); and
- Perform dredging at Berths 302–305, with the dredge material (approximately 55,000 cubic yards) going to an approved upland disposal site.

Under the amended Permit No. 733 and the existing space assignment, EMS would continue to operate the terminal as a container terminal. The redevelopment and expansion would provide EMS with additional backlands for container storage and terminal equipment, and would lengthen the

existing wharf to accommodate newer, larger-class vessels, which together would allow increased ship calls and throughput. The wharf extension, new cranes, and dredging would require a permit from the Corps. The proposed project would also increase gate and on-dock rail moves. The proposed project would increase throughput from approximately 1.3 million Twenty-foot Equivalent Units (TEUs) in 2008 to approximately 3 million TEUs by 2027. By 2027, approximately 38 percent of the 3 million TEUs would travel to and from the terminal by on-dock rail, 7 percent would travel to and from the terminal via truck to near-dock rail yards, and the remaining cargo would travel by truck to the local market (*i.e.,* markets within an approximately 100-mile radius from the Port of Los Angeles).

Although dredge material is expected to be disposed of at an approved upland site, there is the potential for disposal of some dredged material at an established ocean disposal site, which would require Corps authorization under section 103 of the MPRSA. A sampling and analysis program would be implemented to approve any offshore disposal of material.

Through the EIS/EIR process, feasible environmental mitigation measures will be developed to reduce potential environmental impacts. Measures to reduce operational impacts would be implemented through lease amendments and become permit requirements. Measures to reduce construction impacts would be implemented through construction contract specifications and requirements. Air Quality measures would be consistent with or exceed the San Pedro Bays Clean Air Action Plan (CAAP) and are likely to include AMP, low sulfur fuel, Vessel Speed Reduction Program (VSRP) requirements for new vessel builds, and terminal equipment standards.

3. *Issues:* There are several potential environmental issues that will be addressed in the Draft EIS/EIR. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

1. Aesthetic and visual impacts from construction and operation;
2. Air quality impacts from construction and operation of an expanded container terminal, including ship and vehicle emissions, and contributions to global warming and greenhouse gases;
3. Biological impacts to marine and terrestrial wildlife;
4. Geological issues, including dredging and stabilization of fill areas in an area of known seismic activity;
5. Hazards and hazardous materials related to existing and former activities that have contaminated soil and groundwater in the Port, or pose hazardous risks related to ongoing operations, and hazards and risk of upset due to terrorism;
6. Hydrology and water quality from disturbance of sediment, operations, and runoff from development;
7. Noise from construction, existing and future operations, and increased traffic;
8. Traffic and transportation, including ground transportation; and
9. Cumulative impacts from past, present, and reasonably foreseeable future projects.

4. *Alternatives:* Several alternatives are being considered for the proposed action. The Draft EIS/EIR will include a co-equal analysis of the project alternatives considered. Alternatives being considered for the proposed project include several reduced project alternatives; the proposed project with an expanded on-dock rail yard; and a No Project/No Federal Action Alternative that would not implement any of the project elements. For this project, the No Federal Action Alternative is the same as the No Project Alternative and will therefore be referred to and analyzed as the No Project/No Federal Action Alternative. These alternatives will be further formulated and developed during the scoping process. Additional alternatives that may be developed during scoping will also be considered in the Draft EIS/EIR.

5. *Scoping Process:* The Corps and the LAHD will jointly conduct a public scoping meeting for the proposed Berths 302–306 [APL] Container Terminal Project Draft EIS/EIR to receive public comment and to assess public concerns regarding the appropriate scope and preparation of the Draft EIS/EIR. Participation in the public meeting by Federal, State, and local agencies and other interested organizations and persons is encouraged. This meeting will be conducted in both English and Spanish. Members of the public who wish to communicate and listen entirely in Spanish are encouraged to attend this meeting. The meeting will be held on August 5, 2009 at 6:00 PM (PST) at the Board Room in the Harbor Administration Building at 425 South Palos Verdes Street, San Pedro, CA 90731. Written comment letters will be accepted until August 24, 2009.

The Corps also anticipates consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Fishery Conservation and Management Act. Additionally, the EIS/EIR will assess the consistency of the proposed action with the Coastal Zone Management Act and potential water quality impacts pursuant to Section 401 of the Clean Water Act.

6. *Availability of the Draft EIS:* The Draft EIS/EIR is expected to be published and circulated in mid-2010, and a public meeting will be held after its publication.

Dated: June 30, 2009.

David J. Castanon,

Chief, Regulatory Division, Corps of Engineers.

[FR Doc. E9–16231 Filed 7–8–09; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

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

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by July 13, 2009. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before September 8, 2009.

ADDRESSES: Written comments regarding the emergency review 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 or faxed to (202) 395–6974 or electronically mailed 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 Director of OMB provide interested Federal agencies and the

public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. ED invites public comment.

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

Dated: July 6, 2009.

James Hyler,

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

Office of Elementary and Secondary Education

Type of Review: New.

Title: Requests for Title I, part A Waivers.

Abstract: The U.S. Department of Education (ED) plans to issue guidance inviting requests for waivers related to the use of fiscal year (FY) 2009 Title I, part A funds available through the American Recovery and Reinvestment Act of 2009 (ARRA) and requests for waivers related to certain Title I, part A statutory and regulatory provisions. The guidance will provide information for State educational agencies (SEAs) on how they may apply to ED for waivers and information for local educational agencies (LEAs) on how they may implement the waivers obtained by their SEA.

Additional Information: ED is requesting that the Office of Management and Budget (OMB) approve these information requests on an emergency basis, by July 13, 2009. Approval of these information requests will enable ED to consider requests to waive certain statutory requirements that relate to the use of Title I, part A ARRA funds. The information collections relate to the information that must be submitted to ED as part of a waiver request, as required by section 9401 of the Elementary and Secondary Education Act (ESEA).

In addition, the Secretary has reviewed the Title I, part A regulations that were issued in October 2008 (73 FR 64436 (Oct. 29, 2008)) and sent a letter to all Chief State School Officers discussing those regulations. In that letter, the Secretary indicates that he will consider requests for waivers of certain Title I, part A regulatory provisions, in accordance with his authority under section 9401 of the ESEA. First, as noted in the letter, the Secretary intends to propose for public comment in a notice of proposed rulemaking (NPRM) a repeal of the provision that prohibits a State from approving as a provider of supplemental educational services (SES) a school identified for improvement, corrective action, or restructuring or a district identified for improvement or corrective action (34 CFR 200.47(b)(1)(iv)(A), (B)). While the rulemaking process is on-going, the Secretary will consider a request to waive this requirement for school year (SY) 2009–10. Such a waiver would allow a State to approve as an SES provider a district or school in improvement. Second, the Secretary also will consider a request for a one-year waiver of the requirement to provide notice of public school choice at least 14 days before the start of the school year if districts cannot comply with that requirement because of their State's current assessment timeline or contract with its assessment vendor. Third, although not discussed in the Secretary's letter to Chief State School Officers, the Secretary will consider requests for waivers that would allow an LEA to provide SES to eligible students attending schools in the first year of improvement and to count the funds providing SES to those students toward the LEA's obligation to spend an amount at least equal to 20 percent of its Title I, part A allocation on SES and public school choice-related transportation (20 percent obligation). Such a waiver would waive the provisions in section 1116(b)(10) of the ESEA and 34 CFR 200.48 that limit the funds spent on SES that an LEA may count toward its 20 percent obligation to funds spent providing SES to eligible students attending schools in the second year of improvement, in corrective action, or in restructuring.

Additionally, the Secretary will also consider requests to waive the maintenance of effort (MOE) requirements in sections 1120A(a) and 9521 of the ESEA.

With respect to requests for waivers related to the Title I, part A ARRA funds, LEAs are already working with their SEAs to plan Title I, part A activities for next year. Planning for a Title I, part A program typically occurs in the spring and summer prior to the next school year. Consequently, in order to plan effectively and on schedule, SEAs and LEAs cannot wait until right before the school year starts to know how to obtain these waivers. OMB approval on an emergency basis would enable ED to provide SEAs and LEAs with timely information about waivers of certain Title I, part A requirements—information that will be necessary as SEAs and LEAs make crucial decisions about how they will most effectively use Title I, part A funds, including those available under the ARRA, during summer 2009 and in SY 2009–10. If emergency clearance is not granted, ED will not be able to provide the waiver request information to SEAs and LEAs in time for them to plan successfully. And without proper planning, Title I, part A services to academically at-risk students, including those supported by the ARRA, would suffer.

Similarly, now that States have received the Secretary's letter regarding the Title I regulations, as soon as possible they need to understand the process for how to request a waiver and what information will be required to accompany that request. The Secretary's letter indicates that ED will provide additional information about the process for submitting a waiver request and this waiver guidance keeps that commitment. The waiver process must begin at this time in order for States and LEAs to plan for their implementation of the public school choice notice requirement for SY 2009–10. In addition, if a school or LEA in improvement, corrective action, or restructuring is going to be able to be approved as an SES provider for SY 2009–10, a waiver must be granted before a State completes its process for approving SES providers, or with sufficient time for the State to reopen

that process, if it chooses to do so. Likewise, the process for requesting waivers related to the provision of SES to eligible students attending Title I schools in the first year of improvement must begin at this time in order for LEAs to have sufficient time to appropriately plan their implementation of SES. In all three cases, without emergency approval, States and LEAs will not be able to take advantage of the flexibility the Secretary is offering regarding these provisions for the upcoming school year because ED would not be able to provide information regarding how to apply for a waiver until it is too late.

Concerning MOE, in accordance with ED's MOE regulations for ESEA programs (including Title I, part A) covered by the MOE requirements, States will soon begin identifying those LEAs that failed to maintain effort in SY 2008–09. Section 9521(c) of the ESEA gives the Secretary the authority to waive the MOE requirements if an LEA experiences an exceptional or uncontrollable circumstance or experiences a precipitous decline in its financial resources. Due to the state of the economy during SY 2008–09, ED expects many more LEAs will have experienced a precipitous decline in their financial resources or an exceptional or uncontrollable circumstance than in prior years, causing them to miss maintaining effort and in turn to seek an MOE waiver from ED. Given these circumstances, the planned waiver guidance specifies the process States may use to obtain MOE waivers from ED for their LEAs. In order for this process to begin in a timely fashion, ED needs emergency approval of the information collection activities in the guidance associated with MOE waivers.

Frequency: One time.

Affected Public: State, Local, or Tribal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 947.
Burden Hours: 29,640.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4002. 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. E9–16298 Filed 7–8–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting 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 August 10, 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 Acting Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 6, 2009.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: William D. Ford Federal Direct Loan Program General Forbearance Request.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 1,186,120.

Burden Hours: 237,224.

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to request forbearance on their loans when they are willing but unable to make their currently scheduled monthly payments because of a temporary financial hardship.

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 4025. 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. E9–16232 Filed 7–8–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

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

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 1, 2009. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before September 8, 2009.

ADDRESSES: Written comments regarding the emergency review 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, or by e-mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

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

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

Dated: July 6, 2009.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Reinstatement.

Title: Regulations for Equity in Athletics Disclosure Act (EADA).

Abstract: The EADA amended the Higher Education Act of 1965, as amended (HEA), to require coeducational institutions of higher education that participate in any program under Title IV of the HEA and have an intercollegiate athletic program, annually to make available upon request a report on institutional financing and student and staff participation in men's and women's intercollegiate athletics. The HEA of 1993 amended the EADA to require additional disclosures, to require that an institution submit its report to the Department of Education, and to require the Department to make the institutions' EADA reports publicly available.

Additional Information:

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,000.
Burden Hours: 11,000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4071. 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. E9–16233 Filed 7–8–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before September 8, 2009.

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

Reporting and/or recordkeeping burden. OMB invites public comment.

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

Dated: July 6, 2009.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: New.

Title: Strengthening America's Competitiveness through Math Instruction—Teacher Training Field Test.

Frequency: Once.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 67.

Burden Hours: 67.

Abstract: This initiative involves three Adult Numeracy Instruction (ANI) Professional Development Institutes. Twenty teachers and ten program administrators from ten adult education programs from each of two states will participate in a field test of the Professional Development Institutes. The goals of the Institutes are to:

- Enhance teacher knowledge and use of research-based adult education mathematics standards.
- Increase and deepen mathematics content knowledge among teacher participants.
- Increase the repertoire of instructional skills among teachers working with adults in ABE, pre-GED, and GED classes.
- Increase state capacity to support teachers in the area of mathematics instruction.

The study will involve the administration of the following instruments:

- Pre/Post surveys of participants.
- Pre/Post administration of a cognitive assessment to participating teachers.
- Post-professional development interviews with participating teachers and program administrators.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4022. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E9–16229 Filed 7–8–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences

AGENCY: Department of Education, Institute of Education Sciences.

ACTION: Notice of an Open Meeting and Partially Closed Session.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Board for Education Sciences. The notice also describes the functions of the Committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend the open portion of the meeting.

DATES: July 27, 2009.

Time: Open meeting, 1:30 p.m. to 4:30 p.m.; closed session, 4:30 p.m. to 5 p.m.

ADDRESSES: 80 F Street, NW., Room 100, Washington, DC 20208

FOR FURTHER INFORMATION CONTACT: Norma Garza, Executive Director, National Board for Education Sciences, 555 New Jersey Ave., NW., Room 627H, Washington, DC 20208; *phone:* (202) 219–2195; *fax:* (202) 219–1466; *e-mail: Norma.Garza@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.

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002 (ESRA). The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding for applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute. At this time, the Board consists of only six of fifteen appointed members due to the expirations of the terms of nine members. The Board shall meet and can carry out official business because the ESRA states that a majority of the voting members serving at the time of a meeting constitutes a quorum.

On July 27 from 1:30 p.m. to 4:30 p.m., the Board will receive a briefing on the American Recovery and Reinvestment Act (ARRA), conduct an overview of its interactions with IES, and discuss its annual report. At 4:30 p.m., the meeting will be closed to the public to discuss possible candidates to serve as Commissioners for the IES Centers. Because this discussion involves a discussion of individuals' qualifications to serve, it will be closed under exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C. This portion of the meeting must be held in closed session because the meeting concerns the internal personnel practices of an agency and would disclose information of a personal nature where disclosure would constitute an invasion of personal privacy if it were to be held in open session.

A final agenda will be available from Norma Garza (see contact information above) on July 20. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistance listening devices, or materials in alternative format) should notify Norma Garza no later than July 20. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Committee proceedings and are available for public inspection at 555 New Jersey Ave., NW., Room 627H, Washington, DC 20208, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fed-register/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. E9–16256 Filed 7–8–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of Renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with section 102–3.65, title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Advanced Scientific Computing Advisory Committee has been renewed for a two-year period beginning July 2009. The Committee will provide advice to the Director, Office of Science, on the Advanced Scientific Computing Research Program managed by the Office of Advanced Scientific Computing Research.

The renewal of the Advanced Scientific Computing Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee may be obtained from Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on July 1, 2009.

Eric Nicoll,

Committee Management Officer.

[FR Doc. E9–16254 Filed 7–8–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 739–022]

Appalachian Power Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

July 1, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 739–022.

c. *Date Filed:* June 29, 2009.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Claytor Project.

f. *Location:* On the New River in Pulaski County, Virginia. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ms. Teresa Rogers, Reservoir Superintendent, Appalachian Power Company, 40 Franklin Road, Roanoke, VA 24011, (540) 985–2441, *tprogers@aep.com.*

i. *FERC Contact:* John Smith, (202) 502–8972 or *john.smith@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The Claytor Project consists of: (1) A 1,142-foot-long, 137-foot-high concrete gravity dam; (2) a 4,472-acre reservoir with a storage capacity of 225,000 acre-feet at normal pool elevation 1,846.0 feet National Geodetic Vertical Datum (NGVD); (3) four 16-foot-diameter penstocks; (4) a powerhouse integral with the dam containing four generating units with a combined capacity of 75 megawatts; (5) a 1,000-foot-long transmission line; and (6) switching and appurtenant equipment.

The applicant proposes to expand its current levelized flow mode whereby releases from the project approximate inflows to the project over a 24-hour period from April 15 through October 15 to April 1 through November 30. Reservoir levels would continue to be maintained between 1,845 feet NGVD and 1,846 feet NGVD and a minimum average hourly flow of 750 cubic feet per second (cfs), or inflow, whichever is less, would be provided downstream of the project. The applicant would also modify the current period for peaking operations from October 16 through April 14 to December 1 through March 31 and increase its minimum average hourly downstream flow from 750 cfs to 1,000 cfs, or inflow, whichever is less. During this period, the applicant would extend the time to ramp down during peaking operations from 15 minutes to 30 minutes but continue to bring units on line in 15-minute intervals to meet system demands. Reservoir levels would be maintained between 1,844 feet NGVD and 1,846 feet NGVD. In addition, the applicant would eliminate the current winter drawdown to protect aquatic resources including state-listed mussel populations. For recreation purposes, the applicant is proposing to provide weekend releases of 1,000 cfs when inflow falls below 1,000 cfs but is above 800 cfs and would provide recreation releases for the annual squirt boat competition each May.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/ Notice of Ready for Environmental Analysis (when FERC approved studies are complete).	September 27, 2009.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	November 26, 2009.
Commission issues Draft EA.	July 9, 2010.
Comments on Draft EA.	August 8, 2010.
Filing Modified Terms and Conditions.	October 7, 2010.
Commission Issues Final EA.	January 5, 2011.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16158 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–376]

Grand River Dam Authority; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 1, 2009.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 1494–376.

c. *Date Filed:* June 1, 2009.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Project.

f. *Location:* The proposed non-project use is located in Lawhead Hollow on Grand Lake, in Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Tamara E. Jahnke, Assistant General Council, Grand Dam River Authority, P.O. Box 409, Vinita, Oklahoma 74301, (918) 265–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Jade Alvey at (202) 502–6864.

j. *Deadline for filing comments and/or motions:* August 3, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Grand River Dam Authority filed an application seeking Commission authorization to permit Fox Pointe Development, LLC to install two homeowners' docks and a walkway on project lands along or near the shoreline of Lawhead Hollow on Grand Lake in Eucha, Delaware County, Oklahoma. The application is for a total of 19 boat slips and 21 PWCs. The filing includes maps and descriptions of the areas and of dock and slip configurations, photographs, environmental and historic considerations. No dredging is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–1494) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16160 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–438–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

June 30, 2009.

Take notice that on June 23, 2009, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP09–438–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon by sale Line BW–1507 in its entirety and a 4,940 foot segment of Line B–55–EXT, located in Johnson County, Arkansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For

assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director, Rate & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or by calling (318) 429–2804 (telephone) or (318) 429–3133 (fax), *larry.thomas@centerpointenergy.com,* or to Mark C. Schroeder, Vice President & General Counsel, CenterPoint Energy Gas Transmission Company, P.O. Box 1700, Houston, Texas 77210–1700, or by calling (713) 207–3395 (telephone) or (713) 207–0711 (fax), *mark.schroeder@centerpointenergy.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: July 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16165 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–420–001]

Algonquin Gas Transmission, LLC; Notice of Amendment to Application

June 30, 2009.

Take notice that on June 19, 2009, as supplemented on June 24, 2009, Algonquin Gas Transmission, LLC (Algonquin), 5400 Westheimer Court, Houston, Texas 77056, filed in the above referenced docket an amendment to its application in CP08–420–000 pursuant to sections 7(c) and (b) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations for an order granting a certificate of public convenience to construct, install, own, operate and maintain natural gas pipeline facilities necessary to provide at least 281,500 dekatherms per day (Dth/d) of firm transportation capacity. By this amendment, Algonquin proposes to (i) make piping modifications at the Hanover Compressor Station in Morris County, New Jersey in order to permit reverse flow of gas, along with backhaul capability along Algonquin's entire mainline; and (ii) install approximately 2.6 miles of 12-inch pipe along the E–3 System in New London County, Connecticut that will replace a segment of 6-inch pipe from MP0.0 in the City of Norwich to MP2.559 at the E–4 Tap. Algonquin also requests: (i) authority to charge its existing HubLine 2003 Project rate for service on the amended HubLine/East to West Project facilities; and (ii) any waivers, authority, and further relief as may be necessary to implement the proposal contained in its application, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Garth Johnson, General Manager, Rates and Certificates, Algonquin Gas Transmission, P.O. Box 1642, Houston, Texas 77251–1642, or at (713) 627–5415, or *gjohnson@spectraenergy.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS)

or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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: July 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16164 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13365–000—Alaska]

City of Angoon, Alaska; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 1, 2009.

On June 16, 2009, the City of Angoon filed an application pursuant to section 4(f) of the Federal Power Act to study the feasibility of the proposed Scenery Lake Project No. 13365 located in southeast Alaska. The June 16 application amends the City of Angoon's initial application for the Scenery Lake Project, which was accepted and noticed by the Commission on June 1, 2009. The acceptance letter is hereby rescinded, and this notice supersedes the June 1, 2009, *Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications* for the Scenery Lake Project. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A 15-foot-high concrete dam with spillway impounding Scenery Lake having a surface area of 520 to 610 acres and a storage capacity of 17,000 acre-feet; (2) a lake tap or siphon with fish screen; (3) a 13,000-foot-long by 8-foot-diameter power conduit; (4) a powerhouse containing two to four new generating units having an installed capacity of 30 megawatts; (5) a proposed 29-mile-long, 69- and 138-kilovolt transmission line; and (6) appurtenant facilities. The proposed Scenery Lake Project would have an average annual generation of 130 gigawatt-hours.

Applicant Contact: Albert Howard, Mayor, City of Angoon, P.O. Box 189, Angoon, AK 99820; phone: (907) 788–3653.

FERC Contact: Gina Krump, (202) 502–6704, *gina.krump@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13365) in the docket number field to

access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16159 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–439–000]

National Fuel Gas Supply Corporation; Notice of Application

June 29, 2009.

Take notice that on June 24, 2009, National Fuel Gas Supply Corporation (National Fuel) 6363 Main Street, Williamsville, New York 14221, filed an application in Docket No. CP09–439–000 pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity. National Fuel seeks the necessary authorization to refunctionalize from gathering to transmission Lines K–197 and R–49 in Jefferson, Forest and Elk Counties, Pennsylvania; and to refunctionalize from transmission to gathering approximately 2 miles of its Line YM–2 in McKean County, Pennsylvania.

Copies of this filing are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to David W. Reitz, Deputy General Counsel for National Fuel, 6363 Main Street, Williamsville, New York 14221, or call at (716) 857–7949.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents Docket No. CP09–439–000 filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

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.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. 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.

Comment Date: 5 p.m. Eastern Time on July 20, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16157 Filed 7–8–09; 8:45 am]

BILLING CODE; P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 02, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–790–000.
Applicants: MIGC LLC.
Description: MIGC, LLC submits First Revised Sheet 50 *et al.*, to its FERC Gas Tariff, Second Revised Volume 1 to be effective 8/1/09.
Filed Date: 06/29/2009.
Accession Number: 20090630–0006.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–791–000.
Applicants: MoGas Pipeline LLC.
Description: MoGas Pipeline, LLC submits its Section 4 rate case to change its base rates and institute a fuel charge.
Filed Date: 06/30/2009.
Accession Number: 20090701–0151.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–792–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits Fifth Revised Sheet 25 *et al.*, to its FERC Gas Tariff, Third Revised Volume 1, to be effective 8/1/09.
Filed Date: 06/30/2009.
Accession Number: 20090701–0058.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–793–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits First Revised Sheet 370 *et al.*, to its FERC Gas Tariff, Fourth Revised Volume 1 to be effective 7/30/09.
Filed Date: 06/30/2009.
Accession Number: 20090701–0059.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–794–000.
Applicants: Southern LNG Inc.
Description: Southern LNG, Inc submits First Revised Sheet 41 *et al.*, to its FERC Gas Tariff, Original Volume 1.
Filed Date: 06/30/2009.

Accession Number: 20090701–0060.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–795–000.
Applicants: Gulf States Transmission Corporation.
Description: Gulf States Transmission Corporation submits First Revised Sheet 38 *et al.*, effective 8/1/09.
Filed Date: 06/30/2009.
Accession Number: 20090701–0065.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–796–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corp submits 129th Revised Sheet 9 to its FERC Gas Tariff, Fourth Revised Volume 1.
Filed Date: 06/30/2009.
Accession Number: 20090701–0064.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–797–000.
Applicants: Trunkline LNG Company, LLC.
Description: Trunkline LNG Company, LLC submits FERC Gas Tariff Revised Volume 1–A.
Filed Date: 06/30/2009.
Accession Number: 20090701–0063.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–798–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Midcontinent Express Pipeline, LLC submits First Revised Sheet 113 *et al.*, to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.
Filed Date: 06/30/2009.
Accession Number: 20090701–0067.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–799–000.
Applicants: Trunkline LNG Company, LLC.
Description: Trunkline LNG Company, LLC submits Second Revised Sheet 1 *et al.*, to FERC Gas Tariff, Second Revised Volume 1–A, to be effective 8/1/09.
Filed Date: 06/30/2009.
Accession Number: 20090701–0161.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–800–000.
Applicants: WTG Hugoton, LP.
Description: WTG Hugoton, LP submits Second Revised Sheet 5 to reflect changes to the annual Fuel Retention Percentages applicable to transportation service provided under Rate Schedules FT and IT.
Filed Date: 07/01/2009.
Accession Number: 20090702–0086.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–801–000.
Applicants: Empire Pipeline, Inc.
Description: Empire Pipeline, Inc submits First Revised Sheet 18 *et al.* to FERC Gas Tariff, Original Volume 1 effective 8/1/09, to be effective 8/1/09.
Filed Date: 07/01/2009.
Accession Number: 20090702–0085.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–802–000.
Applicants: Texas Eastern Transmission LP.
Description: Texas Eastern Transmission, LP submits part of its FERC Gas Tariff, Seventh revised Volume 1 and First Revised Volume 2, *et al.,* to be effective 8/1/09.
Filed Date: 07/01/2009.
Accession Number: 20090702–0084.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–803–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Midcontinent Express Pipeline LLC submits amendments to existing negotiated rate Transportation Rate Schedule FTS Agreements between MEP and the Shippers listed on Appendix A.
Filed Date: 07/01/2009.
Accession Number: 20090702–0083.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–805–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, LP submits Fourth Revised Sheet 142 *et al.*, to FERC Gas Tariff, First Revised Volume 1.
Filed Date: 07/01/2009.
Accession Number: 20090702–0098.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–806–000.
Applicants: Dominion Transmission, Inc.
Description: Report of annual overrun/penalty revenue distribution of Dominion Transmission, Inc.
Filed Date: 07/01/2009.
Accession Number: 20090701–5264.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–807–000.
Applicants: Viking Gas Transmission Company.
Description: Viking Gas Transmission Company submits Seventh Revised Sheet 1 *et al.*, to FERC Gas Tariff, First Revised Volume 1, to be effective 8/1/09.
Filed Date: 07/01/2009.
Accession Number: 20090702–0107.
Comment Date: 5 p.m. Eastern Time on Monday, July 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. E9–16263 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 30, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–157–008; ER98–4159–018; ER04–268–015; ER06–398–012; ER06–399–012.

Applicants: Macquarie Cook Power Inc., Duquesne Light Company, Duquesne Power, L.P., Duquesne Keystone, LLC, Duquesne Conemaugh, LLC.

Description: Macquarie Cook Power Inc et al submits its Order 697 Compliance Filing and Category 1 Seller classification.

Filed Date: 06/29/2009.

Accession Number: 20090630–0014.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09–730–002.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits the attached revised PJM Open Access Transmission Tariff sheets to comply with the directives in the FERC 5/29/09 Order Accepting Tariff Revisions Subject to Conditions in this proceeding.

Filed Date: 06/29/2009.

Accession Number: 20090630–0003.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09–906–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an amendment to their tariff filing and response to FERC's 5/21/09 letter requiring additional information.

Filed Date: 06/29/2009.

Accession Number: 20090630–0004.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09–934–002.

Applicants: Bangor Hydro-Electric Company.

Description: Bangor Hydro-Electric Company submits revised Attachment P to Schedule 21–BHE.

Filed Date: 06/29/2009.

Accession Number: 20090630–0002.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09–1113–002.

Applcants: RRI Energy Ormond Beach, Inc.

Description: RRI Energy Coolwater, Inc submits Substitute Second Revised Sheet 1 et al to its Fourth Revised FERC Electric Rate Schedule 1.

Filed Date: 06/29/2009.

Accession Number: 20090630–0015.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09–1365–000.

Applicants: Alpena Power Generation, LLC.

Description: Alpenda Power Generation, LLC submits notice of cancellation of its market based rate tariff.

Filed Date: 06/29/2009.

Accession Number: 20090630–0021.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09–1366–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company submits Engineering and Procurement Agreement between CMP and Record Hill LLC.

Filed Date: 06/29/2009.

Accession Number: 20090630–0022.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09–1367–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits Facilities Agreement with ITC Midwest LLC.

Filed Date: 06/29/2009.

Accession Number: 20090630–0023.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09–1368–000.

Applicants: New York State Electric & Gas Corporation.

Description: New York State Electric & Gas Corporation submits supplement to Rate Schedule FERC No 200-Facilities Agreement between New York State Electric & Gas Corporation and the New York Power Authority.

Filed Date: 06/29/2009.

Accession Number: 20090630–0024.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09–1369–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits revisions to Schedule 7–Long Term Firm and Short Term Firm Point to Point et al.

Filed Date: 06/29/2009.

Accession Number: 20090630–0025.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR06–1–022; RR07–7–008.

Applicants: North American Electric Reliability Corporation; Western Electricity Coordinating Council.

Description: Report of the North American Electric Reliability Corporation and Western Electricity Coordinating Council in Response to Paragraph 230 of March 21, 2008 Commission Order.

Filed Date: 06/29/2009

Accession Number: 20090629–5244.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 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. E9–16262 Filed 7–8–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 1, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP01–245–029.
Applicants: Transcontinental Gas Pipeline Company LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits Third Revised Sheet 81 *et al.*, to its FERC Gas Tariff, Fourth revised Volume 1.
Filed Date: 06/29/2009.
Accession Number: 20090630–0036.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP02–361–077.
Applicants: Gulfstream Natural Gas System, LLC.
Description: Gulfstream Natural Gas System, LLC submits Second Revised Sheet 8.01c to FERC Gas Tariff, Original Volume 1.
Filed Date: 06/29/2009.
Accession Number: 20090630–0009.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–739–001.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, L.P. Request for Additional Temporary Waiver of NAESB Standards and Extension of Time to comply with standard number 4.3.72.
Filed Date: 06/29/2009.
Accession Number: 20090629–5237.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 8, 2009.

Docket Numbers: RP09–758–001.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc submits Substitute Second Revised Sheet 133 to FERC Gas Tariff, Original Volume 1 to be effective 7/10/09.
Filed Date: 06/29/2009.
Accession Number: 20090630–0007.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–770–001.
Applicants: Western Gas Interstate Company.
Description: Western Gas Interstate Co. submits Seventh Revised Sheet 247 to FERC Gas Tariff, Fourth Revised Volume 1.
Filed Date: 06/29/2009.
Accession Number: 20090630–0010.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP97–13–036.
Applicants: East Tennessee Natural Gas, LLC.
Description: East Tennessee Natural Gas, LLC submits Original Sheet 38 and Sheets 39–100 to FERC Gas Tariff, Third Revised Volume 1.
Filed Date: 06/29/2009.
Accession Number: 20090630–0008.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP97–81–053.
Applicants: Kinder Morgan Interstate Gas Trans. LLC.
Description: Kinder Morgan Interstate Gas Transmission LLC submits Substitute First Revised Sheet 0 *et al.*, to FERC Gas Tariff, Fourth Revised Volume 1–A, to be effective 8/1/09.
Filed Date: 06/26/2009.
Accession Number: 20090626–0100.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 8, 2009.

Docket Numbers: RP09–8–002.
Applicants: Tuscarora Gas Transmission Company.
Description: Tuscarora Gas Transmission Company submits Substitute Original Sheet 10 *et al.*, to FERC Gas Tariff, First Revised Volume 1, to be effective 7/1/09.
Filed Date: 06/23/2009.
Accession Number: 20090624–0007.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: RP09–148–001.
Applicants: Wyoming Interstate Company, Ltd.
Description: Wyoming Interstate Company, Ltd submits Sixth Revised Sheet 63A, & First Revised Sheet 63C to FERC Gas Tariff, Second Revised Volume 2, to be effective 6/12/09.
Filed Date: 06/26/2009.
Accession Number: 20090629–0101.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 8, 2009.

Docket Numbers: RP09–668–001.
Applicants: Wyoming Interstate Company, Ltd.
Description: Wyoming Interstate Company, Ltd submits Substitute Eighth Revised Sheet 37D to FERC Gas Tariff, Second Revised Volume 2 pursuant to Order No. 587–T Compliance filing.
Filed Date: 06/08/2009.
Accession Number: 20090610–0065.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: RP01–382–019.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas submits for filing its annual report setting forth the Carlton Resolution buyout and surcharge dollars reimbursed to the Carlton Sourcers.
Filed Date: 06/30/2009.
Accession Number: 20090630–5074.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP08–350–003.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline submits Original Volume 1 *et al.*, to be effective 11/1/08.
Filed Date: 06/30/2009.
Accession Number: 20090630–0060.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP96–272–094.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits Tenth Revised Sheet No 66B 01a *et al* to its FERC Gas Tariff, Fifth Revised Volume No 1.
Filed Date: 06/30/2009.
Accession Number: 20090630–0059.
Comment Date: 5 p.m. Eastern Time on Monday, July 13, 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 date. 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,

Deputy Secretary.

[FR Doc. E9–16264 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–61–000]

Louisiana Public Service Commission, Complainant v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC, and Entergy Texas, Inc., Respondents; Notice of Complaint

June 30, 2009.

Take notice that on June 29, 2009, the Louisiana Public Service Commission filed a formal complaint against Entergy Corp., Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., and Entergy Gulf States Louisiana, LLC, pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e and 18 CFR 386.206, alleging that sales of electric energy by Entergy Arkansas, Inc. to third party power marketers and others that are not members of the Entergy System Agreement (System Agreement): (a) Violated the provisions of the System Agreement that allocate the energy generated by System resources, (b) imprudently denied the System and its ultimate consumers the benefits of low-cost System generating capacity, and (c) violated the provisions of the System Agreement that prohibits sales to third parties by individual companies absent an offer of a Right-of-First-Refusal to the other companies.

The Louisiana Public Service Commission certifies that copies of the complaint were served on the contacts for Entergy Corp., Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., and Entergy Gulf States Louisiana, LLC, as listed on the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 July 20, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16167 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 785–018–MI]

Consumers Energy Company; Notice of Availability of Environmental Assessment

June 29, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects reviewed the application for a new license for the Calkins Bridge Hydroelectric Project, located on the Kalamazoo River in Allegan County, Michigan, and prepared an environmental assessment (EA). In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Calkins Bridge Project No. 785–018'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Timothy Konnert at (202) 502–6359.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16154 Filed 7–8–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2244–022]

Energy Northwest; Notice of Availability of Final Environmental Assessment

July 1, 2009.

In accordance with the National Environmental Policy Act (NEPA) of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new major license for the

Packwood Lake Hydroelectric Project (project), located on Lake Creek in Lewis County, Washington, and has prepared a final Environmental Assessment (EA). In the final EA, Commission staff analyze the potential environmental effects of licensing the project and conclude that issuing a license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the final EA is on file with the Commission and is available for public inspection. The final EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16161 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–780–020]

Southern Company Services, Inc.; Notice of Filing

June 29, 2009.

Take notice that on January 9, 2009, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Power Company, submit additional information in compliance with the Commission's December 19, 2008 Letter Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please 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 July 8, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16156 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2311–010; ER97–2846–013]

Carolina Power & Light Company; Florida Power Corporation; Notice of Filing

June 30, 2009.

Take notice that on January 13, 2009, Progress Energy Inc., on behalf of Carolina Power & Light Company and Florida Power Corporation (the Applicants), filed a response to the Commission's December 23, 2008, data request regarding the Applicants September 2, 2008 filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. 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 July 8, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16168 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF09–5101–000]

Western Area Power Administration; Notice of Filing

June 30, 2009.

Take notice that on June 17, 2009, the Deputy Secretary, U.S. Department of Energy, under the authority of the Department of Energy Organization Act (42 U.S.C. *et seq.*), confirm and approve on an interim basis, effective June 8, 2009, a power rate formula for the Amistad and Falcon Projects, and pursuant to the authority vested by Delegation Order No. 00–037.00, submitted a certification of the power rate formula and the power rate formula for confirmation and final approval effective June 8, 2009 and ending June 7, 2014, under Rate Order No. WAPA–143.

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 July 17, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16166 Filed 7–8–09; 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

June 30, 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

July 23, 2009 (8 a.m.–2 p.m.), Sheraton New Orleans, 500 Canal Street, New Orleans, LA 70130, 504–525–2500.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32	Entergy Services, Inc.
Docket No. OA08–59	Entergy Services, Inc.
Docket No. OA08–61	Entergy Services, Inc.
Docket No. OA08–75	Entergy Services, Inc.
Docket No. OA08–92	Entergy Services, Inc.
Docket No. OA08–149	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. EL08–59	ConocoPhillips v. Entergy Services, Inc.
Docket No. EL08–60	Union Electric v. Entergy Services, Inc.
Docket No. EL09–35	Cottonwood Energy LLP 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. ER03–583	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. ER07–985	Entergy Services, Inc.
Docket No. ER08–513	Entergy Services, Inc.
Docket No. ER08–515	Entergy Services, Inc.
Docket No. ER08–767	Entergy Services, Inc.
Docket No. ER08–774	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER08–1057	Entergy Services, Inc.
Docket No. ER09–555	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. ER09–878	Entergy Services, Inc.
Docket No. ER09–882	Entergy Services, Inc.
Docket No. ER09–985	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. E9–16258 Filed 7–8–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–8–000]

Transmission Planning Processes Under Order No. 890; Notice of Technical Conferences

June 30, 2009.

Take notice that Commission staff will convene technical conferences on the following dates in the following cities to examine the planning processes that are being conducted pursuant to Order No. 890.[1] Staff expects all transmission providers to participate in the technical conference for their particular region, although all interested persons, including transmission providers in other regions, regional representatives, transmission customers, developers of merchant transmission and distributed generation, and other resource developers are also invited to participate in each conference.

In Order No. 890, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment to their open access transmission tariffs.[2] On December 7, 2007, pursuant to Order No. 890, most public utility transmission providers and several non-public utility transmission owners submitted their proposed transmission planning processes.[3] The Commission subsequently addressed these filings in a series of orders that were issued throughout 2008. Generally, the Commission accepted each of the transmission planning processes to be effective December 7, 2007, subject to further compliance filings required to meet the nine planning principles (Initial Planning Orders). The Commission also noted that its staff would periodically monitor the implementation of these processes, and it stated its intent to convene regional technical conferences in 2009 to assess them.

Recently, the Commission issued a series of orders addressing the further transmission planning process compliance filings (Compliance Filing Orders). In each of the Compliance Filing Orders, the Commission emphasized that it remains interested in the development of transmission planning processes and will continue to examine the adequacy of the processes accepted to date. The Commission reiterated the encouragement made in prior orders for further refinements and improvements to the planning processes as transmission providers, their customers, and other stakeholders gain more experience through actual implementation of the processes. The Commission also re-stated that, as part of its ongoing evaluation of the implementation of the planning processes, it intended to convene regional technical conferences this year to determine if further refinements to these processes are necessary.

The conferences scheduled in this notice are intended to meet the Commission's commitment made in the Initial Planning Orders and Compliance Filing Orders that its staff would conduct an assessment of the Order No. 890 transmission planning processes. Consistent with these orders, the focus of the 2009 regional technical conferences will be: (1) To determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas that may need improvement; (2) to examine whether existing transmission planning processes adequately consider needs and solutions on a regional or interconnection-wide basis to ensure adequate and reliable supplies at just and reasonable rates; and (3) to explore whether existing processes are sufficient to meet emerging challenges to the transmission system, such as the development of interregional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy resources.

Date	Location	Transmission provider participants
September 3, 2009	Phoenix Airport Marriott, 1101 North 44th Street, Phoenix, AZ 85008.	Entities located within the ColumbiaGrid, Northern Tier Transmission Group, WestConnect, and CAISO footprints, and other entities in the WECC region that are not a part of any of these subregional groups.[4] Those wishing to participate as a panelist and provide feedback on the planning issues described above should submit a request form by close of business on August 13, 2009, located at: *https://www.ferc.gov/whatsnew/registration/trans0903speakerform.asp.*
September 10, 2009	Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, GA 30337.	Entities located in the states represented in the Southeastern Association of Regulatory Utility Commissioners and entities located in the Southwest Power Pool footprint. Those wishing to participate as a panelist and provide feedback on the planning issues described above should submit a request form by close of business on August 20, 2009 located at: *https://www.ferc.gov/whatsnew/registration/trans0910speakerform.asp*
September 21, 2009	Marriott Philadelphia Airport, One Arrivals Road, Philadelphia, PA 19153.	Entities located within the Midwest ISO, PJM, New York ISO, and ISO New England footprints, MAPP/MAPP Participants, and adjacent areas.

[1] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299, (2008) *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009).

[2] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 418–602.

[3] A small number of transmission providers were granted extensions.

[4] Staff also requests that a representative of WECC's Transmission Expansion Planning Policy Committee attend this technical conference.

Date	Location	Transmission provider participants
		Those wishing to participate as a panelist and provide feedback on the planning issues described above should submit a request form by close of business on August 31, 2009, located at: *https://www.ferc.gov/whats-new/registration/trans 09 21 speaker form.asp*.

A further notice with a detailed agenda for each conference will be issued in advance of the conferences. In the event a transmission provider is uncertain as to which technical conference is the appropriate forum for discussion of its planning process, such transmission providers should contact Commission staff in advance to discuss the matter. Lastly, a comment date will be set at a later date allowing for the filing of post-conference comments.

For further information about these conferences, please contact:

Zeny Magos (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8244, *Zeny.Magos@ferc.gov*.

John Cohen (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8705, *John.Cohen@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16170 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–615–000; ER07–1257–000; ER08–1113–000; ER08–1178–000; ER09–241–000; ER09–1048–000; ER09–1281–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

June 29, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following dates members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *http://www.caiso.com.*

June 30, 2009—Market Surveillance Committee.

July 1, 2009—Settlements and Market Clearing User Group. Congestion Revenue Rights.

July 2, 2009—Market Issues.

July 7, 2009—Systems Interface User Group.

July 8, 2009—Congestion Revenue Rights. Settlements and Market Clearing User Group.

July 9, 2009—Market Issues. Convergence Bidding Meeting.

July 14, 2009—Systems Interface User Group.

July 15, 2009—Settlements and Market Clearing User Group. Congestion Revenue Rights.

July 16, 2009—Market Issues. Transmission Maintenance Coordination Committee Meeting.

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants, and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov*; (916) 294–0322 or Maury Kruth at *maury.kruth@ferc.gov*, (916) 294–0275.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16155 Filed 7–8–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12615–001—Alaska Soule River Hydroelectric Project]

Alaska Power & Telephone Company; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

June 30, 2009.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Alaska State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 470f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Soule River Hydroelectric Project No. 12615–001.

The programmatic agreement, when executed by the Commission and the SHPO, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities, pursuant to section 106 for the Soule River Hydroelectric Project, would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Alaska Power & Telephone Company, as applicant for the Soule River Hydroelectric Project No. 12615–001, is invited to participate in consultations to develop the programmatic agreement.

For the purpose of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

[1] 18 CFR 385.2010.

Don Klima or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004..	Judith Bittner, SHPO or Representative, Office of History & Archaeology, 550 W 7th Avenue, Suite 1310, Anchorage, AK 99501.
Glen Martin or Representative, Alaska Power & Telephone Company, 193 Otto Street, P.O. Box 3222, Port Townsend, WA 98368..	Martin Stanford or Representative, U.S. Forest Service, 3031 Tongass Avenue, Ketchikan, AK 99901.
T. Weber Greiser, Historical Research Associates, Inc., 125 Bank Street, Suite 500, Missoula, MT 59802..	John Autrey or Representative, U.S. Forest Service, 648 Mission Street, Ketchikan, AK 99901.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also, please identify any concerns about historic properties, including properties of traditional religious and cultural importance to an Indian tribe. If historic properties would be identified within the motion, please use a separate page, and label it *non-public* Information.

The original and 8 copies of any such motion must be filed with Kimberly D. Bose, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and must be served on each person whose name appears on the official service list. Please put the following on the first page: Soule River Hydroelectric Project No. 12615–001. Motions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15-day period.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16163 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1256–029]

Loup River Public Power District; NebraskaLoup River Hydroelectric Project; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

July 1, 2009.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Nebraska State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. section 470f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Loup River Hydroelectric Project No. 1256–029.

The programmatic agreement, when executed by the Commission and the SHPO, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Loup River Hydroelectric Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a new license.

Loup River Public Power District, as licensee for the Loup River Hydroelectric Project No. 1256–029, is invited to participate in consultations to develop the programmatic agreement.

For the purpose of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Don Klima or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004.	George Howell, President or Representative, Pawnee Tribal Business Council, P.O. Box 470, Pawnee, OK 74058.
Neal Suess, President or Representative, Loup River Public Power District, 2404 15th Street, Columbus, NE 68602–0988.	Roger Trudell, Chairman or Representative, Santee Sioux Tribal Council, Route 2, Niobrara, NE 68760.
Michael J. Smith, Director or Representative, Nebraska State Historical Society, 1500 R Street, Lincoln, NE 68501.	Amen Sheridan, Chairman or Representative, Omaha Tribal Council, Omaha Tribe of Nebraska, P.O. Box 368, Macy, NE 68039.
Jill E. Dolberg, Nebraska State Historical Society, 1500 R Street, Lincoln, NE 68501.	Michael J. Madson, M.S., RPA, HDR One Company, 701 Xenia Avenue South, Suite 600, Minneapolis, MN 55416.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including properties of traditional religious and cultural importance to an Indian tribe. If historic properties would be identified within the motion, please use a separate page, and label it NON–PUBLIC Information.

[1] 18 CFR section 385.2010.

The original and 8 copies of any such motion must be filed with Kimberly D. Bose, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and must be served on each person whose name appears on the official service list. Please put the following on the first page: ''Loup River Hydroelectric Project No. 1256–029''. Motions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16162 Filed 7–8–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0284; FRL–8929–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Municipal Solid Waste Landfills (Renewal), EPA ICR Number 1938.04, OMB Control Number 2060–0505

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 10, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0284, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4113; *fax number:* (202) 564–0050; *e-mail address: williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0284, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, to access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NESHAP for Municipal Solid Waste Landfills (Renewal).

ICR Numbers: EPA ICR Number 1938.04, OMB Control Number 2060–0505.

ICR Status: This ICR is scheduled to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Municipal Solid Waste (MSW) Landfills were proposed on November 7, 2000, and promulgated on January 16, 2003. These standards apply to each existing and new municipal solid waste (MSW) landfills. This subpart applies to: An MSW landfill that has accepted waste since November 8, 1987, or has additional capacity for waste deposition; a major source, collocated with a major source; and an area source landfill with a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) and has estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) of nonmethane organic compounds (NMOC); or an MSW landfill that has additional capacity for waste deposition, that includes a bioreactor and is not permanently closed as of January 16, 2003.

Owners or operators of the affected facilities would be required to submit semiannual compliance reports for control device operating parameters, prepare a startup, shutdown, and malfunction (SSM) plan, and prepare semiannual SSM reports.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements and retain the file for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average five hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information either to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of each municipal solid waste landfill.

Estimated Number of Respondents: 1,121.

Frequency of Response: On occasion, annually and semiannually.

Estimated Total Annual Hour Burden: 18,234.

Estimated Total Annual Cost: $1,489,039, which includes $1,472,039 in labor costs, $17,000 in operation and maintenance (O&M) costs, and no capital/startup costs.

Changes in the Estimates: There is no change in the labor hours in this ICR as compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or nonexistent, so there is no significant change in the overall burden. It should be noted that there is a change in the labor cost compared to the previous ICR. The change is due to a minor calculation error. This ICR reflects the correction and updates the labor cost figure.

The capital/startup costs are not included because this NESHAP does not require MSW landfills to purchase or operate additional control equipment or monitoring devices.

Dated: July 2, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–16269 Filed 7–8–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0899; FRL–8928–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Stationary Compression Ignition Internal Combustion Engines (Renewal), EPA ICR Number 2196.03, OMB Control Number 2060–0590

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 10, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0899, to (1) EPA online using www.regulations.gov (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 29, 2008 (73 FR 79470), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0899, which is available for public viewing online at *http://www.regulations.gov* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Stationary Compression Ignition Internal Combustion Engines (Renewal).

ICR Numbers: EPA ICR Number 2196.03, OMB Control Number 2060–0590.

ICR Status: This ICR is schedule to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for Stationary Compression Ignition Internal Combustion Engines were proposed on July 11, 2005, and promulgated on July 11, 2006. These regulations apply to stationary compression ignition (CI) internal combustion engines (ICE).

Owners or operators of the affected facilities must submit an initial notification report also manufacturers are required to submit an application for certification, including emission data and other descriptive information for each engine family subject to the standard. They are also required to maintain records of corrective action taken after the backpressure monitor has alerted the owner or operator of a high backpressure limit. Annual reports are also required.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least two years following the collection of such measurements, maintenance reports, and records.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart IIII, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information estimated to average one hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information either to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Stationary source compression ignition internal combustion engines.

Estimated Number of Respondents: 206,290.

Frequency of Response: Initially and annually.

Estimated Total Annual Hour Burden: 192,197.

Estimated Total Annual Cost: $19,015,209, which includes $18,773,209 in labor costs, $242,000 in operation and maintenance costs, and no capital/startup costs.

Changes in the Estimates: There is an adjustment increase of 47,062 hours in the total estimated labor hour burden as currently identified in the OMB Inventory of Approved ICR Burdens because the standard is now fully implemented. There has not been an increase in the number of facilities subject to the standard. It should be noted that the increase is not due to any program changes.

The previous ICR covered the initial phase of standard implementation, which occurred over a three-year period. Hence, the average number of respondents during the initial phase is less than the number of respondents when the standard is fully implemented. This ICR shows the labor hour burden after full implementation.

There are no changes of cost in the capital/startup and operating and maintenance (O&M) costs associated with this ICR.

Dated: July 2, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–16266 Filed 7–8–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0372; FRL–8928–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Petroleum Dry Cleaners (Renewal); EPA ICR Number 0997.09, OMB Control Number 2060–0079

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 10, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2008–0372, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sounjay Gairola, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4003; *e-mail address: gairola.sounjay@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0372, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NSPS for Petroleum Dry Cleaners (Renewal)

ICR Numbers: EPA ICR Number 0997.09, OMB Control Number 2060–0079.

ICR Status: This ICR is scheduled to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for Petroleum Dry Cleaners (40 CFR part 60, subpart JJJ) were proposed on December 14, 1982, promulgated on September 24, 1984, and amended on October 17, 2000 (65 *FR* 61773).

The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart JJJ.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 22 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Petroleum dry cleaners.

Estimated Number of Respondents: 18.

Frequency of Response: Initially.

Estimated Total Annual Hour Burden: 1,664.

Estimated Total Annual Cost: $134,355 in labor costs exclusively. There are no annualized capital/startup costs or O&M costs associated with this ICR.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Apparent differences of less than 500 hours are attributable to rounding; in previous years, hours were rounded to the nearest thousand; this ICR presents more exact figures.

Dated: July 2, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–16267 Filed 7–8–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8928–4]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Claywood Park Public Service District, West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Claywood Park Public Service District (PSD) for the purchase of blowers at their Wastewater Treatment Plant (WWTP). These blowers are manufactured outside of the United States by Aerzen, a company based in Germany, and meet the PSD's technical specifications. The Acting Regional Administrator is making this determination based on the review and recommendations of the EPA Region III, Water Protection Division, Office of Infrastructure and Assistance. The Claywood Park Public Service District has provided sufficient documentation to support its request.

The Assistant Administrator of the EPA's Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of specific type blowers for the proposed project being implemented by the Claywood Park Public Service District.

DATES: *Effective Date:* June 8, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Chominski, Deputy Associate Director, (215) 814–2162, or David McAdams, Environmental Engineer, (215) 814–5764, Office of Infrastructure & Assistance (OIA), Water Protection Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111–5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to the Claywood Park Public Service District (PSD) for the acquisition of specialized blowers manufactured outside of the United States by Aerzen, a company based in Germany. Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The PSD has provided information to the EPA representing that there are

currently no blowers manufactured in the United States that have the same product specifications in place. The specifications for the new blowers required that both the gear-end and the drive-end of the blowers shall be oil splash lubricated for minimal maintenance and long service life. Grease lubricated bearings are not acceptable and maximum average noise level, within enclosure, 76 dba measured at 6 locations at a distance of 3 feet from the blower system.''

Since the original WWTP was built in 1990, additional homes in the community were constructed closer to the WWTP than existing houses had been. Moreover, because there is no additional space in the basement of the operations building, the two new blowers had to be constructed outside the operations building. The PSD has also provided information that the low-noise stand alone blower enclosure ensures that the plant does not become a noise nuisance to the Cedar Grove and Happy Valley Community. The Aerzen-style blowers are the quietest blowers available. Given the proximity of the new residents and the necessary exterior location of the blowers, the PSD had a reasonable and appropriate basis to limit the project specification to ultra-quiet blowers.

The PSD's submission clearly articulates entirely functional reasons for its technical specifications, and has provided sufficient documentation that the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantity and of a satisfactory quality to meet its technical specifications.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American Provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' '', defines reasonably available quantity as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design''. The PSD has incorporated specific technical design features for its blowers for noise, improved reliability and ease of maintenance.

The PSD has provided information to the EPA representing that there are currently no blowers manufactured in the United States that have the exact same product specifications in place. Based on additional research conducted by the Office of Infrastructure & Assistance and to the best of the Region's knowledge at the time of the review, there does not appear to be other blowers to meet the PSD's exact technical specifications.

Furthermore, the purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring utilities, such as the Claywood Park Public Service District, to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

The Office of Infrastructure & Assistance has reviewed this waiver request and has determined that the supporting documentation provided by the Claywood Park Public Service District is sufficient to meet the criteria listed under Section 1605(b) and in the April 28, 2009, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum'': Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The basis for this project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the District's technical specifications, a waiver from the Buy American requirement is justified.

The EPA's March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the Claywood Park Public Service District is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of blowers using ARRA funds as specified in the PSD's request of April 9, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Public Law 111–5, section 1605.

Dated: June 18, 2009.

William C. Early,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. E9–16265 Filed 7–8–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8924–4]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: *http://www.epa.gov/compliance/monitoring/programs/caa/adi.html.* The document may be located by control number, date, author, subpart, or subject search. For questions about the ADI or this notice, contact Rebecca Kane at EPA by phone at: (202) 564–5960, or by e-mail at: *kane.rebecca@epa.gov.* For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions to the NSPS in 40 Code of Federal Regulations (CFR) part 60 and the NESHAP in 40 CFR part

61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are commonly referred to as applicability determinations. *See* 40 CFR 60.5 and 61.06. Although the part 63 NESHAP [which includes Maximum Achievable Control Technology (MACT) standards] and section 111(d) of the Clean Air Act (CAA) regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping that are different from the promulgated requirements. *See* 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are commonly referred to as alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are commonly referred to as regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the ADI on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 69 such documents added to the ADI on June 17, 2009. The subject and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *http://www.epa.gov/compliance/monitoring/programs/caa/adi.html.*

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on June 17, 2009; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter.

We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents. This notice does not change the status of any document with respect to whether it is ''of nationwide scope or effect'' for purposes of section 307(b)(1) of the Clean Air Act. For example, this notice does not make an applicability determination for a particular source into a nationwide rule. Neither does it purport to make any document that was previously non-binding into a binding document.

ADI DETERMINATIONS UPLOADED ON JUNE 17, 2009

Control No.	Category	Subparts	Title
0900001	NSPS	WWW	Solar Flare Requirements.
0900003	NSPS	OOO	Performance Testing and Test Waiver Request.
0900004	NSPS	A, UUU	Spray Dryer Equipped with Baghouse and Wet Scrubber.
0900005	NSPS	A, UUU	Spray Dryer Equipped with Baghouse and Wet Scrubber.
0900006	NSPS	A, UUU	Spray Dryer Controlled by Baghouse-Scrubber System.
0900007	NSPS	XX	Ethanol Plant Receiving Gasoline by Truck.
0900008	NSPS	Cc, WWW	Landfill Expansion.
0900009	NSPS	WWW	Higher Operating Temperature at Landfill Wellhead.
0900010	NSPS	WWW	Alternative Operating Temperature at Landfill Wellhead.
0900011	NSPS	WWW	New Temporary Higher Operating Limit at Landfill Wellhead.
0900012	NSPS	BBBB, JJJ	Dioxin/furan Testing at Small Municipal Waste Combustor.
0900013	NSPS	Db	Alternative Monitoring Proposal.
0900014	NSPS	A, RR	Replacement Regenerative Thermal Oxidizer.
0900015	NSPS	PPP	Glass Pull Rate and Primary Amp/Voltage Monitoring.
0900016	NSPS	WWW	Alternative Timeline to Correct Oxygen Exceedances at Wellhead.
0900017	NSPS	CC	Opacity Standard for Glass Plants.
0900018	NSPS	NNN, RRR	Flow Monitoring Requirements for Distillation Column C–600.
0900019	NSPS	J	Platformer Regeneration Process Unit Operations.
0900020	NSPS	J	Wastewater API Separator Unit Operations.
0900021	NSPS	A, D	Relocating/Certifying Continuous Opacity Monitoring Systems.
0900022	NSPS	NNN, RRR	Flow Monitoring Requirements for Distillation Column C–5222.
A090001	Asbestos	M	Vermiculite in Facility Demolished for Safety Reasons.
A090003	Asbestos	M	Residential Structures Demolished by Municipalities for Public Safety.
A090004	Asbestos	M	Demolition Procedures Involving Asbestos-containing Vermiculite.
M090004	MACT	FFFF, GGG	Initial Compliance Demonstration for Process Condensers.
M090006	MACT	FFFF	Alternative Calculation of Uncontrolled Phenol Emissions; Use of Soundproof Acoustic Flare Monitoring System.
M090007	MACT	GGG	Floating Roof as Process Tank Control Device.
M090008	MACT	FFFF	Exclusion of Hydrogen Halides and Halogen HAPs.
M090009	MACT	RRR	Installation of Sweat Furnace at Area Source Aluminum Foundry.
M090010	MACT	FFFF	Alternative Monitoring Requirements for Packed Scrubber.
M090011	MACT	GGGGG	Excavated Soil Used as Backfill.
M090012	MACT	FFFF, SS	Control Methods for HAP Emissions from Group 1 Process Vents.
M090013	MACT	A, LLL	Alternative Baghouse Inlet Temperature Calculation for Long Wet Kiln.
M090014	MACT	FFFF	Use of Process Condenser as Recovery Device.

ADI DETERMINATIONS UPLOADED ON JUNE 17, 2009—Continued

Control No.	Category	Subparts	Title
M090015	MACT	RRR	Alternative Monitoring and Recordkeeping for Scrap Dryer.
M090016	MACT	EEEE	Container-to-Container and Truck-to-Container Transfers.
M090017	MACT	WWWW	Styrene Content Value for Calculating Emissions; Repairs with Putty.
M090018	MACT	KK	MACT Applicability after HAP Is Delisted.
M090019	MACT	MM	New Compliance Monitoring Limits without Testing.
M090020	MACT	VVVV	Opting Out of MACT after Compliance Date.
M090021	MACT	A, CCC	Monitoring and Recordkeeping Requirements.
Z090001	NESHAP	F, V	Updating Vinyl Chloride Leak Detection and Repair Programs.

Backlog:

ADI DETERMINATIONS UPLOADED ON JUNE 17, 2009

Control No.	Category	Subparts	Title
0900023	NSPS	J	Revising Alternative Monitoring Plan for Hydrogen Sulfide.
0900024	NSPS	WWW	Alternative Compliance Timeline for Well Exceedance.
0900025	NSPS	AAAA, WWW	Alternatives to Collection and Control System Design Plan.
0900026	NSPS	WWW	Alternative Monitoring Plan.
0900027	NSPS	WWW	Conducting Additional Tier 2 Sampling.
0900028	NSPS	J	Modification of Approved Alternative Monitoring Plan.
0900029	NSPS	QQQ	Designating Group 2 Wastewater Stream as Group 1 Wastewater Stream.
0900030	NSPS	WWW	Alternative Operating Temperatures for Gas Well.
0900031	NSPS	Db	Alternative Monitoring Plan.
0900032	NSPS	Db	Alternative Monitoring Plan.
0900033	NSPS	WWW	Alternative Operating Temperatures for Two Gas Wells.
0900034	NSPS	J	Alternative Monitoring Plan.
0900035	NSPS	VV	Closed Loop Sampling Systems.
0900036	NSPS	WWW	Alternative Operating Temperatures at Multiple Wells.
0900037	NSPS	WWW	Alternative Timeline for Gas Collection.
M090022	MACT	RRR	Thermal Chip Dryer Operation.
M090023	MACT	A, JJJJJ	Alternative Monitoring Method and Performance Test Waiver.
M090024	MACT	J, UUU	Alternative Monitoring Request for FCCU COMS.
M090025	MACT	CC	Alternative Monitoring Plan.
M090026	MACT	AAAA	Determination Whether Subpart Applies.
M090027	MACT	CC	Designating Group 2 Wastewater Stream as Group 1 Wastewater Stream.
M090028	MACT	G, JJJ	Alternative Control Device.
M090029	MACT	AAAA	Determination Whether Subpart Applies.
M090030	MACT	A, RRR	Alternative Monitoring Method.
M090031	MACT	JJJJ	Initial Performance Test Waiver.
M090032	MACT	GGG, MMM	Use of Previously Conducted Performance Tests for Initial Compliance Demonstration.
Z090002	NESHAP	FF	Designating Group 2 Wastewater Stream as Group 1 Wastewater Stream.

Abstracts

Abstract for [A090001]

Q: Does EPA approve a variance from 40 CFR part 61, subpart M, the asbestos NESHAP, to allow vermiculite material to be left in place during demolition at the former Coachman Motel in Bloomington, Illinois?

A: No. EPA does not approve a variance to the asbestos NESHAP under any circumstance. However, the asbestos NESHAP identifies situations where regulated asbestos-containing material (RACM) need not be removed prior to demolition, including a situation where the RACM was not accessible for testing and not discovered until after demolition, and as a result of the demolition, cannot be safely removed. The loose vermiculite material in between the walls at this motel appears to fall into this situation because, to remove it, the walls would need to be taken down, causing the ceiling to collapse. All exposed RACM and all contaminated debris must be treated as asbestos-containing waste material in this situation.

Abstract for [A090003]

Q: Does the applicability determination issued by EPA on July 15, 1993 (see ADI Control Number 930828) conflict with EPA's Clarification of Intent published in the **Federal Register** on July 28, 1995, as to the applicability of 40 CFR part 61, subpart M (the asbestos NESHAP) to single-family homes?

A: No. EPA believes that these documents are not in conflict, but rather are complementary and apply to different factual situations. The 1993 applicability determination responds to the issue of a large municipality-orchestrated project where multiple single-family homes are being demolished as part of that large project over the course of the same planning or scheduling period, which, for most municipalities, we believe is done on a fiscal or calendar year basis, or in accordance with the terms of a contract. It is EPA's interpretation that the demolition of such multiple single-family homes under such circumstances by a municipality is subject to the asbestos NESHAP regulation, notwithstanding the residential building exclusion contained within the definition of ''facility'' in the asbestos NESHAP. The 1995 Clarification of Intent, on the other hand, deals with the demolition of two or more single-family homes on the same site (*e.g.,* a city

block) that are under the control of a common owner or operator. Under that factual scenario, the single-family homes are considered to be (or, perhaps, to be a part of) an installation, as defined under the asbestos NESHAP, and are subject to the asbestos NESHAP regulation.

Abstract for [A090004]

Q: Does EPA approve Environmental Consultants' request under 40 CFR part 61, subpart M, to leave vermiculite asbestos-containing material (ACM), which is loose between the load-supporting concrete block walls of a vacant commercial building in O'Fallon, Illinois, in place during the building's demolition?

A: Yes. EPA has determined that Environmental Consultants can leave ACM in place during demolition because it is a friable ACM, and the exception in 40 CFR 61.145(c)(1)(iii) applies since it cannot be safely removed prior to demolition without causing the ceiling to collapse. All exposed regulated ACM and all asbestos-contaminated debris must be treated as asbestos-containing waste material and kept adequately wet at all times until properly disposed of.

Abstract for [M090004]

Q: Does EPA approve Dow Chemical Company's request under 40 CFR part 63, subpart FFFF (MON), to waive the initial compliance demonstration for process condensers at its Midland, Michigan facility?

A: Yes. EPA approves Dow's request to waive the initial compliance demonstration for the specific process condensers listed in its request because the condensers are not designed to recover hazardous air pollutants (HAP) and therefore cannot meet the initial compliance demonstration requirements without negatively affecting process operations. In addition, the condensers are vented to control devices that reduce HAP emissions per the MON.

Abstract for [M090006]

Q1: Is a Soundproof acoustic flare monitoring system an acceptable method for the Albemarle Corporation facility in Orangeburg, South Carolina, to meet the flare monitoring requirements of 40 CFR 63.987(c), as referenced in 63.2450(e)(2)?

A1: Yes. Based on information Albemarle Corporation submitted in its November 8, 2007 letter, specifically information from John Zink Company, the manufacturer of the Soundproof Acoustic Pilot Monitor, EPA concludes that the Soundproof monitoring system meets the requirements of 40 CFR 63.987(c).

Q2: May Albemarle Corporation conduct an engineering assessment to calculate uncontrolled phenol emissions from its P30 process at its Orangeburg, South Carolina facility?

A2: Yes. Phenol is used as the limiting reagent in the P30 process. During the reaction, phenol is converted to hydrochloric acid at a 1:1 molar ratio. Due to the variable nature of the batch reaction, it is impossible to know the mole fraction of phenol during the reaction; thus, it is impossible to calculate the partial pressure. Phenol emissions were calculated by multiplying the HCl emissions from the process by the ratio of phenol to HCl in the scrubber liquid (0.14 percent, obtained from test results).

Abstract for [M090007]

Q: May a floating roof be used as a control device for process tank emissions to comply with 40 CFR part 63, subpart GGG?

A: Yes. A floating roof can be used in this application provided that the 93 percent reduction of HAP emissions required by 40 CFR 63.1254(a)(1) is met. The 93 percent HAP reduction requirement can be satisfied by first calculating uncontrolled HAP emissions using the equations in 40 CFR 63.1257(d)(2)(i)(A) and calculating the controlled HAP emissions using EPA's TANKS computer program, then calculating the percent reduction using these two values.

Abstract for [M090008]

Q1: Does EPA approve of test conditions, data, calculations, and other means used at the MeadWestvaco facility in Charleston, South Carolina, to establish operating limits for a regenerative thermal oxidizer according to 40 CFR 63.2460(c)(3)?

A1: EPA approval is not required for this request because MeadWestvaco is requesting to average emissions within specific processes and not across multiple processes.

Q2: Can hydrogen halides and halogen HAPs generated due to halides present in water used as a raw material by the MeadWestvaco facility in Charleston, South Carolina, be excluded from uncontrolled emissions calculations under 40 CFR part 63, subpart FFFF?

A2: No. Although the levels of hydrogen halides and halogen HAPs are quite small, there is no de minimis value for these pollutants in MACT subpart FFFF. Also, there is no regulatory basis in 40 CFR part 63 for EPA to grant such an approval.

Q3: Does EPA approve the use of the reduced recordkeeping requirements at 40 CFR 63.2525(e)(3) under MACT subpart FFFF for miscellaneous organic chemical processing units (MCPUs) with uncontrolled halogen halide and halogen HAP emissions of less than 200 pounds per year?

A3: No. EPA does, however, approve the use of these reduced recordkeeping requirements under MACT subpart FFFF for MCPUs with uncontrolled halogen halide and halogen HAP emissions less than 100 pounds per year.

Abstract for [M090009]

Q: Does the installation of a sweat furnace at the Nemak USA aluminum foundry facility in Sylacauga, Alabama, which is currently exempt from the requirements of 40 CFR part 63, subpart RRR (Secondary Aluminum Production NESHAP), make the facility subject to the requirements of NESHAP subpart RRR?

A: Yes. According to 40 CFR 63.1503, aluminum foundries are not considered secondary aluminum production facilities if they only melt clean charge, customer returns, or internal scrap, and do not operate sweat furnaces, thermal chip dryers, or scrap dryers/delacquering kilns/decoating kilns. By this definition, the Nemak facility would be subject to subpart RRR upon installation of a sweat furnace at its facility. Specifically, as an affected source located at an area source of HAPs, the sweat furnace would be subject to the requirements of subpart RRR pertaining to dioxin and furan (D/F) emissions and the associated operating, monitoring, reporting, and record keeping requirements under 40 CFR 63.1500(c)(3). Per the applicability criteria in 40 CFR 63.1500(c)(4), the existing area source furnaces are still exempt from the requirements of MACT subpart RRR because they only process clean charge.

Abstract for [M090010]

Q: Does EPA approve the requested alternative monitoring to the monitoring requirements under 40 CFR part 63, subpart FFFF, for the C–202 packed scrubber at the Rhodia Inc. facility in Charleston, South Carolina?

A: Yes. EPA approves the monitoring of the scrubber column differential pressure, scrubber liquid inlet flow rate, and scrubber liquid acid strength in place of the monitoring requirements stated in 40 CFR 63.990(c) [as referenced by 63.2470(c)]. Rhodia has identified that all three of these parameters have specific designed

operating conditions specified by the manufacturer.

Abstract for [M090011]

Q: Would contaminated soil that the BP refinery in Whiting, Indiana, excavates as part of on-site construction activities, temporarily stores on-site, and uses as backfill on-site be subject to the Site Remediation MACT, 40 CFR part 63, subpart GGGGG?

A: No. The re-use of contaminated soil as backfill on-site without any cleanup activities is not subject to MACT subpart GGGGG.

Abstract for [M090012]

Q1: Does EPA approve an alternative monitoring plan under the Miscellaneous Organic NESHAP, 40 CFR part 63, subpart FFFF (MON), for the packed-bed caustic scrubber used to control phenol emissions from several Group 1 batch process vents at DynaChem, Inc.'s batch chemicals manufacturing facility in Georgetown, Illinois?

A1: Yes. EPA approves DynaChem's request to continuously measure pH and scrubber flow rate (to determine the liquid to gas ratio) as an alternative to continuously measuring the scrubbing liquid temperature and the specific gravity. According to DynaChem, the phenol in the process reacts with the sodium hydroxide in the scrubbing liquid caustic solution to form sodium phenolate. As phenol is removed, the specific gravity will not vary significantly to provide the level of sensitivity needed for determining on-going compliance due to the limited solubility of the sodium phenolate. This alternative monitoring plan follows the requirements for absorbers removing halogenated compounds where the scrubbing liquor is reacting with the compound instead of absorbing it.

Q2: Are DynaChem's condensers after the vacuum pumps in the epoxy and sulfonic acid production batch trains ''control devices'' or ''process condensers'' under the MON?

A2: Based on the information provided by DynaChem, the refrigerated vent condensers in the vent stream trains after the vacuum pumps (vent condensers 1, 2, and 3, and the post condenser) are control devices for the following reasons: (1) The primary purpose of these vent condensers is the control of HAP emissions; (2) three of the four condensers were installed at the same time as the non-regenerative adsorber units as part of a single control system for controlling HAP emissions to meet 98 percent control and the fourth condenser is outside the unit battery limits and functions as an emission control device; and (3) these condensers account for a very small percentage of the total condensate recovered during a process batch.

Q3: Does EPA approve an alternative monitoring plan under the MON for Group 1 process vent trains, in the epoxy resin and sulfonic acid production processes, which are equipped with a combination of refrigerated vent condensers followed by two non-regenerative carbon canisters configured in series, at DynaChem's Georgetown, Illinois facility?

A3: Yes. EPA approves an alternative monitoring plan involving the use of a Flame Ionization Detector (FID) to detect when the canisters need change-out. The frequency of such monitoring will be determined via performance testing. DynaChem must also install and operate a monitoring device capable of providing a continuous record of the exit (product side) gas temperature of the condenser.

Abstract for [M090013]

Q: Does EPA approve a re-start of the calculation of the 180-minute rolling average baghouse inlet temperature (BHIT), under 40 CFR part 63, subpart LLL, when the Holcim, Inc. facility in Dundee, Michigan, switches the emission controls on its long wet kiln #1 from the carbon injection system to the scrubber/regenerative thermal oxidizer (S/RTO) system, and vice versa?

A: Yes. EPA approves a re-start under MACT subpart LLL. Holcim conducted performance testing on long wet kiln #1, which resulted in a BHIT limit of 419 degrees Fahrenheit when operating the S/RTO and a BHIT of 351 degrees Fahrenheit when operating carbon injection. Because Holcim has two temperature limits in two different operating scenarios, the facility needs to begin anew at zero the calculation of the 180-minute rolling average temperature when switching between the two control device scenarios.

Abstract for [M090014]

Q: May the 3V Inc. facility in Georgetown, South Carolina, use a condenser as a recovery device to reduce collective uncontrolled organic HAP emissions from batch process vents by 95 percent as required by Table 2 of 40 CFR part 63, subpart FFFF?

A: No. Under MACT subpart FFFF, any condenser which recovers material for fuel value cannot be a recovery device used to comply with Table 2, and is deemed a process condenser.

Abstract for [M090015]

Q: Does EPA approve Aleris International's request under 40 CFR part 63, subpart RRR, to base the feed/charge weight to the scrap dryer on the weight of the feed/charge into either the ring crusher or the feed hopper at the Wabash Alloys facility in Wabash, Indiana?

A: Yes. EPA approves Aleris International's alternative methodology request under MACT subpart RRR based on its claims that (1) there are no process losses at or through the ring crusher, (2) after the ring crusher and after the hopper the material is conveyed continuously to the scrap dryer, and (3) the equipment configurations do not allow the separate weighing of the feed/charge directly into the dryer.

Abstract for [M090016]

Q: Are the following organic liquid transfers at the BP Whiting refinery in Whiting, Indiana, subject to 40 CFR part 63, subpart EEEE, the Organic Liquid Distribution MACT: Container-to-container transfers via gravity or non-permanent hose or valve; and truck-to-container transfers via non-permanent hose or valve with or without a pump?

A: Each of the loading/unloading activities described by BP meets the definition of a ''transfer rack'' under MACT subpart EEEE at 40 CFR 63.2406, defined as ''a system used to load organic liquids into, or unload organic liquids out of, transport vehicles or containers''. However, BP does not explain whether, in addition to being non-permanent, the transfers are related to special situation distribution loading and unloading operations or maintenance to make a determination on whether the exemption in 40 CFR 63.2338(c) would apply. If the organic liquid transfers are normal operating procedures necessary to keep process operations going, then the exemption in 40 CFR 63.2338(c) would not apply.

Abstract for [M090017]

Q1: Concept Plastics of High Point, North Carolina, submitted 16 photos with textual description, seeking determinations concerning whether the processes depicted in the photos are manual resin application, open molding, closed molding, or polymer casting under 40 CFR part 63, subpart WWWW. Concept Plastics also requested a clarification on how these processes were differentiated, with particular interest in how much ''working'' constitutes manual resin application.

A1: EPA has determined that all Concept processes, described in photos,

are considered polymer casting per definition in 40 CFR 63.5935. These processes are defined as polymer casting because they involve a filled resin that contains no reinforcement material. There is no working of the resin after application except for smoothing the material or vibrating to remove air bubbles. Because there is no reinforcement to be wetted out, the resin does not have to be worked to the same extent as occurs on open molding manual resin application. Specifically, photos 1 and 2 show polymer casting as the materials are poured into a closed mold and the resin is allowed to cure. Photos 3 and 4 show polymer casting as the component materials are poured into a closed mold and brushed to remove an air pocket. Photos 5 through 8 show polymer casting operations that involve pouring the composite materials into an open mold and not working the resin during or after application. These processes do not meet the definition of open molding manual resin application. Open molding involves the resin being typically applied to the open mold covered with reinforcing materials (typically fiberglass cloth or mat), or the resin applied to the mold contains reinforcing materials. The resin is typically applied using a brush (although it is sometimes poured on), and a roller is run back and forth across the surface to remove air bubbles and to insure the reinforcement is completely wetted out. Several passes of a hand held roller are generally necessary to ensure complete wetting of the reinforcement. On the other hand, Concept Plastics processes are not considered closed molding since this broader category includes fabricating composites in a way that HAP-containing materials are not exposed to the atmosphere except during the material loading stage.

Q2: Is the process involving a rotocast machine to allow the resin to contact and coat all sides of the mold, as described in photos 9 through 12, ''centrifugal casting'' or ''polymer casting'' under 40 CFR part 63, subpart WWWW?

A2: EPA has determined that Concept processes, described in photos 9 through 12, are polymer casting involving pouring the composite materials into an open mold that is then closed and rotated on more than one axis to allow the resin to contact and coat all sides of the mold. The resin is worked via this rotation after the mold is closed to ensure that all surfaces of the mold are coated. Based on photos 11 and 12, the rotation does not appear to rely upon centrifugal forces to hold the composite materials in place until the part is sufficiently cured to maintain its physical shape. Hence, it does not appear to be centrifugal casting.

Q3: Given that the styrene content of the ''neat resin plus'' varies, what value should the emission calculations use?

A3: The weighted average of styrene content should be used to address the variable formulations used at the facility.

Q4: Does the mixing of much of the catalyst and ''neat resin plus'' in one-gallon buckets constitute ''mixing'' under 40 CFR part 63, subpart WWWW?

A4: No. Because MACT subpart WWWW defines ''mixing'' as the blending of HAP-containing materials in vessels of five gallon or greater capacity, the mixing at issue here, and depicted in Photo 13, is not subject to the rule.

Q5: Is minor touch up work done using resin applied in a putty form considered a repair under 40 CFR part 63, subpart WWWW?

A5: No. The application of putties is excluded from the provisions of MACT subpart WWWW.

Abstract for [M090018]

Q: Is the Reynolds Flexible Packaging Plant (Reynolds) in Louisville, Kentucky, subject to the National Emission Standards for Hazardous Air Pollutants (HAP) for the Printing and Publishing Industry, 40 CFR part 63, subpart KK, after the compliance date if the primary HAP is delisted from the section 112(b) list of Hazardous Air Pollutants?

A: No. EPA finds that it is appropriate to allow facilities to look back to the first substantive compliance date to demonstrate that the potential to emit HAPs on that date would have been less than the major source threshold, without counting emissions of the delisted pollutant.

Abstract for [M090019]

Q: Does EPA approve a request to establish a lower compliance monitoring parameter limit without conducting a source test at the lower limit under 40 CFR part 63, subpart MM, for a smelt dissolving tank scrubber at the Smurfit-Stone facility in Florence, South Carolina (Florence Mill)?

A: No. EPA does not approve this request. A source test will be required before a lower compliance monitoring limit can be established under MACT subpart MM.

Abstract for [M090020]

Q: Does EPA approve a request from Stamas Yacht, Inc. (Stamas), in Pinellas County, Florida, to opt out of MACT applicability after the compliance date if actual HAP emissions never exceeded the major source threshold? Stamas was issued an initial Title V permit, based on emissions of hazardous air pollutants (HAPS), on September 11, 1998. The permit was renewed on December 29, 2003, at which time the requirements of the National Emission Standard for Hazardous Air Pollutants for Boat Manufacturing, 40 CFR 63, subpart VVVV were added.

A: No. EPA does not approve Stamas' request because based on the 1999 and 2000 styrene emissions, the facility does have the potential to emit major source levels of HAPs, even when its actual emissions level may be lower at this time. Therefore, we believe that the Stamas request to opt out of subpart VVVV applicability and to rescind their Title V permit should be denied.

Abstract for [M090021]

Q1: Has EPA reconsidered its May 23, 2007 determination regarding the monitoring and recordkeeping requirements of 40 CFR part 63, subpart CCC, Steel Pickling NESHAP, that apply to wet scrubbers on the two existing continuous pickling lines and the acid regeneration plant at Nucor Corporation's steel mini-mill in Crawfordsville, Indiana?

A1: Yes. EPA has reconsidered its earlier determination and reissued this superseding determination.

Q2: How does 40 CFR 63.1162(a)(2), which requires that the scrubber flow rates be monitored continuously and recorded at least once per shift while the scrubber is operating, apply to the Nucor Mill?

A2: Under 40 CFR 63.1162(a)(2) Nucor must install, operate, and maintain flow meters to monitor continuously the scrubber flow rates (makeup water and recirculation water flow rates) at all times the scrubber is operating. These flow rates must be recorded at least once per shift while the scrubber is operating. Furthermore, because operation of the scrubber with excursions of scrubber flow rates less than the minimum values established during the performance test(s) will require initiation of corrective action as specified by the maintenance requirements of the Steel Pickling NESHAP, the instantaneous scrubber flow rates must be displayed continuously in real time via gauges or digital readout systems to allow such corrective action if the flow rates drop below the minimum values established during the performance test(s).

Q3: Are Nucor's scrubber flow rates monitoring systems ''continuous monitoring systems''?

A3: Yes. The term ''continuous monitoring system'' or CMS is a comprehensive term that includes not only continuous emission monitoring systems but also various systems that provide continuous assurance that a NESHAP is being met. Notwithstanding this determination, EPA interprets 40 CFR 63.1162(a)(2) to require Nucor to record the scrubber flow rates once per shift.

Abstract for [Z090001]

Q: Does EPA approve Dow Chemical Company's (Dow's) request to modify the leak detection and repair programs under 40 CFR part 61, subpart F, with regard to its Midland, Michigan facility by: (1) Increasing the leak definition for vinyl chloride detected with a portable leak detector from 10 to 500 parts per million (ppm); (2) eliminating weekly/monthly monitoring of valves, connectors, and compressors not monitored per Method 21 at 40 CFR part 60, appendix A (Method 21); (3) eliminating weekly monitoring of all sealless pumps in vinyl chloride service; (4) replacing weekly monitoring of all compressors in vinyl chloride service with a designation of ''no detectable emissions'', and an annual verification by Method 21 monitoring; and (5) changing the monitoring process from monitoring by plant personnel to monitoring by the site's fugitive emission contractor, and the data collection process from retention of paper checklists to retention of an electronic database?

A: In regard to increasing the vinyl chloride leak definition to 500 ppm [(1), above] and eliminating weekly/monthly non-Method 21 monitoring of valves, connectors, and compressors [(2), above], Dow does not need EPA approval because these modifications would not change Dow's leak detection and elimination area program under 40 CFR 61.65(b)(8)(i), and because Dow would continue to meet the requirements of 40 CFR 61.65(b)(8)(ii). Dow also does not need EPA approval to eliminate weekly monitoring of sealless pumps in vinyl chloride service [(3), above] because these pumps are exempt from monitoring under 40 CFR part 61, subpart V. With regard to compressor monitoring [(4), above), EPA accepts the submittal of the information Dow provided as fulfillment of the requirements of 40 CFR 61.10(c) to provide notification to EPA of a change to any information provided in 40 CFR 61.10(a), including the method chosen by the facility to demonstrate compliance. Finally, EPA approves Dow's request in (5), above, to change the monitoring process from monitoring by plant personnel to monitoring by the site's fugitive emission contractor, and the data collection process from retention of paper checklists to retention of an electronic database.

Abstract for [0900001]

Q: May a solar-powered flare with a constant sparking device be used to control landfill gas emissions for purposes of 40 CFR part 60, subpart WWW?

A: No. EPA does not recognize constant sparking devices as meeting requirements under 40 CFR 60.18(f)(2) and 40 CFR 60.756(c)(1). The flare must also have a pilot flame and heat sensors such as a thermocouple or ultraviolet beam sensor with a recording device.

Abstract for [0900003]

Q1: Does EPA approve the proposed performance testing protocol under 40 CFR part 60, subpart OOO, for Duke Energy Indiana's Cayuga Generating Station in Cayuga, Indiana?

A1: Yes. EPA conditionally approves the proposed performance test protocol submitted under NSPS subpart OOO, provided that the testing protocol is modified to incorporate the changes and additions listed in EPA's response.

Q2: Does EPA approve Cayuga's request for a waiver for compliance testing using Method 5 or Method 17, pursuant to the requirements of 40 CFR 62.672(e)(2), requiring that the emissions from the forced air vents in the Limestone Preparation Building shall not exceed the stack emission limits of 0.022 gr/dscf (using Method 5 or Method 17) and 7 percent opacity (using Method 9) as given in 40 CFR 60.672(a)? Due to the nature and location of the forced air vents in the Limestone Preparation Building, Cayuga is unable to conduct a compliance test using either Method 5 or Method 17.

A2: Yes. EPA conditionally approves Cayuga's test waiver request under NSPS subpart OOO, provided that the facility can demonstrate compliance for the two forced air vents in the Limestone Preparation Building by having no visible emissions, using Method 9 for the duration of 1 hour.

Abstract for [0900004]

Q: Does EPA approve an alternative monitoring plan under 40 CFR part 60, subpart UUU, for Criterion Catalyst's spray dryer system equipped with a baghouse system followed by a non-Venturi type wet scrubber located in Michigan City, Indiana? Criterion Catalyst seeks to monitor continuously the fuel flow rate to the spray dryer process heater and the feed rate to the spray dryer in lieu of continuously monitoring the gas phase pressure drop across the scrubber.

A: No. EPA does not approve the requested alternative monitoring plan under NSPS subpart UUU. Although EPA agrees with Criterion Catalyst that the pressure drop may not be an appropriate monitoring parameter for a wet scrubber that does not use a Venturi design, Criterion Catalyst has not made adequate demonstration that the feed rate to the dryer or the fuel flow rate to the process heater correlate to the gas flow to the scrubber or relate to the performance of the scrubber.

Abstract for [0900005]

Q: Does EPA approve an alternative monitoring system (AMS) plan to comply with the mass emission standard under 40 CFR part 60, subpart UUU, for Criterion Catalyst's spray dryer equipped with a baghouse system and wet scrubber located in Michigan City, Indiana? Criterion Catalyst seeks to monitor continuously the liquid-to-gas ratio in lieu of the pressure drop across the scrubber.

A: EPA conditionally approves Criterion Catalyst's AMS plan under NSPS subpart UUU to monitor continuously the liquid-to-gas ratio in lieu of the pressure drop across the scrubber to comply with the mass emission standard. In addition, Criterion Catalyst must have continuous monitoring systems in place for the baghouse system since in this case the baghouses are essential to achieving compliance with the particulate matter (PM) emission standard, and Criterion Catalyst does not meet the exception in 40 CFR 60.734(a).

Abstract for [0900006]

Q: Does EPA approve Criterion Catalyst's request, under 40 CFR part 60, subpart UUU, to monitor continuously at its spray dryer system in Michigan City, Indiana, the opacity of exhaust gases in the ductwork between the baghouse system and scrubber as an alternative to monitoring the opacity at the outlet of the scrubber?

A: Yes. Because the opacity at the scrubber outlet cannot be measured accurately with a monitor due to interference caused by liquid water, EPA approves the use of a continuous opacity monitoring system (COMS) under NSPS subpart UUU for the measurement of the opacity of the exhaust gases in the ductwork between the baghouse system and scrubber.

Abstract for [0900007]

Q: Does the Illinois River Energy production plant in Rochelle, Illinois, which handles an ethanol/gasoline

blended fuel known as ''E–85'' and which receives fuel by truck, meet the definition of bulk terminal in 40 CFR 60.501 of NSPS subpart XX?

A: No. The Illinois River Energy facility does not meet the definition of bulk terminal and is, therefore, not subject to NSPS subpart XX. Although the E–85 fuel meets the definition of gasoline, the bulk terminal receives gasoline only by truck, which was intentionally excluded from the rule's definition, as supported by the Background Information Document for NSPS subpart XX (Bulk Gasoline Terminals—Background Information for Proposed Standards, September 1980).

Abstract for [0900008]

Q: The Laraway Recycling and Disposal Facility (Laraway) in Will County, Illinois, consists of three physically separate waste disposal areas located within a single parcel of property and identified as: (1) The closed Resource Conservation and Recovery Act (RCRA) unit, which accepted municipal solid waste (MSW) from 1973 to 1983; (2) the closed Trench 11, which never accepted MSW; and (3) the active 32-acre solid waste unit, which was permitted to accept MSW but never actually accepted MSW. Will a vertical and horizontal expansion of the active solid waste unit described in (3) be subject to 40 CFR part 60, subpart WWW?

A: No. Although the closed RCRA unit is an MSW landfill, and all three landfills are a single source or facility, a modification to a proven non-MSW landfill, such as the solid waste unit, would not make the entire facility subject to NSPS subpart WWW, as long as the solid waste unit continues to contain only non-MSW. If the expansion begins accepting MSW, then the solid waste unit (including the expansion area) and the RCRA unit would become subject to NSPS subpart WWW.

Abstract for [0900009]

Q: Does EPA approve a higher operating temperature at Waste Management's Milam Recycling and Disposal Facility Well MW28 in East St. Louis, Illinois, under 40 CFR part 60, subpart WWW?

A: EPA approves a temporary higher operating temperature of 140 degrees Fahrenheit only until May 31, 2008, because Milam has submitted only four consecutive days of data. EPA requests that Milam supply another three months of monitoring data before the Agency makes a final determination as to a higher operating temperature limit under NSPS subpart WWW.

Abstract for [0900010]

Q: Does EPA approve a permanent higher operating temperature of 140 degrees Fahrenheit at Well MW28 at Milam Recycling and Disposal Facility in East St. Louis, Illinois, under 40 CFR part 60, subpart WWW?

A: No. On February 14, 2008, and March 7, 2008, EPA approved a temporary higher operating temperature of 140 degrees Fahrenheit, under NSPS subpart WWW, to last until July 31, 2008. [See ADI Control Numbers 0900009 and 0900011, which are summarized in this FR Notice.] In March 2008, the facility installed a new lateral line to the well, which has corrected the temperature exceedances. Therefore, no higher operating temperature is needed.

Abstract for [0900011]

Q: Does EPA approve a new temporary higher operating temperature of 150 degrees Fahrenheit for Milam Recycling and Disposal Facility's (Milam) Well MW28 in East St. Louis, Illinois, under 40 CFR part 60, subpart WWW?

A: No. EPA does not approve a new temporary higher operating temperature of 150 degrees Fahrenheit for this facility, as it is no longer needed due to the installation of a new lateral line by Milam. On February 14, 2008, EPA approved a temporary higher operating limit of 140 degrees Fahrenheit until May 31, 2008, under NSPS subpart WWWW, pending the submittal of three months of additional monitoring data. [See ADI Control Number 0900009, which is summarized in this FR Notice.] Milam has now indicated that the temperature at the Well MW28 will likely decrease with the installation of a new lateral line to the well. Therefore, EPA approves an alternative timeline until May 31, 2008, to correct the temperature exceedances at MW28. EPA will also grant an extension of the existing 140 degrees Fahrenheit temperature limit until July 31, 2008, to gather additional monthly well data after the lateral line is installed in order to set the final operating temperature.

Abstract for [0900012]

Q1: Pursuant to 40 CFR 62.15250(a) of 40 CFR part 62, subpart JJJ, may the Polk County Solid Waste Management Facility (SWMF) in Fosston, Minnesota, skip two subsequent annual stack tests for dioxins/furans after demonstrating compliance with the dioxin/furan emission standard during three consecutive annual dioxin/furan stack tests?

A1: Yes. Each small municipal waste combustor (MWC) unit at the Polk County SWMF has demonstrated compliance with the dioxin/furan emission standard for three years in a row (2005, 2006, and 2007). The Polk County SWMF must conduct a dioxin/furan stack test on each unit in April 2010.

Q2: Pursuant to 40 CFR 62.15250(b) of 40 CFR part 62, subpart JJJ, is the Polk County SWMF required to conduct a dioxin/furan stack test every other year if both units at the facility have demonstrated dioxins/furans emissions less than or equal to 30 nanograms total mass per dry standard cubic meter at 7 percent oxygen for two consecutive years?

A2: No. The Polk County SWMF qualifies for and has elected to implement the option in 40 CFR 62.15250(a). Thus, the requirement in 40 CFR 62.15250(b) does not apply.

Abstract for [0900013]

Q: Does EPA approve Proctor & Gamble Paper Products Company's (Proctor & Gamble) request for an alternative opacity monitoring procedure for Boiler No. 2 at its Albany, Georgia facility, which is subject to 40 CFR part 60, subpart Db? The primary fuel for the boiler is biomass, and No. 2 fuel oil is used during startup and as a backup fuel. Particulate matter emissions are controlled by a wet electrostatic precipitator (WESP). Due to moisture interference, the company proposes to monitor the total power input to the WESP as an alternative to a COMS.

A: No. EPA does not approve Proctor & Gamble's request under NSPS subpart Db. The company will need to install a PM continuous emission monitoring system (PM CEMS) unless it can be demonstrated that a PM CEMS is not a viable alternative for the boiler.

Abstract for [0900014]

Q: Would the replacement of three regenerative thermal oxidizers (RTO) with a single RTO system on three pressure sensitive vinyl/paper roll coating lines trigger the performance test requirements of the 40 CFR part 60, subparts A and RR, at Avery Dennison's facility in Lowell, Indiana?

A: No. EPA has determined that because no construction, modification or reconstruction appears to have occurred, as defined in NSPS subparts A and RR, the NSPS requirements have not been triggered. NSPS subpart RR applies to any affected facility that begins construction, modification or reconstruction after December 30, 1980. A modification could occur if the new RTO system proves to be less efficient

than the old RTO system at controlling volatile organic compounds (VOC).

Abstract for [0900015]

Q1: Does EPA approve CertainTeed's request under 40 CFR part 60, subpart PPP, to monitor only secondary voltage and amperage on the wet electrostatic precipitator (WESP) at its Kansas City, Kansas facility?

A1: Yes. EPA approves CertainTeed's request under NSPS subpart PPP. The CertainTeed WESP operation is monitored and controlled by microprocessor based automatic voltage controllers that react extremely quick to changes in secondary voltage and current. (See also ADI control Number 0700066.)

Q2: Does EPA approve CertainTeed's request to use flow cameras at its Kansas City, Kansas facility to comply with the monitoring requirement in 40 CFR part 63, subpart NNN, as an alternative to calculating the glass pull rate?

A2: Yes. EPA has determined that the use of flow cameras is an equivalent, if not a better, monitoring method than the one specified in 40 CFR part 60, subpart PPP. (See also ADI control Number 0600088.)

Abstract for [0900016]

Q: Does EPA approve an alternative timeline under 40 CFR part 60, subpart WWW, to correct an oxygen exceedance at Well MW20 at Milam Recycling and Disposal Facility in East St. Louis, Illinois?

A: Yes. EPA will approve an alternative timeline under NSPS subpart WWW for Milam to correct the oxygen exceedance at Well MW20. However, in the future, it is not sufficient for Milam to notify EPA of a parameter exceedance at a wellhead. In accordance with 40 CFR 60.755(a)(5), the facility must request an alternative timeline within 15 days of the initial exceedance.

Abstract for [0900017]

Q: Saint-Gobain Containers Inc. requested a clarification on whether the opacity value, determined using the 99 percent upper confidence level, is a reporting threshold or a never-to-exceed limit under the New Source Performance Standards (NSPS) for Glass Manufacturing Plants, 40 CFR part 60, subpart CC?

A: The opacity value determined under 40 CFR 60.263(c)(4) is not an opacity limit, but an exceedance. An exceedance could constitute credible evidence that the source is not being properly operated and maintained.

Abstract for [0900018]

Q: Does EPA approve Advanced Aromatics, L.P.'s (AALP) request to use the flow monitoring methods of 40 CFR 60.703(b)(2) in lieu of the requirements of 40 CFR 60.663(b)(2) for the Distillation Column C–600 (and associated equipment) at its facility in Baytown, Texas?

A: No. EPA does not approve this request because AALP's letter did not include specific details of valves associated with the C–600. Although AALP provided a drawing, it did not address the necessary criteria for evaluating and proving this request.

Abstract for [0900019]

Q: Does EPA approve Delek Refining's (Delek) request to monitor hydrogen sulfide (H2S) in vent streams, pursuant to 40 CFR part 60, subpart J, in lieu of installing a H2S continuous emissions monitor (CEMs) on the hydrochloric acid (HCl) scrubber, associated with the ''Platformer Regeneration Process'' at its Tyler, Texas facility?

A: EPA conditionally approves Delek's alternate monitoring request under NSPS subpart J, as described in the EPA response letter.

Abstract for [0900020]

Q: Does EPA approve Delek Refining's (Delek) request under 40 CFR part 60, subpart J, to monitor hydrogen sulfide (H2S) in vent streams in lieu of installing a H2S continuous emissions monitor (CEMs) on the Wastewater API Separator Process vent stream combusted in the Wastewater API Separator Flare at its Tyler, Texas facility?

A: No. EPA does not approve Delek's request under NSPS subpart J because Delek did not state the correlation between inherently low and stable H2S content in the exhaust gas stream to the process parameters proposed in the alternate monitoring plan for various wastewater streams being treated. Delek also did not include piping and instrumentation drawings to support its request.

Abstract for [0900021]

Q: Does EPA approve Public Service Company of New Mexico's (PNM) alternative monitoring plan (AMP) under 40 CFR part 60, subpart D, involving the relocation and certification of continuous opacity monitoring systems at Units 4, 3, 2, and 1 at the PNM San Juan Generating Station in Waterflow, New Mexico?

A: EPA approves PNM's AMP for all four units under NSPS subpart D, so long as they meet the terms and conditions specified in the Enclosure of EPA's February 28, 2008 response letter.

Abstract for [0900022]

Q1: Does EPA approve Texmark Chemicals, Inc. (Texmark) request for flow monitoring requirements applicable to Distillation Column C–5222 (and associated equipment) at its facility in Galena Park, Texas, in accordance with 40 CFR 60.703(b)(2) of NSPS subpart RRR in lieu of 40 CFR 60.663(b)(2) of NSPS subpart NNN?

A1: Yes. EPA conditionally approves Texmark's request to monitor Distillation Column C–5222 (and associated equipment) at its Galena Park, Texas facility in accordance with 40 CFR 60.703(b)(2) in lieu of 40 CFR 60.663(b)(2) for compliance with both NSPS subparts RRR and NNN standards.

Q2: Does EPA approve Texmark's request to comply with the recordkeeping requirements specified in 40 CFR part 60, subpart RRR in lieu of 40 CFR part 60, subpart NNN, for Distillation Column C–5222, at its Galena Park, Texas facility?

A2: Yes. EPA approves Texmark's request to comply with the recordkeeping requirements in NSPS subpart RRR in lieu of subpart NNN requirements, because these recordkeeping requirements correspond directly to those monitoring requirements to be implemented for the distillation vents under NSPS subparts RRR and NNN. Since subpart RRR provides some relief in testing and monitoring requirements in comparison to subpart NNN, a copy of the schematic required by 40 CFR 60.705(s) needs to be submitted in the initial report to the State agency, and a copy must be maintained onsite for the life of the system to ensure that the affected vent streams are being routed to appropriate control devices under this approval.

Abstract for [M090022]

Q: Does EPA approve the request from Allied Metal Company (Allied) in Chicago, Illinois, to begin operation of a thermal chip dryer, under 40 CFR part 63, subpart RRR?

A: EPA approves Allied's request under MACT subpart RRR, provided that Allied operates the thermal chip dryer and all associated emission control equipment for performance test preparation beginning in January 2007. All performance testing must be completed by March 1, 2007. If Allied cannot follow this schedule, Allied must cease operating the thermal chip dryer and notify EPA.

Abstract for [M090023]

Q1: The Glen-Gery Marseilles Facility (Glen-Gery) in Marseilles, Illinois, operates two identical natural gas fired tunnel kilns subject to 40 CFR part 63, subpart JJJJJ. May Glen-Gery use an alternative monitoring procedure whereby exhaust flow to the dry limestone absorber (DLA) will be verified by continuously monitoring the bypass stack damper position at least once every fifteen minutes during normal kiln operation, and any period in which the bypass damper is opened allowing the kiln exhaust gas to bypass the DLA would be considered a MACT-related event triggering corrective actions pursuant to the facilities startup, shutdown, and malfunction plan?

A1: Yes. EPA approves this alternative monitoring request under MACT subpart JJJJJ. As explained in 68 FR 26704, the pressure drop across the DLA is only intended to demonstrate that kiln exhaust flow is being directed through the DLA, and is not bypassing the control device.

Q2: Will EPA approve a performance test waiver for Glen-Gery seeking approval to conduct performance testing while Kiln A and B are operating at maximum production rates, but with different limestone extraction screw settings, and then apply the lower DLA limestone extraction screw setting to demonstrate ongoing compliance with both kilns under 40 CFR part 63, subpart JJJJJ?

A2: No. EPA denies Glen-Gery's performance test waiver request. Although both units may be identical in design and operation, there is an insufficient body of compliant performance test data demonstrating that the kilns have a low variability in emissions, and that the emissions profiles of the kilns are the same under MACT subpart JJJJJ.

Abstract for [M090024]

Q: Does EPA approve an alternative monitoring plan (AMP) submitted by ExxonMobil Oil Corporation's (ExxonMobil) refinery in Joliet, Illinois, under 40 CFR part 63, subpart UUU?

A: No. EPA does not approve ExxonMobil's AMP requesting identical monitoring, recordkeeping, and reporting requirements to those granted under NSPS subpart J, for compliance with MACT subpart UUU. See determination filed as ADI Control Number 0800082. Specifically, EPA will not approve the same averaging time or the same method for determining excess emissions or deviations as that approved for the NSPS. Rather, this AMP must follow the continuous monitoring requirements of 40 CFR 63.1564(b)(1) identified as Option 2 in Table 3 of MACT subpart UUU. This is consistent with the requirements requested by ExxonMobil.

Abstract for [M090025]

Q: Does EPA approve ExxonMobil's request for an alternative monitoring to use two carbon canisters in series instead of its current flare if it monitors the carbon canister system for 20 ppm breakthrough using a portable VOC analyzer twice weekly at its Joliet Refinery in Joliet, Illinois, under 40 CFR 63.643 of MACT subpart CC?

A: No. EPA cannot approve this alternative monitoring request under MACT subpart CC without notification from ExxonMobil that continuous monitors and a back-up will be installed on the outlet of both the primary and secondary carbon canisters. EPA requests that you provide further details.

Abstract for [M090026]

Q: Does EPA determine that the Beecher Development Company Landfill (Beecher) in Beecher, Illinois, which is subject to 40 CFR part 60, subpart WWW, is subject to 40 CFR part 63, subpart AAAA, given the applicability criteria of 40 CFR 63.1935?

A: Yes. EPA determines that Beecher is subject to the requirements of MACT subpart AAAA because at the time of the compliance date for this subpart Beecher's nonmethane organic compound (NMOC) emissions were greater than 50 Mg/year.

Abstract for [M090027], [0900029] and Z090002

Q: Does EPA agree with BP Products North America (BP), Whiting, Indiana, that a wastewater stream, which is defined as a Group 2 wastewater stream under 40 CFR part 63 subpart CC, National Emissions Standards for Hazardous Air Pollutants (NESHAP) from Petroleum Refineries (the Refinery MACT) and is managed in equipment that is also subject to the provisions of 40 CFR part 60, subpart QQQ, and was designated by BP instead as a Group 1 wastewater stream, as allowed under the Refinery MACT and controlled and treated under the applicable provisions of 40 CFR part 61, subpart FF, would only be subject to the provisions of NSPS subpart QQQ? Under the Refinery MACT, streams meeting the definition of a Group 1 wastewater stream are required to meet the wastewater control requirements of the Benzene Waste Operations NESHAP (BWON) found at 40 CFR 61.340 through 40 CFR 61.355.

A: Yes. The Refinery MACT at 40 CFR 63.640(c)(l) states that ''after the compliance dates specified in paragraph (h) of this section a Group 1 wastewater stream managed in a piece of equipment that is also subject to the provisions of 40 CFR part 60, subpart QQQ is required to comply only with this subpart.'' Therefore, EPA agrees with BP that if this facility were to designate a Group 2 wastewater stream as a Group 1 wastewater stream, as allowed in the Refinery MACT, it would not be subject to NSPS subpart QQQ per the overlap provisions under the Refinery MACT, specified at 40 CFR 63.640(c)(l), if these designated streams were fully treated and controlled as prescribed in the waste water provisions of the Refinery MACT at 40 CFR 63.647(a) through (c), and none of the treatment and control exemptions of the BWON rule were applied.

Abstract for [M090028]

Q: Does EPA approve the request of Lanxess Corporation (Lanxess) under 40 CFR part 63, subparts G and JJJ, for an alternative emission control device for the Lanxess Building 30 Organic Trap Oil-Water separator (organic trap), specifically that the organic trap scrubber, which achieves the required 95 percent organic HAP removal, be classified as the MACT control device for the organic trap instead of the facility's thermal oxidizer?

A: No. EPA does not approve the Lanxess request for an alternative emission control device under MACT subparts G and JJJ because it believes the design of the organic trap scrubber was not properly evaluated. The evaluation: (1) Did not demonstrate the required HAPs emission reduction at all possible temperatures, only at 30 degrees C; and (2) only evaluated the emissions reductions for Acrylonitrile, Styrene, and MEK, despite the fact that Lanxess told EPA that ABS and Ethyl Benzene are also vented to the organic trap scrubber a small amount of the time. In addition, Group 1 wastewater/residual streams are sent to a storage tank, which vents to the organic trap scrubber. The storage tank is located outside of Building 30 thus the temperature of the tank would fluctuate with the weather. Lastly, Lanxess used estimations and not actual temperatures of the five Group I wastewater/residual streams that are sent to the storage tank.

Abstract for [M090029]

Q: Does the Lake County Landfill (Lake County) in Kirtland, Ohio, which is subject to 40 CFR part 60, subpart WWW, also meet the applicability

criteria in 40 CFR 63.1935 under NESHAP subpart AAAA?

A: Lake County would be subject to the requirements of NESHAP subpart AAAA if at the time of the compliance date for this subpart Lake County's NMOC emissions were greater than 50 Mg/year. In order for EPA to make a final determination, Lake County should provide its nonmethane organic compound (NMOC) emissions rate as of January 16, 2004, the compliance date for this subpart.

Abstract for [M090030]

Q: Does EPA approve the request of Staker Alloys (Staker), under 40 CFR part 63, subpart RRR, to use a data logger, a dual thermocouple and a digital readout as an alternative to calibrating the afterburner thermocouple at least once every six months at its facility in Hallowell, Maine?

A: Yes. EPA approves Staker's request for alternative monitoring under MACT subpart RRR based on the series of setup and operation conditions set forth in the determination.

Abstract for [M090031]

Q: Does EPA approve a request from Avery Dennison (Avery) for an initial performance test waiver under 40 CFR part 63, subpart JJJJ, for its facility in Painesville, Ohio?

A: Yes. EPA approves Avery's request for an initial performance test waiver under MACT subpart JJJJ based upon supporting data that included summary information from the most recent performance test for each existing thermal oxidizer and the Title V Compliance Certifications for Year 2005 for Avery Dennison Corporation, Reflective Products and Graphics Divisions.

Abstract for [M090032]

Q: Does EPA approve Dow Chemical Company's (Dow) request to use performance tests previously conducted on three thermal treatment devices under 40 CFR part 63, subparts GGG and MMM for the initial compliance demonstration for 40 CFR part 63, subpart FFFF?

A: With certain contingency, EPA approves Dow's request to use performance tests previously conducted under MACT subparts GGG and MMM for the initial compliance demonstration under MACT subpart FFFF because these tests used the methods specified in 40 CFR 63.997(e), and because no significant process changes have occurred since these tests. Specifically, this approval is contingent on the production rates achieved during these prior performance tests as representing the highest production rates currently achievable.

Abstract for [0900023]

Q: Does EPA approve Air Products and Chemicals (Air Products) request to use the process monitor as the primary method to measure H2S and eliminate the previously stipulated alternative monitoring plan (AMP) conditions that require random H2S grab sampling for two of its furnaces operating within ExxonMobil's Joliet, Illinois facility and subject to 40 CFR part 60, subpart J?

A: No. EPA finds that the conditions of the AMP cannot be revised, because monitoring a process parameter is not a substitute for H2S grab sampling under NSPS subpart J. Please refer to a previous EPA approved AMP, filed as ADI Control Number 0100037.

Abstract for [0900024]

Q: Does EPA approve of the alternative compliance timeline requested by the Zion Landfill (Zion), located in Zion, Illinois, to correct exceedances under 40 CFR part 60, subpart WWW?

A: No. EPA does not approve Zion's request for an alternative compliance timeline under NSPS subpart WWW. Zion was unable to correct the exceedance at both wells EW–39 and EW–45 within the 15-day timeline and is, therefore, required to expand the gas collection system within 120 days of the initial exceedance.

Abstract for [0900025]

Q: Does EPA approve the alternative design plans and monitoring and operations standards request from American Disposal Services of Illinois, Inc.'s Livingston Landfill (Livingston Landfill), located in Pontiac, Illinois, under 40 CFR part 60, subpart AAAA?

A: No. EPA does not find Livingston Landfill's request under NSPS subpart AAAA clear enough to approve. EPA requests that Livingston Landfill submit a revised letter to EPA with changes that are applicable to EPA, such as operational and monitoring alternatives. Note that design plan changes should be directed to the State, and operational and monitoring standard alternatives should be directed to EPA.

Abstract for [0900026]

Q1: Does EPA approve a request from BFI Waste Systems of North America (BFI) for its Quad Cities Landfill located in Milan, Illinois, to waive nitrogen monitoring at interior wellheads and monitor only oxygen, under 40 CFR part 60, subpart WWW?

A1: Yes. EPA approves this request because 40 CFR 60.753(c) allows a landfill to monitor either nitrogen or oxygen.

Q2: Does EPA approve a request from BFI Waste Systems of North America (BFI) for its Quad Cities Landfill located in Milan, Illinois, to have 180 days after start-up of new wells to meet all operating conditions, under 40 CFR part 60, subpart WWW?

A2: No. EPA still cannot approve this request. However, BFI may make this request under NSPS subpart WWW for specific wells within the gas collection and control system (GCCS) with supporting data.

Q3: Does EPA approve a request from BFI Waste Systems of North America (BFI) for its Quad Cities Landfill located in Milan, Illinois, to treat Quad Cities Landfill as a separate landfill from Millennium Waste Landfill to reduce the frequency of surface scan requirements, under 40 CFR part 60, subpart WWW?

A3: No. EPA finds that Quad Cities Landfill and the Millennium Waste Landfill are considered one landfill under NSPS subpart WWW.

Q4: Does EPA approve a request from BFI Waste Systems of North America (BFI) for its Quad Cities Landfill located in Milan, Illinois, to not be subject to the monitoring, recordkeeping, reporting, and testing requirements of 40 CFR part 60, subpart WWW, for treated landfill gas?

A4: Yes. EPA previously approved this request for treatment of landfill gas at BFI's Quad Cities facility. See previous determination filed as ADI Control Number 0800069. As a clarification, EPA approves the flare as part of the treatment system when it is combusting treated gas. If the flare is controlling emissions that are not treated, then it is subject to the requirements of 40 CFR 60.752(b)(2)(iii)(A) and (B).

Q5: Does EPA approve a request from BFI Waste Systems of North America (BFI) for its Quad Cities Landfill located in Milan, Illinois, for approval of a closure report submitted to meet the requirements of 40 CFR part 60, subpart WWW?

A5: No. EPA finds that since the Quad Cities Landfills and Millennium Landfill are considered one landfill under NSPS subpart WWW, the closure report must be submitted when the landfill as a whole ceases accepting wastes.

Abstract for [0900027]

Q: Does EPA approve under 40 CFR part 60, subpart WWW, the monitoring request from Rock Island County Landfill (Upper Rock) in Milan, Illinois, to conduct additional Tier 2 testing to

update the 2006 values as it has expanded the active gas collection system?

A: Yes. EPA approves Upper Rock's monitoring request under NSPS subpart WWW. Where the requirements for submittal of a Gas Collection and Control System (GCCS) design plan and installation of a GCCS have been triggered, EPA has determined it will allow owners or operators to conduct additional Tier 2 testing until the compliance deadline for installing the GCCS, provided that a GCCS design plan was submitted within one year of the first exceedance of the 50Mg/year threshold. EPA has also determined that allowing owners or operators to conduct additional Tier 2 testing is reasonable as nonmethane organic compound (NMOC) emission rate results are more representative of current conditions if they are calculated using up-to-date Tier 2 sampling data.

Abstract for [0900028]

Q: Does EPA approve BP Products North America's (BP) request to use at its facility in Whiting, Indiana, detector tubes with a dual range of 1–20 ppm and 10–200 ppm to conduct H2S testing under 40 CFR part 60, subpart J, given that BP could not locate tubes with ranges specified in the RFG AMP Guidance issued January 9, 2006?

A: Yes. EPA approves BP's request to use detector tubes at the Whiting, Indiana facility with a dual range of 1–20 ppm and 10–200 ppm under NSPS subpart J.

Abstract for [0900030]

Q: Does EPA approve Elk River Landfill's (Elk River) request for an alternative operating temperature under 40 CFR part 60, subpart WWW, of 145 degrees F for gas well number 26r at its Elk River, Minnesota facility?

A: Yes. EPA approves Elk River's request for an alternative operating temperature under NSPS subpart WWW. Based on the supporting information presented by Elk River, it appears that the methanogenic process is still at an anaerobic phase at the higher landfill gas temperatures, and no evidence of subsurface landfill fire is present at the site.

Abstract for [0900031]

Q: Does EPA approve an alternative monitoring plan under 40 CFR part 60, subpart Db, at the Flint Hills Resources Pine Bend Refinery (FHR) plant in Saint Paul, Minnesota, specifically the use of an alternative dual span value for the continuous emissions monitoring system (CEMS) for nitrogen oxides (NO_X) to be installed on an existing boiler?

A: Yes. EPA approves FHR's alternative monitoring plan request under NSPS subpart Db, specifically the request for a dual span range, one span value of 50 ppmdv and a second span value set at 500 ppmdv, for the EU 126 NO_X CEMS.

Abstract for [0900032]

Q: Does EPA approve the request of International Specialty Products Lima (ISP-Lima) under 40 CFR part 60, subpart Db, to use an analyzer span change from 500 ppm to 140 ppm for the nitrogen oxides (NO_X) continuous emission rate monitoring system (CERMS) at ISP-Lima's Butanediol Plant #1 Scrubber Offgas Boiler (SOGB) at its facility in Lima, Ohio, for the purpose of providing a more appropriate span range for the actual NO_X emissions emitted?

A: EPA approves ISP-Lima's request for alternative monitoring under NSPS subpart Db, provided that ISP-Lima meet the series of conditions set out in the determination.

Abstract for [0900033]

Q: Does EPA approve Stony Hollow Landfill's (Stony Hollow) request for alternative operating temperatures under 40 CFR part 60, subpart WWW, for two gas wells at its Dayton, Ohio facility, 145 degrees F for gas well number 26 and 150 degrees F for gas well number 27?

A: Yes. EPA approves Stony Hollow's request for alternative operating temperatures under NSPS subpart WWW. Based on the supporting information presented by Stony Hallow Landfill, it appears that the methanogenic process is still at an anaerobic phase at the higher landfill gas temperatures and no evidence of subsurface landfill fire is present at the site.

Abstract for [0900034]

Q: Does EPA approve Sunoco's request for an alternative monitoring plan under 40 CFR part 60, subpart J, for its Toledo, Ohio refinery, to allow parametric monitoring of the wet gas scrubber in lieu of a continuous opacity monitoring system at the catalyst regenerator, in which pressure of the water supplied at the discharge of the recirculation pumps supplying water to the scrubber filtering modules and flue gas pressure drop across the scrubber filtering modules will be continuously monitored and recorded?

A: EPA approves Sunoco's request for an alternative monitoring plan under NSPS subpart J, provided that Sunoco meet the several conditions set out in the EPA response letter.

Abstract for [0900035]

Q: Does EPA agree with BP Products North America (BP) that a Sentry closed loop liquid and gas sampler system is sufficient to demonstrate compliance with the Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry (SOCMI), 40 CFR part 60, subpart VV, at the BP facility in Whiting, Indiana?

A: No. EPA determines that because the remaining vapors in the sampling system lines will be purged, causing VOC emissions to the atmosphere, this sampling system does not meet any of the compliance options under 40 CFR 60.482(5)(b).

Abstract for [0900036]

Q: Does EPA approve the request of Noble Road Landfill (Noble Road) for an alternative monitoring plan under 40 CFR part 60, subpart WWW that would allow an operating temperature of 160 degrees F for well numbers EW01, EW02, EW03, EW04, EW05, EW06, EW07, EW08, EW09, EW10, EW11, EW12, EW61, EW62, EW63, EW64, EW65, EW66, EW67, and EW68 at its facility in Shiloh, Ohio?

A: EPA approves certain of Noble Road's request under NSPS subpart WWW as follows: Based on the supporting information presented by Noble Road, it appears that the methanogenic process is still at an anaerobic phase at the higher landfill gas temperatures for wells EW10, EW63, and EW65 and no evidence of subsurface landfill fire is present at the site. EPA will approve an operating temperature of 150 degrees F for gas well EW10 and an operating temperature of 140 degrees F for gas well EW63, and EW65. However, EPA does not approve of Noble's request for an operating temperature of 160 degrees F for wells EW01, EW02, EW03, EW04, EW05, EW06, EW07, EW08, EW09, EW10, EW1I, EW12, EW61, EW62, EW63, EW64, EW65, EW66, EW67, and EW68.

Abstract for [0900037]

Q: Does EPA approve the request of County Environmental of Wyandot (County) for an alternative timeline and alternative operation under 40 CFR part 60, subpart WWW, for wells EW2, EW3, EW4R, EW8, and EW9R, at its facility in Carey, Ohio? Specifically, County is planning to install a new 14-inch header line to replace the current 10-inch line and for worker safety, the portion of the header system that will be affected will

be isolated from the rest of the collection system. The facility also states that by doing this, wells EW2, EW3, EW4R, EW8 and EW9R will have no vacuum applied and will remain off during the duration of the construction, expected to last until July 15, 2006.

A: Yes. EPA approves County's request for an alternative timeline and alternative operation under NSPS subpart WWW, for wells EW2, EW3, EW4R, EW8, and EW9R.

Dated: June 8, 2009.

Lisa Lund,

Director, Office of Compliance.

[FR Doc. E9–16274 Filed 7–8–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:55 a.m. on Thursday, July 2, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a matter related to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director John E. Bowman (Acting Director, Office of Thrift Supervision), concurred in by Director John C. Dugan (Comptroller of the Currency), Director Thomas J. Curry (Appointive), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matter which was to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsection (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 6, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–16171 Filed 7–8–09; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–AD47

Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed statement of policy with request for comment.

SUMMARY: The FDIC is proposing to issue a Statement of Policy on Qualifications for Failed Bank Acquisitions (Proposed Policy Statement) to provide guidance to private capital investors interested in acquiring or investing in failed insured depository institutions regarding the terms and conditions for such investments or acquisitions. This Proposed Policy Statement is being published with a request for comment in order to obtain the public's views on the provisions of the policy statement before it becomes effective.

DATES: Comments must be received by the FDIC no later than August 10, 2009.

ADDRESSES: You may submit comments on the Proposed Policy Statement by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the agency Web site.
- *E-mail: Comments@FDIC.gov.* Include RIN # 3064–AD47 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the 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.

Instructions: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Catherine Topping, Counsel, Legal Division, (202) 898–3975 or *ctopping@fdic.gov,* Charles A. Fulton, Counsel, Legal Division, (703) 562–2424 or chfulton@fdic.gov, or Mindy West, Chief, Policy and Program Development, Division of Supervision and Consumer Protection, (202) 898–7221 or *miwest@fdic.gov.*

SUPPLEMENTARY INFORMATION

I. Background

Recently, private capital investors have indicated interest in purchasing insured depository institutions in receivership.[1] The FDIC is particularly concerned that owners of banks and thrifts, whether they are individuals, partnerships, limited liability companies, or corporations, have the experience, competence, and willingness to run the bank in a prudent manner, and accept the responsibility to support their banks when they face difficulties and protect them from insider transactions.

Especially in light of the increased number of bank and thrift failures, and the consequent increase in interest by potential acquirers, the FDIC has evaluated the policies that apply in deciding whether a prospective acquisition is appropriate. The FDIC has reviewed various elements of private capital investment structures and considers that some of these investment structures raise potential safety and soundness considerations and risks to the Deposit Insurance Fund (DIF) as well as important issues with respect to their compliance with the requirements applied by the FDIC in its decision on the granting of deposit insurance. The concerns center on the need for fully adequate capital, a source of financial and managerial strength for the depository institution, and the potential adverse effects of extensions of credit to affiliates. These structuring issues are present with respect to any new proposed acquisition of a failed insured depository institution.

The FDIC is seeking public input on this Proposed Policy Statement. This guidance describes the terms and conditions that private capital investors would be expected to satisfy to obtain eligibility for a proposed acquisition structure. These measures would cover capital support and cross guarantees; transactions with affiliates; secrecy jurisdiction investors; continuity of ownership requirements, and disclosure.

II. Request for Public Comment

The FDIC invites comments on all aspects of the Proposed Policy Statement, including the following questions:

1. The measures contained in the Proposed Policy Statement will not be applied to individuals, partnerships, limited liability companies, or corporations, that accept the

[1] The purchase or acquisition of a failed depository institution in receivership refers to the purchase of the deposit liabilities, or both such liabilities and assets.

responsibilities under existing law to serve as responsible custodians of the public interest that is inherent in insured depository institutions, but will be applied to (a) private capital investors in certain companies, proposing to assume deposit liabilities, or both such liabilities and assets, from a failed insured depository institution in receivership (including all entities in such an ownership chain) and to (b) applicants for insurance in the case of de novo charters issued in connection with the resolution of failed insured depository institutions (hereinafter ''Investors''). Is some other definition more appropriate?

2. The Proposed Policy Statement indicates that so-called ''silo'' structures would not be considered to be eligible bidders for failed bank assets and liabilities since under these structures beneficial ownership cannot be ascertained, the responsible parties for making decisions are not clearly identified, and/or ownership and control are separated. Are there any reasons why they should be considered to be eligible bidders?

3. One of the most important elements in the Proposed Policy Statement is the requirement that the acquired depository institution be very well capitalized. The text requires a Tier 1 leverage ratio of 15 percent, that this ratio be maintained for a period of at least 3 years, and thereafter that the capital of the insured depository institution remain at a ''well capitalized'' level. The capital adequacy of depository institutions formed from assets and/or liabilities acquired from failed banks in receivership is a matter of crucial importance for reasons of safety and soundness and for protection of the Deposit Insurance Fund. This is especially important in the case of newly established banks that, as a general matter, have a weak record of performance in the early years of activity.

In view of these considerations it has been suggested that a Tier 1 leverage ratio of 15 percent included in the text of the Proposed Policy Statement is entirely necessary and appropriate for at least some minimum period after the new depository institution acquisition. On the other hand, it has also been suggested that safety and soundness considerations can be satisfied with a lower, but a still high level, of Tier 1 capital more in line with the level normally applicable to bank or thrift investors subject to prudential regulation, activities restrictions and that serve as a source of strength for their subsidiary institutions. It is also suggested that exceeding such normal capital levels could have the effect of making investments in the assets and liabilities of failed banks and thrifts uncompetitive and uneconomic.

The FDIC seeks to accomplish both objectives in setting initial capital requirements for failed bank asset and liability acquisitions under this Proposed Policy Statement. Clearly, a high level, above normal levels, is necessary to deal with the unusual circumstances facing banking institutions, especially new banking institutions, today. The FDIC seeks the views of commenters on the appropriate level of initial capital that will satisfy safety and soundness concerns without making investments in the assets and liabilities of failed banks and thrifts uncompetitive and uneconomic.

As noted above, the text of the Proposed Policy Statement requires an initial Tier 1 leverage ratio of 15 percent, that this ratio be maintained for a period of at least 3 years, and thereafter that the capital of the insured depository institution remain at a ''well capitalized'' level. Should there be a further requirement that if capital declines below the required capital level, the institution would be treated as ''undercapitalized'' for purposes of Prompt Corrective Action and the institution's regulator would have available all the measures that would be available in such a situation?

4. Should the Source of Strength commitment included in the Proposed Policy Statement be retained in the final policy statement? Should the commitment be enhanced to require from the shell holding company and/or the Investors a broader obligation than only a commitment to raise additional equity or engage in capital qualifying borrowing?

5. Should the Cross Guarantee commitment included in the Proposed Policy Statement be retained in the final policy statement? Should the commitment contained in the Proposed Policy Statement be enhanced by requiring a direct obligation of the Investors?

6. The Proposed Policy Statement limits the use of entities in an ownership structure that are domiciled in bank secrecy jurisdictions unless the investors are subsidiaries of companies that are subject to comprehensive consolidated supervision as recognized by the Federal Reserve Board. Should entities established in bank secrecy jurisdictions be considered to be eligible bidders even without being subject to comprehensive consolidated supervision?

7. Under the Proposed Policy Statement, Investors would be prohibited from selling or otherwise transferring securities of the Investors' holding company or depository institution for a 3 year period of time following the acquisition absent the FDIC's prior approval. Is 3 years the correct period of time for limiting sales, or should the period be shorter or longer?

8. The Proposed Policy Statement provides that Investors that directly or indirectly hold 10 percent or more of the equity of a bank or thrift in receivership would not be considered eligible to be a bidder to become an investor in the deposit liabilities, or both such liabilities and assets, of that failed depository institution. Is this exclusion from bidding eligibility appropriate on the basis of the need to assure fairness among all bidders and to avoid an incentive for the 10 percent or more Investor to seek to take advantage of the potential availability of loss sharing by the FDIC if the subsidiary bank or thrift enters into a receivership?

9. Should the limitations in this Proposed Policy Statement be lifted after a certain number of years of successful operation of a bank or thrift holding company? If so, what would be the appropriate timeframe for lifting the conditions? What other criteria should apply? Should all or only some of the conditions be lifted?

III. Text of Proposed Policy Statement

The text of the Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions follows:

Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions

Introduction

Capital investments by individuals and limited liability companies acting through holding companies operating within a well developed prudential framework has long been the dominant form of ownership of insured depository institutions. From the perspective of the FDIC's interest as insurer and supervisor of insured depository institutions, this framework has included, in particular, measures aimed at maintaining well capitalized bank and thrift institutions, support for these banks when they face difficulties, and protections against insider transactions. The ability of the owners to provide financial support to depository institutions with adequate capital and management expertise are essential safeguards. These safeguards are particularly appropriate for owners of insured depository institutions given the important benefits conferred on

depository institutions by deposit insurance.

Recently, private capital investors have indicated an interest in participating in acquiring the deposit liabilities, or both such liabilities and assets, of failed insured banks and thrifts in receivership in the current circumstances in which substantial additional capital is needed in the U.S. banking system. The FDIC is keenly aware of this need, particularly as it arises in the context of its function as the receiver of failed insured depository institutions charged with protecting insured deposits based on a congressionally mandated least cost to the insurance fund solutions for these institutions. The FDIC is also aware that new banks, regardless of their investor composition, pose an elevated risk to the deposit insurance fund since they generally lack a core base of business, a proven track record in the banking industry, and are vulnerable to significant losses in the early years of incorporation.

The FDIC is of the view that private capital participation in the acquisition of the deposit liabilities, or both such liabilities and assets, from a failed depository institution in receivership should be consistent with the foregoing basic elements of insured depository institution ownership. The FDIC has reviewed various elements of private capital investment structures for consistency with these principles. Some acquisition arrangements, such as those involving complex and functionally opaque ownership structures, typified by so-called ''silo'' organizational arrangements, in which the beneficial ownership cannot be ascertained, the responsible parties for making decisions are not clearly identified, and/or ownership and control are separated, would be so substantially inconsistent with these principles as not to be considered as appropriate for approval for ownership of insured depository institutions. While these structuring issues are generally attributed to private equity ownership investments, the FDIC will apply the same standard of review to any prospective proposed acquisition of a failed bank or thrift to ensure parity and to avoid the creation of loopholes or regulatory arbitrage.

Other ownership structures raise important policy issues that can be addressed so as to meet the principles applied by the FDIC in its decisions on the granting of deposit insurance. The FDIC is particularly concerned that owners of banks and thrifts, whether they are individuals, partnerships, limited liability companies, or corporations, accept the responsibility to serve as responsible custodians of the public interest that is inherent in insured depository institutions and will devote their efforts to assuring that banks or thrifts acquired with assistance from the deposit insurance fund do not return to the category of troubled institutions.

In order to address the concerns raised mainly by ownership structures involving more than *de minimis* investments that typically involve a shell holding company owned by another entity or other entities that avoid certain of the responsibilities of bank and thrift ownership, the FDIC is establishing standards for bidder eligibility that would be applicable to (a) private capital investors in a company (other than a bank or thrift holding company that has come into existence or has been acquired by an Investor at least 3 years prior to the date of this policy statement), that is proposing to directly or indirectly assume deposit liabilities, or such liabilities and assets, from a failed insured depository institution in receivership, and to (b) applicants for insurance in the case of de novo charters issued in connection with the resolution of failed insured depository institutions (hereinafter ''Investors'').

The standards provide for:

(a) Capital support of the acquired depository institution;

(b) agreement to a cross guarantee over substantially commonly owned depository institutions;

(c) limits on transactions with affiliates;

(d) maintenance of continuity of ownership as specified below; and

(e) avoidance of secrecy law jurisdiction vehicles as the channel for their investments unless the parent company is subject to consolidated home country supervision.

It is the intention of the FDIC to apply these requirements as set out below.

Capital Commitment: Investors would be expected to agree to cause the depository institution acquiring deposit liabilities, or both such liabilities and assets, from a failed depository institution in receivership to be initially capitalized at a minimum 15 percent Tier 1 leverage ratio for a period of 3 years unless the period is extended by the FDIC, and thereafter to maintain the depository institution at no lower level of capital adequacy than ''well capitalized'' during the remaining period of their ownership. If at any time the depository institution fails to meet this standard, the Investors would have to immediately facilitate restoring the institution to the ''well capitalized'' standards. Failure to maintain the required capital level will result in the institution being treated as ''undercapitalized'' for purposes of Prompt Corrective Action triggering all of the measures that would be available to the institution's regulator in such a situation.

Source of Strength: Investors organizational structures subject to the measures provided for in this policy statement would be expected to agree to serve as a source of strength for their subsidiary depository institutions. Source of strength commitments under this paragraph are to be supported by the agreement of the depository institution holding company in which the Investors have invested that holds the stock of such depository institutions to sell equity or engage in capital qualifying borrowing.

Cross Guarantees: Investors whose investments, individually or collectively, constitute a majority of the direct or indirect investments in more than one insured depository institution would be expected to pledge to the FDIC their proportionate interests in each such institution to pay for any losses to the deposit insurance fund resulting from the failure of, or assistance provided to, any other such institution.

Transactions with Affiliates: All extensions of credit to Investors, their investment funds if any, any affiliates of either, and any portfolio companies (*i.e.,* companies in which the Investors or affiliates invest) by an insured depository institution acquired or controlled by such Investors under this policy statement would be prohibited. For purposes of this policy statement the term ''extension of credit'' is defined in 12 CFR 223.3(o) including any subsequent amendments, and the term ''affiliate'' is any company in which an investor owns 10 percent or more of the equity of that company.

Secrecy Law Jurisdictions: Investors employing ownership structures utilizing entities that are domiciled in bank secrecy jurisdictions would not be eligible to own a direct or indirect interest in an insured depository institution unless the Investors are subsidiaries of companies that are subject to comprehensive consolidated supervision (''CCS'') as recognized by the Federal Reserve Board, and they execute agreements on the provision of information to the primary Federal regulator about the non-domestic Investors' operations and activities; maintain its business books and records (or a duplicate) in the U.S.; consent to the disclosure of information that might be covered by confidentiality or privacy laws and to cooperate with the FDIC, if necessary, in obtaining information

maintained by foreign government entities; consent to jurisdiction and designation of an agent for service of process; and consent to be bound by the statutes and regulations administered by the appropriate U.S. Federal banking agencies.

Continuity of Ownership: Investors subject to this policy statement would be prohibited from selling or otherwise transferring securities of the Investors' holding company or depository institution for a 3 year period of time following the acquisition absent the FDIC's prior approval. This time period is consistent with the current de novo business plan change approval and other requirements in FDIC Deposit Insurance Orders. The FDIC does not expect to approve any sale to a private capital investor during such 3 year period unless the buyer agrees to be subject to the same conditions that are applicable under this policy statement to the selling Investor.

Special Owner Bid Limitation: Investors that directly or indirectly hold 10 percent or more of the equity of a bank or thrift in receivership would not be considered eligible to be a bidder to become an investor in the deposit liabilities, or both such liabilities and assets, of that failed depository institution.

Disclosure: Investors subject to this policy statement would be expected to submit to the FDIC information about the Investors and all entities in the ownership chain including such information as the size of the capital fund or funds, its diversification, the return profile, the marketing documents, the management team and the business model. In addition, Investors and all entities in the ownership chain will be required to provide to the FDIC such other information as is determined to be necessary to assure compliance with this policy statement.

Limitations: Nothing in this policy statement is intended to replace or substitute for any determination required by a relevant depository institution's primary Federal regulator or a Federal bank or thrift holding company regulator under any applicable regulation or statute, including, in particular, bank or thrift holding company statutes, or with respect to determinations made and requirements that may be imposed in connection with the general character, fitness and expertise of the management being proposed by the Investors, the need for a thorough and reasonable business plan that addresses business lines and strategic initiatives and includes appropriate contingency planning elements, satisfactory corporate governance structure and representation, and any other supervisory matter.

By order of the Board of Directors.

Dated at Washington, DC, this 2nd day of July, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–16077 Filed 7–8–09; 8:45 am]

BILLING CODE 6714–01–P

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 July 24, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Norlo Inc., Prior Lake, Minnesota, to engage, de novo, in lending activities, pursuant to section 225.28 (b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 06, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–16255 Filed 7–8–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Sunshine Act; Notice of Meeting

TIME AND DATE: July 14, 2009—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. *FMC Agreement No. 201202:* Oakland MTO Agreement.
2. *FMC Agreement No. 011275–027:* Australia and New Zealand/United States Discussion Agreement.
3. *FMC Agreement No. 011275–028:* Australia and New Zealand/United States Discussion Agreement.

Closed Session

1. Section 15 Order on Competition, Rates and Service in the U.S.-Australia/New Zealand and Northbound and Southbound Trade.
2. FMC Agreement No. 011741–013: U.S. Pacific Coast-Oceania Agreement.
3. Order Initiating Proceeding—Admission to Practice Before the Commission.
4. Internal Administrative Practices and Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary. (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. E9–16414 Filed 7–7–09; 4:15 pm]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 019129NF.
Name: Affordable Shipping Services, L.L.C.
Address: 11100 Wilcrest Drive, Ste. H, Houston, TX 77099.
Date Revoked: April 25, 2009.
Reason: Surrendered license voluntarily.

License Number: 001530F.
Name: Colombo Services, Inc.
Address: 4000–A Airline Dr., Houston, TX 77022.
Date Revoked: May 7, 2009.
Reason: Failed to maintain a valid bond.

License Number: 019757N.
Name: D & C Logistics, Inc.
Address: 1999 W. Walnut St., Compton, CA 90220.
Date Revoked: June 5, 2009.
Reason: Failed to maintain a valid bond.

License Number: 018694F.
Name: Global Parcel System LLC.
Address: 8304 NW 30th Terr., Miami, FL 33122.
Date Revoked: April 11, 2009.
Reason: Failed to maintain a valid bond.

License Number: 001988F.
Name: Heg International Freight Forwarders, Inc.
Address: 5855 Naples Plaza, Ste. 202, Long Beach, CA 90803.
Date Revoked: June 6, 2009.
Reason: Failed to maintain a valid bond.

License Number: 016706F.
Name: Inter-Trade Liner Shipping Co., Inc.
Address: 2111 W. Crescent Ave., Ste. E, Anaheim, CA 94801.
Date Revoked: June 5, 2009.
Reason: Failed to maintain a valid bond.

License Number: 021444F.
Name: J & V International Shipping Corp.
Address: 806 Arcadia Ave., Ste. 4, Arcadia, CA 91007.
Date Revoked: June 5, 2009.
Reason: Failed to maintain a valid bond.

License Number: 016952N.
Name: Sunice Cargo Logistics, Inc.
Address: 550 W. Merrick Rd., Ste., #1, Valley Stream, NY 11580.
Date Revoked: June 11, 2009.
Reason: Failed to maintain a valid bond.

License Number: 016268N.
Name: Value-Plus Express, Inc.
Address: 118 W. Hazel St., Ste. C, Inglewood, CA 90302.
Date Revoked: June 5, 2009.
Reason: Failed to maintain a valid bond.

License Number: 013172F.
Name: Yung Hoon Kim dba Conex International.
Address: 20695 So. Western Ave., Ste. 136, Torrance, CA 90501.
Date Revoked: April 10, 2009.
Reason: Surrendered license voluntarily.

License Number: 020711F.
Name: Joeanne W. Leake dba J & L Export.
Address: 101 Ashford Circle, Summerville, SC 29485.
Date Revoked: June 27, 2009.
Reason: Failed to maintain a valid bond.

License Number: 021666F.
Name: South Florida Freight Forwarding, Inc.
Address: 330 SW 27th Ave., Ste. 605, Miami, FL 33135.
Date Revoked: June 27, 2009.
Reason: Failed to maintain a valid bond.

License Number: 018409N.
Name: Deans International Shipping Co., Inc.
Address: 217–21 Merrick Blvd., Laurelton, NY 11413.
Date Revoked: June 30, 2009.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. E9–16117 Filed 7–8–09; 8:45 am]
BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Nursing Scholarship Program (OMB No. 0915–0301)—Extension

The Nursing Scholarship Program (NSP) or ''Nursing Scholarship'' is a competitive Federal program, which awards scholarships to individuals for attendance at schools of nursing. The Bureau of Clinician Recruitment and Service (BCRS) in HRSA administers the program. The scholarship consists of payment of tuition, fees, other reasonable educational costs, and a monthly support stipend. In return, the students agree to provide a minimum of 2 years of full-time clinical service (or an equivalent part-time commitment, as approved by the NSP) at a health care facility with a critical shortage of nurses as defined by the program.

Nursing scholarship recipients must be willing and are required to fulfill their NSP service commitment at a health care facility with a critical shortage of nurses in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Marianas, the U.S. Virgin Islands, the Territory of America Samoa, the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia. Students who are uncertain of their commitment to provide nursing in a health care facility with a critical shortage of nurses in the United States and its Territories are advised not to participate in this program. The NSP needs to collect data to determine an applicant's eligibility for the program, to monitor a participant's continued enrollment in a school of nursing, to monitor the participant's compliance with the NSP service obligation, and to obtain data on its program to ensure compliance with legislative mandates and prepare annual reports to Congress.

The following information will be collected: (1) From the applicants and/or the schools, general applicant and nursing school data such as full name, location, tuition/fees, and enrollment status; (2) from the schools, on an annual basis, data concerning tuition/fees and student enrollment status; and (3) from the participants and their health care facilities with a critical shortage of nurses, on a biannual basis, data concerning the participant's employment status, work schedule and leave usage. BCRS enters the cost information into its computerized data system, along with the projected amount for the monthly stipend, to determine the amount of each scholarship award.

The annual estimate of burden is as follows:

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Application	4,000	1	4,000	2	8,000
In-school monitoring	500	1	500	2	1,000
In-service monitoring	600	1	1,200	1	1,200
Total	5,100		10,200		10,200

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: July 2, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–16199 Filed 7–8–09; 8:45 am]

BILLING CODE 4165–15–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: HRSA National Environmental Policy Act (NEPA) Environmental Information and Documentation (EID) (OMB No. 0915–0324)—Extension

HRSA is requesting extension of the approval for the Environmental Information and Documentation (EID) checklist which consists of information that the agency is required to obtain to comply with the National Environmental Policy Act of 1969 (NEPA). NEPA establishes the Federal Government's national policy for protection of the environment. HRSA has developed the EID for applicants of funding that would potentially impact the environment and to ensure that their decision-making processes are consistent with NEPA. Applicants must provide information and assurance of compliance with NEPA on the EID checklist. The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
NEPA EID Checklist	2,734	1	2,734	1	2,734
Total	2,734		2,734		2,734

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: July 2, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–16196 Filed 7–8–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–09AJ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Centers for Public Health Preparedness Program Evaluation—New—Coordinating Office for Terrorism Preparedness & Emergency Response (COTPER), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Under the Authority of Sections 301(a) and 317(k)(2) of Public Health Service Act, the Centers for Disease Control and Prevention is responsible for administering and monitoring the

Centers for Public Health Preparedness (CPHP) Program. The purpose of the CPHP Program is to strengthen terrorism and emergency preparedness by linking academic expertise to state and local health agency needs. The program brings together colleges and universities with a common focus on public health preparedness to establish a national network of education and training resources. Of these institutions, 27 are accredited Schools of Public Health funded through a five-year Cooperative Agreement for years 2004–2009. This program addresses the public health goals described in ''A National Strategy for Terrorism Preparedness and Response: 2003–2008 Strategic Plan,'' specifically Imperative Five, a Competent and Sustainable Workforce. Critical objectives under this Imperative are to: (1) Increase the number and type of professionals that comprise a preparedness and response workforce; (2) deliver certification and competency-based training and education; (3) recruit and retain the highest quality workforce; and (4) evaluate the impact of training to ensure learning has occurred.

CDC requests OMB approval for a period of one year to collect information beginning in the fall of 2009. CDC is undertaking a summative evaluation of the CPHP Program encompassing the period of the current Cooperative Agreement. In order to complete this evaluation, CDC is proposing three data collection instruments to gather information describing the program's processes and outcomes. These are: (1) CPHP Interview Instrument; (2) CPHP Customer/Partner Survey Instrument; and (3) CPHP Customer/Partner Follow-Up Interview Instrument. Collectively, these instruments are needed in order to gather, process, aggregate, evaluate, and disseminate CPHP program information. The information will be used by CDC to document progress toward meeting established program goals and objectives, to evaluate outcomes generated by the collective work of the 27 Centers, to inform the development of a new public health preparedness education and training cooperative agreement program, and to respond to data inquiries made by CDC and other agencies of the federal government.

The CPHP Interview Instrument will be used to guide a telephone interview process with key CPHP staff. Questions will gather perceptions about the CPHP Program from the perspective of CPHP staff. It is estimated that there will be a total of 81 respondents with an estimated time for data collection of 90 minutes. The CPHP Customer/Partner Survey Instrument will be used to gather information from representatives of organizations that have received training or technical assistance from the CPHP Program. It will be administered electronically with an option for paper copy administration. It is estimated that there will be one request per respondent and a total of 171 respondents with an estimated time for data collection of 20 minutes. The CPHP Customer/Partner Follow-Up Interview Instrument will be used to gather more in-depth information on the same categories of questions from the Survey Instrument. It is estimated that there will be a total of 20 respondents with an estimated time for data collection of 45 minutes. The annualized estimated burden hours are 193.5.

There are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
CPHP PIs, PCs, and Evaluators	CPHP Interview Instrument.	81	1	1.5	121.5
CPHP Customers and Partners	CPHP Customer/Partner Survey Instrument.	171	1	20/60	57
CPHP Customers and Partners	CPHP Customer/Partner Follow-Up Interview Instrument.	20	1	45/60	15

Dated: July 2, 2009.

Marilyn I. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–16225 Filed 7–8–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Immunogenic Peptide from NGEP Protein for Developing Prostate Cancer Vaccines

Description of Technology: The NGEP protein is only present in the prostate and is typically overexpressed on prostate cancer cells. Hence, as a novel prostate tumor-associated antigen (TAA) it is a good target for developing active immunotherapies to kill prostate cancer cells. For example, NGEP could be used in a vaccine to activate an individual's immune system to recognize and kill NGEP-expressing prostate cancer cells. However, TAAs typically are not very effective in inciting an immune response. This can be overcome by identifying portions (epitopes) of the

TAA that are more immunologically active.

Investigators at the NIH have identified a small peptide fragment of the NGEP protein (NGEP CTL peptide epitope) that is very effective in activating cytotoxic lymphocytes, causing them to destroy prostate cancer cells and has great potential for development of a variety of active immunotherapy strategies, such as vector-based cancer vaccines, to treat and prevent prostate cancer. In addition, it could be used for developing sensitive immunoassays for measuring the immune response of a prostate cancer patient during immunotherapy.

Applications:

- Peptide cancer vaccine.
- Vector-based cancer vaccine.
- Liposome-based cancer vaccine.
- Cellular cancer vaccine.
- In vitro diagnostic for monitoring the immune response of prostate cancer patients during cancer vaccine trials.

Advantages:

- Small biologic therapeutic.
- Can be chemically synthesized or produced recombinantly.
- DNA encoded peptide allows molecular engineering.
- Can be used as a tumor antigen with the clinically proven TRICOM-based vaccine technology.

Development Status: Early stage.

Market: Prostate cancer is the second-leading cause of cancer death in men. It is estimated that in the United States there will be 192,280 new cases of prostate cancer and 27,360 deaths due to prostate cancer in 2009.

Inventors: Jeffrey Schlom *et al.* (NCI).

Publications: No publications directly related to this technology.

Patent Status: U.S. Provisional Application No. 61/170,900 filed 20 Apr 2009 (HHS Reference No. E–042–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Sabarni Chatterjee, PhD; 301–435–5587; *chatterjeesa@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research, Laboratory of Tumor Immunology and Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Kevin Brand, J.D. at 301–451–4566 or *brandk@mail.nih.gov* for more information.

Gene Expression Signature Predictive of Response to Chemotherapy

Description of Technology: Combination cisplatin and fluorouracil (CF) is a reference chemotherapy regimen for metastatic gastric cancer. However, to date, no genome-wide studies have identified distinctions in gene expression that predict which subjects with metastatic disease will benefit from this therapy and which subjects will not exhibit a therapeutic response to chemotherapy. Given the toxicity of chemotherapy, however, defining parameters that identify those subjects who will likely benefit from chemotherapy is of paramount importance. Early identification of non-responders would provide opportunities to explore alternate or novel therapeutic approaches. Thus, a need exists to identify methods of predicting a subject's response to chemotherapy prior to receiving the treatment.

Scientists at the National Institutes of Health have discovered a three-gene signature that can be used to determine the chemotherapy response in patients with cancer. By measuring the expression of three cancer-specific genes it can be determined if a patient with an epithelial cancer such as gastric, bladder, head and neck, esophageal or cervical cancers, will respond to CF treatment. The inventors have demonstrated that examining these expression levels has high fidelity in identifying CF treatment non-responders. Further, the invention describes a mechanism that can help patients identified as non-responders become responsive to treatment. Therefore these methods have the potential to reduce fatalities caused by metastatic gastric cancer by identifying patients early on who are non-responsive to standard CF treatment and customizing a new treatment plan which may be better suited to their individual needs.

Applications:

- Prognostic testing of epithelial cancer patients.
- Customized treatment for gastric cancer patients identified as CF treatment non-responders.

Advantages:

- Expression levels of cancer-specific genes can be used to determine if metastatic gastric cancer patients are responsive to combination cisplatin and fluorouracil (CF) treatment.
- Fatalities due to metastatic gastric cancer may be reduced by customizing the treatment of non-responders.

Market: In 2008, it is estimated that there will be 21,500 new cases and 10,880 deaths from gastric cancer in the United States.

Development Status: Patient tissue sample data available.

Inventors: Jeffrey E. Green and Hark Kyun Kim (NCI).

Patent Status: U.S. Provisional Application No. 61/195,123 filed 03 Oct 2008 (HHS Reference No. E–282–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Surekha Vathyam, PhD; 301–435–4076; *vathyams@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research, Laboratory of Cancer Biology and Genetics, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Gene Expression Signature Predictive of Response to Chemotherapy. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Therapeutic Applications of a p53 Isoform in Regenerative Medicine, Aging, and Cancer

Description of Technology: p53 plays a critical role in carcinogenesis and aging as a key regulator of cell cycle progression, senescence and apoptosis. The inventors have discovered that a natural variant of p53 (Δ133p53) inhibits p53-dependent cell senescence. Utilizing Δ133p53 siRNAs, the inventors have data demonstrating that siRNA-treated human fibroblast undergo cell senescence, thereby indicating that Δ133p53 inhibition could be a novel approach for cell senescence-mediated anti-proliferative therapy, including anti-cancer treatments. Alternatively, enhanced expression with Δ133p53 can extend the replicative lifespan of normal human cells. This technology may provide a new method in the field of regenerative medicine for aging-related degenerative disease.

Also available for licensing are Δ133p53 siRNAs and shRNA vectors, as well as a Δ133p53 overexpression vector, which can be used for cancer and age-related degenerative therapeutics. The shRNA can be stably integrated into the cellular genome for long-term Δ133p53 inhibition.

The inventors have also discovered that another p53 variant (p53β) accelerates p53-dependent cell senescence, and developed a vector for overexpressing p53β, which could be used for cell senescence-mediated anti-proliferative therapy.

Applications:

- Method to treat cancer.
- Method to treat aging related disorders.
- Method to promote tissue regeneration.

• Pharmaceutical compositions to inhibit cancer or promote cell regeneration.

Advantages:

• Ability to treat a wide variety of cancers and age-related diseases as p53 is present in normal cells.

• shRNA therapeutics are stably integrated into genome for long-term treatment.

Development Status: The technology is currently in the pre-clinical stage of development.

Market:

• An estimated 1,479,350 new cancer diagnoses in the U.S. in 2009.

• Cancer is the second leading cause of death in United States.

• It is estimated that the cancer therapeutic market would double to $50 billion a year in 2010 from $25 billion in 2006.

Inventors: Curtis C. Harris (NCI) *et al.*

Relevant Publications:

1. K Fujita *et al.* p53 isoforms, Δ133p53 and p53β, are endogenous regulators of replicative cellular senescence. Nat Cell Biol., in press.

2. International Agency Research on Cancer Conference, Lyon, France, November 13, 2007.

Patent Status:

• U.S. Provisional Application No. 60/987,340 filed 12 Nov 2007 (HHS Reference No. E–033–2008/0–US–01).

• PCT Application No. PCT/US2008/080648 filed 21 Oct 2008 (HHS Reference No. E–033–2008/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Human Carcinogenesis, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact *Curtis_Harris@nih.gov* for more information.

Novel Compounds that Specifically Kill Multi-Drug Resistant Cancer Cells

Description of Invention: One of the major hindrances to successful cancer chemotherapy is the development of multi-drug resistance (MDR) in cancer cells. MDR is frequently caused by the increased expression or activity of ABC transporter proteins in response to the toxic agents used in chemotherapy. Research has generally been directed to overcoming MDR by inhibiting the activity of ABC transporters. However, compounds that inhibit ABC transporter activity often elicit strong and undesirable side-effects, restricting their usefulness as therapeutics.

Investigators at the NIH previously identified that the compound NSC73306 had the ability to specifically kill cancer cells that overexpressed an ABC transporter responsible for MDR. Importantly, this ''MDR-selective compound'' is not an inhibitor of ABC transporters, reducing the likelihood of undesirable side-effects if used as a therapeutic.

Using NSC 73306 as a model, new MDR-selective compounds have been created with improved solubility and selectivity. These new MDR-selective compounds can also selectively kill MDR cancer cells, with their efficacy correlating directly with the level of ABC transporter expression. Recent evidence also shows that these new MDR-selective compounds have the ability to decrease the expression of ABC transporters, potentially re-sensitizing the cancer cells to chemotherapeutic agents. Thus, MDR-selective compounds represent a powerful strategy for treating multi-drug resistant cancers as a direct chemotherapeutic and as agents that can re-sensitize MDR cancer cells for treatment with additional chemotherapeutic agents.

Applications:

• Treatment of cancers associated with multi-drug resistance, either alone or in combination with other therapeutics.

• Development of a pharmacophore for improved effectiveness in treating cancers associated with multi-drug resistance.

• Re-sensitization of multi-drug resistant cancer cells to chemotherapeutic agents.

Advantages:

• MDR-selective compounds capitalize on one of the most common drawbacks to cancer therapies (MDR) by using it as an advantage for treating cancer.

• The compositions do not inhibit the activity of ABC transporters, thereby reducing the chance of undesired side-effects during treatment.

• The effects of MDR-selective compounds correlate with the level of ABC transporter expression, allowing healthy cells which do not express high levels of ABC transporters to better survive treatments.

• Increased specificity allows the new MDR-selective compounds to be tailored to treating cancers associated with the overexpression and hyperactivity of particular ABC transporters.

• Increased solubility of the new MDR-selective compounds allows greater access to cancer cells, thereby increasing therapeutic effectiveness.

Development Status: Preclinical stage of development.

Patent Status: PCT Application No. PCT/US2009/000861 (HHS Reference No. E–017–2008/0–PCT–02).

Inventors: Matthew D. Hall *et al.* (NCI).

For more information, see:

• MD Hall *et al.* Synthesis, activity, and pharmacophore development for isatin-beta-thiosemicarbazones with selective activity toward multidrug-resistant cells. J Med Chem. 2009 May 28;52(10):3191–3204.

• US Patent Application Publication 20080214606 A1 (US Patent Application 11/629,233).

Licensing Status: Available for licensing.

Licensing Contact: David A. Lambertson, PhD; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Cell Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the agents described here. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Methods for Treating Cancer in Humans Using IL–21

Description of Invention: The present invention discloses the use of IL–21 for cancer therapy, cancer prevention, and method to induce apoptosis. When compared to similar cytokines, IL–21 has shown substantial anticancer activity and reduced toxicity in murine models.

IL–21 belongs to the class I family of cytokines and is closely related to IL–2 and IL–15. Some cancer patients have shown significant response to administration of IL–2. However, IL–2 has also been associated with severe toxicity leading to a variety of undesirable side effects. This invention attempts to resolve the toxicity concerns and presents a new therapy for cancer prevention and treatment.

Applications: Method to treat and prevent cancer.

Advantages: Targeted therapy to minimize negative side effects of IL–2 cancer therapeutics.

Development Status: Pre-clinical.

Inventors: Patrick Hwu (formerly NCI), Gang Wang (formerly NCI), Warren J. Leonard (NHLBI), Rosanne Spolski (NHLBI), *et al.*

Related Publications:

1. R Spolsi and WJ Leonard. Interleukin-21: Basic biology and implications for cancer and

autoimmunity. Annu Rev Immunol. 2008;26:57–79.

2. WJ Leonard and R Spolski. Interleukin-21: A modulator of lymphoid proliferation, apoptosis and differentiation. Nat Rev Immunol. 2005 Sep;5(9):688–698.

3. G Wang et al. In vivo antitumor activity of interleukin 21 mediated by natural killer cells. Cancer Res. 2003 Dec15;63(24):9016–9022.

Patent Status: U.S. Patent Application No. 10/508,978 filed 19 Nov 2004 (HHS Reference No. E–137–2002/0–US–03).

Licensing Status: Available for licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov.*

Dated: July 1, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–16300 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

qPCR Assay for Detection of JC Virus

Description of Invention: JC Virus causes a fatal disease in the brain called progressive multifocal leukoencephalopathy (PML) that occurs in many patients with immunocompromised conditions. For example, more than five percent (5%) of AIDS patients develop PML. Additionally, these conditions include, but are not limited to, cancers such as leukemias and lymphomas, organ transplants such as kidney, heart and autoimmune conditions with treatment that modulates the immune system such as Multiple Sclerosis (MS), rheumatoid arthritis, psoriasis, and systemic lupus erythematosus. The finding of JCV DNA in the patients with neurological symptoms of PML is a diagnostic criterion and is needed to confirm the diagnosis of PML to rule out other neurological conditions.

This technology describes a qPCR assay that utilizes viral DNA standards and testing samples to detect the presence of the JC viral genome in patients' cerebrospinal fluid and blood, blood products, and tissue samples from biopsy or autopsy.

Application: Development of JC Virus (JCV) diagnostics, calibration of existing JCV assays.

Advantages: Assay is sensitive, reproducible and highly specific because the amount of JCV DNA in cerebrospinal fluid or blood or blood product samples may be very small.

Development Status: Materials and assay have been developed and tested.

Inventors: Eugene O. Major and Caroline Ryschkewitsch (NINDS).

Publications

1. ML Landry *et al.* False negative PCR despite high levels of JC virus DNA in spinal fluid: Implications for diagnostic testing. J Clin Virol. 2008 Oct;43(2):247–249.

2. C Ryschkewitsch *et al.* Comparison of PCR-southern hybridization and quantitative real-time PCR for the detection of JC and BK viral nucleotide sequences in urine and cerebrospinal fluid. J Virol Methods. 2004 Nov;121(2):217–221.

3. T Yousry *et al.* Evaluation of patients treated with natalizumab for progressive multifocal leukoencephalopathy. N Engl J Med. 2006 Mar 2;354(9):924–933.

Patent Status: HHS Reference No. E–152–2009/0—Research Material. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov.*

A Locking Device for Permanently Securing Surgical Suture Loops

Description of Invention: This technology relates to a device that can be used to non-invasively secure surgical suture loops when combined with a percutaneous delivery system. It has been shown to be effective in correcting mitral valve regurgitation (MVR) in an animal model. During the procedure, a guidewire is percutaneously conveyed to the atrium of the heart and is used to secure the ''cerclage'' suture encircling the mitral valve annulus, which is delivered using a delivery catheter. The locking device is advanced over the suture by the delivery catheter and it permanently secures the suture and maintains the tension on the annulus once the delivery system is removed. This locking device, in combination with the percutaneous procedure, allows for more complete coaptation of the valve leaflets and correction of MVR without the need for open heart surgery and its associated risks. The locking device is also adjustable, allowing the user to vary the tension on the suture if further tightening or loosening is required. It is also MRI compatible and all follow-up studies can be performed under MRI.

This invention has demonstrated its ability to correct MVR in animals where the locking device was observed to maintain the correct position and tension after implantation. This device has the potential to replace the traditional loop and knot method used for surgical correction of MVR, and may also be useful for other conditions that require permanently secured suture loops.

Applications: Non-invasive and effective correction of MVR and other conditions; Tensioning device for securing suture loops.

Advantages: Technology amenable to a non-invasive technique; Control of tension on surgical sutures.

Development Status: Early stage.

Inventor: Ozgur Kocaturk (NHLBI).

Patent Status: U.S. Provisional Application No. 61/157,267 filed 04 Mar 2009 (HHS Reference No. E–048–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey A. James, Ph.D.; 301–435–5474; *jeffreyja@mail.nih.gov.*

Collaborative Research Opportunity: The National Heart, Lung and Blood Institute Cardiac Catheterization Lab is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the

tension fixation device. Please contact Peg Koelble at 301–594–4095 or *koelblep@nhlbi.nih.gov* for more information.

Modulators of Pregnane X Receptor (PXR) as Therapeutics for Bowel Disorders (BD)

Description of Invention: This technology is based on the novel findings that susceptibility to BD is strongly associated with genetic variation in the PXR gene, a member of the nuclear receptor family, and rifaximin is a specific activator of human PXR. PXR is an integral component of the body's defense mechanism involved in endogenous and xenobiotic detoxication. Based on these novel findings, the present technology provides (a) methods of screening for compositions that modulate inflammatory bowel disease (IBD), (b) methods of inhibiting inflammation of the bowel and related tissues and organs, and (c) methods of treatment of inflammatory bowel disease.

Applications: Therapeutics for bowel disorders; Screening assays for candidate drugs to treat bowel disorders.

Development Status: Early stage.

Market: It is estimated that as many as one (1) million Americans have IBD, with that number evenly split between Crohn's disease and Ulcerative Colitis (UC). Further, it is estimated that the IBD therapeutic market will grow to reach four (4) billion U.S. dollars in 2017.

Inventors: Frank J. Gonzalez (NCI), Xiaochao Ma (NCI), *et al.*

Publication: X Ma, Y Shah, C Cheung, GL Guo, L Feigenbaum, KW Krausz, JR Idle, FJ Gonzalez. The PREGnane X receptor gene-humanized mouse: a model for investigating drug-drug interactions mediated by cytochromes P450 3A. Drug Metab Dispos. 2007 Feb;35(2):194–200.

Patent Status: U.S. Provisional Application No. 60/999,234 filed 17 Oct 2007 (HHS Reference No. E–002–2008/0–US–01); PCT Patent Application (HHS Reference No. E–002–2008/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Suryanarayana (Sury) Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Collaborative Research Opportunity: The Laboratory of Metabolism, Center for Cancer Research, NCI, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize compounds that ameliorate bowel disorders through the PXR pathway. Please contact Lisa Finkelstein, PhD at 301–451–7458 or *lfinkels@mail.nih.gov* for more information.

The Protein Cyanovirin Inactivates HIV and Influenza

Description of Invention: Cyanovirin-N (CV–N) potently and irreversibly inactivates diverse primary strains of HIV–1, including M-tropic forms involved in sexual transmission of HIV, as well as T-tropic and dual-tropic forms. CV–N also blocks cell-to-cell transmission of HIV infection. CV–N interacts in an unusual manner with the viral envelope, binding with extremely high affinity to poorly immunogenic epitopes on gp120. Further, CV–N and homologous proteins and peptides potently inhibit diverse isolates of influenza viruses A and B, the two major types of influenza virus that infect humans.

The described technology includes glycosylation-resistant mutants, which code sequences to enable ultra large-scale recombinant production of functional CV–Ns in non-bacterial (yeast or insect) host cells or in transgenic animals or plants. Therefore, these glycosylation-resistant mutants may allow industry to produce CV–Ns on a large scale and make CV–Ns cheap enough for developing countries to benefit from this invention.

CV–N was benign in vivo when tested in the rabbit/monkey vaginal toxicity/irritancy model and was not cytotoxic in vitro against human immune cells and lactobacilli. CV–N is readily soluble in aqueous media, is remarkably resistant to physicochemical degradation and is amenable to very large-scale production by a variety of genetic engineering approaches.

Applications

- Therapeutics and prevention of HIV and influenza infections.
- Topical microbicide to protect HIV infection.
- *Ex vivo* devices incorporating CV–N to remove or inactivate HIV from fluid samples.

Advantages

- Potent anti-HIV and anti-influenza activity.
- Can be applied both systematically or locally.
- Can be applied both *in vivo* and *ex vivo.*
- Inexpensive and large scale manufacturing.

Development Status

- Preclinical (rabbit/monkey) data in microbicide field are available at this time.
- Initial animal efficacy studies (both mouse and ferret) against influenza (H1N1) have been completed and published.

Market: For HIV therapeutics market, a published report by the financial services firm Griffin Securities suggested that sales of HIV/AIDS drugs reached $13 billion annually in 2007 (*http://www.hivandhepatitis.com*).

For microbicide market, it has been estimated that the global market size of microbicide will reach to $900 million by 2011 and will reach the sales of over $1.8 billion by 2020). ''Promising microbicides'' *Frontline* (Volume 21—Issue 14, Jul. 03–16, 2004).

For influenza market, based on Report Buyer which is a UK-based independent online store supplying business information on major industry sectors: By 2010, the worldwide influenza market is likely to reach $7.1 billion, with average annual growth estimated at 19.8%.

Inventors: Michael R. Boyd (NCI), Barry R. O'Keefe (NCI), *et al.*

Publications

1. B Giomarelli, R Provvedi, F Meacci, T Maggi, D Medaglini, G Pozzi, T Mori, JB McMahon, R Gardella, MR Boyd. The microbicide cyanovirin-N expressed on the surface of commensal bacterium Streptococcus gordonii captures HIV–1. AIDS. 2002 Jul 5;16(10):1351–1356.

2. CC Tsai, P Emau, Y Jiang, MB Agy, RJ Shattock, A Schmidt, WR Morton, KR Gustafson, MR Boyd. Cyanovirin-N inhibits AIDS virus infections in vaginal transmission models. AIDS Res Hum Retroviruses. 2004 Jan; 20(1):11–18.

3. DF Smee, KW Bailey, MH Wong, BR O'Keefe, KR Gustafson, VP Mishin, LV Gubareva. Treatment of influenza A (H1N1) virus infections in mice and ferrets with cyanovirin-N. Antiviral Res. 2008 Dec;80(3):266–271.

Patent Status

- *E–117–1995/0*—US Patent Numbers 5,843,882; 6,015,876; 5,962,653; 6,245,737 and 6,586,392.
- *E–117–1995/1*—US Patent Numbers 5,821,081; 5,998,587; 6,987,096; and 5,962,668.
- *E–117–1995/2–PCT–01 (WO 96/34107)*—entered in AU with Patent Numbers 707781 and 746809; in CA with Patent application Numbers 2219105; in JP with Patent Numbers 3803115 and 4081484; and in EP with Patent Number 836647 and registration GB, FR, DE, BE and CH.
- *E–117–1995/3–PCT–02 (WO 00/11036)*—entered in USA with Patent Number 6,193,982; in AU with Patent Number 746313; in CA with Patent Application Number 2340787; in JP

with Patent Application Number 566308/2000; and in EP with Patent Application Number 99943784.1.

• *E–074–1999/0*—US Patent Numbers 6,420,336 and 6,743,577.

• *E–074–1999/1*—US Patent Numbers 7,105,169; 7,048,935; and 6,428,790.

• *E–074–1999/2–PCT–01 (WO 00/53213)*—entered in AU with Patent Numbers 762704 and 2003252207; in CA with Patent Application Numbers 2364500; in JP with Patent Application Number 603702/2000; and in EP with Patent Number 1162992 and registration GB, FR, DE, BE and CH.

• *E–074–1999/3–PCT–02 (WO 02/077189)*—entered in USA with Patent Numbers 7,339,037 & 6,780,847 and Patent Application Number 10/857,265; in AU with Patent Number 2002254382; in CA with Patent Application Number 2441287; in JP with Patent Application Number 576632/2002; and in EP with Patent Number 1456382 and registration GB, FR, DE, BE and CH.

• *E–198–2006/0–PCT–02 (WO 2008/022303)*—entered in USA with Patent Application Number 12/377875; and in EP with Patent Application Number 07814209.8.

Licensing Status: Available for licensing.

Licensing Contact: Sally Hu, PhD, 301–435–5606, *HuS@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Molecular Targets Development Program, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Novel Osteobiologic Proteins for Treatment of Osteoporosis, Rheumatoid and Neurologic Diseases

Description of Invention: In an effort to find effective strategies for treatment of body tissue and structural damage as the result of trauma, cancer and other diseases, scientists at the National Institutes of Health (NIH) and the Food and Drug Administration (FDA) have identified proteins and associated pathways instrumental in replacing or regenerating damaged tissue. The identified proteins include Cartilage-Derived Morphogenetic Proteins (CDMP), Bone Morphogenetic Proteins (BMPs) and a tissue fate modifying FRZB Protein. Each has unique activities likely to be useful as stand alone agents or in construction of engineered tissues.

CDMPs appear helpful in the healing of bone and joint surface lesions, and also for the repair or reconstruction of cartilaginous tissues, tendons and ligaments. BMP antagonists will be useful in the study of stem cell differentiation. FRZB Protein, a tissue fate modifying secretable antagonist of Wnt signaling, is involved in the formation of cartilage, bone, neural and muscle tissue.

Potential Areas of Application

• Rheumatic diseases of the bone.
• Osteoporosis and osteoarthritis.
• Wound healing.
• Neurodegenerative disorders.
• Growth and repair of musculoskeletal tissues.
• Tissue engineering.

Cartilage-Derived Morphogenetic Proteins (HHS Reference No. E–138–1994/0)

• Useful in the therapeutic induction, repair, and maintenance of skeletal tissues and cartilage growth.
• Polynucleotides encoding these proteins are effective diagnostic reagents for detecting genetic abnormalities associated with poor skeletal development.

Tissue Fate Modifying FRZB Protein (HHS Reference Nos. E–127–1995/0/1/2)

• Involved in the formation of cartilage, bone, neural and muscle tissue.
• Regenerative agent to treat degenerative disorders (*i.e.,* Huntington's, Alzheimer's or spinal cord injuries), myodegenerative disorders (*i.e.,* muscular dystrophy, myasthenia gravis or myotonic myopathies) and osteodegenerative disorders (*i.e.,* osteoporosis or osteoarthritis)
• Selectively blocks diseases associated with Wnt family of signaling molecules including neoplasias.

Bone Morphogenetic Protein Variants (HHS Reference No. E–196–2004/0)

• Promote repair of menisci, cruciate and collateral ligaments of the knee, and rotator cuff or other tendons and/or ligaments.
• Induce the proliferation and differentiation of progenitor cells into functional bone, cartilage, tendon, or ligament tissue.

Advantages: Osteobiologics, such as BMPs, have the ability to stimulate musculo-skeletal repair instead of using donated human tissue allografts and synthetic materials.

Market Size: Ankylosing spondylitis afflicts least half a million people in the United States. Currently, there remains a need for the development of effective therapeutics for treating spondyloarthropathies that could overcome the disadvantages of current drugs.

Osteoarthritis overall affects an estimated 30 million US adults. Direct medical expenses for arthritis and other rheumatic conditions are estimated at $80.8 billion. In the United States, 10 million people have Osteoporosis. Osteoporosis related fractures attributed for $21 billion with the number expected to rise to $26 billion in 2025.

Inventors: Malcolm C. Moos Jr. (FDA), Frank P. Luyten (NIDCR), *et al.*

Related Publications

1. K Lin, S Wang, MA Julius, J Kitajewski, M Moos Jr., FP Luyten. The cysteine-rich frizzled domain of Frzb-1 is required and sufficient for the modulation of Wnt signaling. Proc Natl Acad Sci. USA 1997 Oct 14;94(21):11196–11200.

2. B Hoang, M Moos Jr, S Vukicevic, FP Luyten. Primary structure and tissue distribution of FRZB, a novel protein related to Drosophila frizzled, suggests a role in skeletal morphogenesis. J Biol Chem. 1996 Oct 18;271(42):26131–26137.

Patent Status

Cartilage-Derived Morphogenetic Proteins (HHS Reference No. E–138–1994/0)

• U.S. Patent 7,148,036 issued 12 Dec 2006.
• U.S. Patent 7,220,558 issued 22 May 2007.
• U.S. Patent Application No. 11/592,811 (allowed).

Tissue Growth-Inducing FRZB Protein (HHS Reference Nos. E–127–1995/0/1/2)

• U.S. Patent 6,884,871 issued 26 Apr 2005.
• U.S. Patent 6,924,367 issued 02 Aug 2005.
• U.S. Patent 7,049,291 issued 23 May 2006.
• U.S. Patent Application No. 11/184,005 (allowed).
• U.S. Patent Application No. 11/369,089 (pending).

Bone Morphogenetic Variants (HHS Reference No. E–196–2004/0)

• U.S. Patent Application No. 11/916,990 (pending).

Licensing Status: Available for licensing.

Licensing Contact: Surekha Vathyam, PhD; 301–435–4076; *vathyams@mail.nih.gov.*

Dated: June 30, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–16299 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Time Sensitive Applications.

Date: July 16, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16214 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, IBD Genetics Ancillary Studies.

Date: July 29, 2009.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16092 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Reviews, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned subcommittee:

Time and Date: 10 a.m.–5 p.m., August 13, 2009.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. Telephone (859) 334–4611, Fax (859) 334–4619.

Status: Open to the public, but without a public comment period. To access by teleconference dial the following information 1(866)659–0537, Participant Pass Code 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

Purpose: The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures

Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction. It is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Office of Compensation Analysis and Support (OCAS) and its dose reconstruction contractor.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes: preparation of status report to the Secretary on procedures review; a discussion of SC&A Findings and NIOSH Responses on OCAS–IG–004 (''The Use of Data from Other Facilities in the Completion of Dose Reconstructions under EEOICPA'') concerning the use of ''surrogate data''; discussion of the following ORAU procedures: OTIB–0035 (''Internal Dosimetry Co-worker Data for K–25''), OTIB–0052 (''Parameters to Consider when Processing claims for Construction Trades Workers''), OTIB–0047 (External Radiation monitoring at Y–12 During the 1948–1949 Period''), and OTIB–0049 (''Estimating Doses for Plutonium Strongly Retained in the Lung''); and, a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

This meeting is open to the public, but without a public comment period. In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

For More Information Contact: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta GA 30333, Telephone (513) 533–6800, Toll Free 1(800) CDC–INFO, E-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–16226 Filed 7–8–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Board Public Meeting Times and Dates: (All times are Eastern Time):

1:30 p.m.–5:45 p.m., July 27, 2009.
9 a.m.–5:30 p.m., July 28, 2009.
9 a.m.–3 p.m., July 29, 2009.

Public Comment Times And Dates: (All times are Eastern Time):

7 p.m.–8 p.m., July 27, 2009.
5:45 p.m.–6:30 p.m., July 28, 2009.

Place: Cincinnati Marriott North at Union Centre, 6189 Muhlhauser Road, West Chester, Ohio; *Phone:* (800) 228–9290; *Fax:* (513) 645–4619. The USA toll free dial in number is 1–866–659–0537 with a pass code of 9933701.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 100 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program (EEOICP) Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the Advisory Board meeting includes: Ethics training for Board members; NIOSH Program Status Update; Department of Labor (DOL) Update; Department of Energy (DOE) Update; Mound Working Group Update; Special Exposure Cohort (SEC) Petitions for: Oak Ridge Hospital, Baker-Perkins Company, Lake Ontario Ordinance Works, Bliss and Laughlin Steel, Norton Company, Blockson Chemical Company (regarding radon-related dose reconstruction), Dow Chemical Company (Madison, Illinois), and Chapman Valve Manufacturing Company; OCAS Science Update; Dose Reconstruction Program Report; Special Exposure Cohort (SEC) Petition Status Updates; Work Group reports; Reports of the Subcommittees on Dose Reconstruction Reviews and Procedures Reviews; and Board Working Time.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted according to the policy provided below. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Policy on Redaction of Board Meeting Transcripts (Public Comment), (1) If a person making a comment gives his or her name, no attempt will be made to redact that name. (2) NIOSH will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public website. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comment; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH website; (d) A statement such as in (a) above will appear in the Federal Register Notice that announces Board and Subcommittee meetings. (3) If an individual in making a statement reveals personal information (*e.g.,* medical information) about themselves that information will not usually be redacted. The NIOSH FOIA coordinator will, however, review such revelations in accordance with the Freedom of Information Act and the Federal Advisory Committee Act and if deemed appropriate, will redact such information. (4) All disclosures of information concerning third parties will be redacted. (5) If it comes to the attention of the DFO that an individual wishes to share

information with the Board but objects to doing so in a public forum, the DFO will work with that individual, in accordance with the Federal Advisory Committee Act, to find a way that the Board can hear such comments.

Contact Person for More Information: Theodore Katz, M.P.A., Executive Secretary, NIOSH, CDC, 1600 Clifton Road, MS E–20, Atlanta GA 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, E-mail *ocas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–16223 Filed 7–8–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 6, 2009, 1 p.m. to August 6, 2009, 4 p.m., Sheraton Delfina Hotel, 530 West Pico Boulevard, Santa Monica, CA, 90405 which was published in the **Federal Register** on June 8, 2009, 74 FR 27156–27160.

The meeting has been changed to a telephone conference at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting date and time remain the same. The meeting is closed to the public.

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16116 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel P–30 Faculty Recruitment 1.

Date: July 23, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 501 Geary St., San Francisco, CA 94102.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel P–30 Faculty Recruitment 2.

Date: July 28, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16107 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel. Health and Retirement Across Nations.

Date: July 28, 2009.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814. (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. 301–402–7703. *ferrellrj@mail.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Effect of Energy Flux on Risk Factors for Age-Related Chronic Diseases.

Date: July 30, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications. National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892. 301–402–7700. *rv23r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16105 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, August 5, 2009, 8 a.m. to August 6, 2009, 5 p.m., Marriott Bethesda North Hotel and Conf. Ctr., Bethesda, MD which was published in the **Federal Register** on June 26, 2009, 74FR30592.

This notice is amended to change the title from ''NCI–ARRA Grand Opportunities—Stem Cells'' to ''NCI–ARRA Grand Opportunities—Stem Cells/Cell Biology''. The meeting is closed to the public.

Dated: July 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16098 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Dates and Times: August 13, 2009, 8:30 a.m. to 5 p.m.

August 14, 2009, 8 a.m. to 4:30 p.m.

Place: Hilton Washington DC/Rockville, Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20852, Telephone: 301–468–1100.

Status: The meeting will be open to the public.

Purpose: The Committee members will focus on advancing and completing their discussions on the working topic for the mandated Ninth Annual Report—Toward Quality Healthcare Reform: Preparing the Interprofessional Healthcare Workforce for Primary Care. A number of experts have been invited to engage in dialogue with the Committee to include—Dr. David Garr, Director of the South Carolina Area Health Education Program who has confirmed his participation. Representatives from the Institute of Medicine, American Association of Colleges of Nursing, and Center for Medicare and Medicaid Services have also been invited. The meeting will afford Committee members with the opportunity to identify and discuss the current status of healthcare reform, best practices, lessons learned from the international perspective of interdisciplinary care, interprofessional competencies, and the like in an effort to ensure the appropriate formulation of recommendations for the Secretary and the Congress.

Agenda: The ACICBL agenda will include an overview of the Committee's general business activities, presentations by and dialogue with experts, and discussion sessions related to the development of recommendations to be addressed in the Ninth Annual Report of the ACICBL.

Agenda items are subject to change as dictated by the priorities of the Committee.

For Further Information Contact: Anyone requesting information regarding the ACICBL should contact Dr. Joan Weiss, Designated Federal Official for the ACICBL, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6950 or *jweiss@hrsa.gov.* Additionally, CAPT Norma J. Hatot, Senior Nurse Consultant, can be contacted at (301) 443–2681 or *nhatot@hrsa.gov.*

Dated: June 30, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–16197 Filed 7–8–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Notice is hereby given of a town hall meeting convened by the Services Subcommittee of the Interagency Autism Coordinating Committee (IACC). This town hall meeting will be open to the public, with attendance limited to space availability; interested individuals are encouraged to register early to secure a space. The format of the meeting will be a 30 minute presentation by members of the IACC, followed by an open microphone session in which comments may be shared on the topics listed below related to services for people with ASD or other related topics. The meeting will be remotely accessible by videocast. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 5 business days in advance of the meeting.

Written comments are welcome in advance of, during and after the meeting until July 31, 2009, at *iaccservices@mail.nih.gov.* Written comments received before or during the meeting may be shared with the meeting audience by the moderators as time permits.

Name of Committee: Services Subcommittee of the Interagency Autism Coordinating Committee (IACC).

Date: July 24, 2009.

Time: 10:45 a.m. to 2 p.m., Central Time.

Agenda: A Town Hall Meeting where the public may share comments, feedback and questions regarding services for people with ASD and their families. Topics of particular interest include: Questions 5 and 6 of the IACC Strategic Plan for ASD Research (*http://iacc.hhs.gov/reports/2009/iacc-strategic-plan-for-autism-spectrum-disorder-research-jan26.shtml*): ''Where can I turn for services?'' and ''What does the future hold?'' Additional suggested topics: Services for adults, community issues, family support, school services, provider issues, infrastructure, evidence-based services and supports, health and safety, early diagnosis, transition to adulthood, therapies and treatments, and health and dental care.

Place:

In Person: 2009 Autism Society National Conference, Pheasant Run Resort and Spa, 4051 East Main Street, St. Charles, IL 60174, *http://www.pheasantrun.com/,* Phone: 1–800–4 PHEASANT (474–3272).

Videocast information as well as Web pre-registration will be available through the IACC Web site Meetings and Events page: *http://iacc.hhs.gov/events/.*

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Bethesda, MD 20892–9669, (301) 443–6040, *IACCPublicInquiries@mail.nih.gov.*

Information about the IACC and a registration link for this meeting are available on the IACC Web site: http://www.iacc.hhs.gov.

Dated: July 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16206 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; GO Grants.

Date: August 4–5, 2009.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott and Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16204 Filed 7–8–09; 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; BST Competitive Revisions Review.

Date: July 21–22, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7849, Bethesda, MD 20892, 301–435–0483, *jacobsonrh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Experimental Cancer Therapeutics, SBIR.

Date: July 28–29, 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: Denise R. Shaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentations.

Date: July 30, 2009.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tera Bounds, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Infectious Disease.

Date: July 30, 2009.

Time: 2:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rolf Menzel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Metabolic Diseases.

Date: July 31, 2009.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cell Biology Member Conflicts: S1 Competitive Revisions.

Date: August 3, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael H. Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

(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: July 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16203 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA ARRA P30–2.

Date: July 24, 2009.

Time: 1 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Deputy Chief and Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–402–7702, *latonia@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; ARRA RC 2 SEP 2.

Date: July 27, 2009.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue,

Suite 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16201 Filed 7–8–09; 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; Small Business: Orthopaedics and Skeletal Biology.

Date: July 13, 2009.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: John P. Holden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–496–8551. *holdenjo@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Computational Modeling and Sciences for Biomedical and Clinical Applications.

Date: July 13, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1032. *xuguofen@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Orthopaedic Small Business ARRA.

Date: July 13, 2009.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: John P. Holden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–496–8551, *holdenjo@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 DKUS F 04 Member Conflict.

Date: July 14, 2009.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: July 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16198 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

NIH State-of-the-Science Conference: Family History and Improving Health; Notice

Notice is hereby given of the National Institutes of Health (NIH) ''NIH State-of-the-Science Conference: Family History and Improving Health'' to be held August 24–26, 2009, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on August 24 and 25, at 9 a.m. on August 26, and will be open to the public.

Many common diseases have genetic, environmental, and lifestyle causes that family members may share. An individual's family health history captures information about shared factors that contribute to that individual's risk for developing diseases such as diabetes, stroke, cancer, and heart disease. Family health history information collected from patients has long been used as a risk assessment tool by health care providers in the United States. Family history is also critical to determining who will benefit from genetic testing for both common and rare conditions and can facilitate interpretation of genetic test results. The combination of these attributes makes the collection of family history an important first step in personalized medicine.

Recently there have been a number of national efforts to ensure that family history information is effectively incorporated into health information technology systems, including electronic health records and personal health record systems. An ultimate goal of these efforts will be to provide clinicians with automated clinical decision tools based on family history information; this will require a sound scientific foundation on which to develop such tools.

Although most individuals are accustomed to providing some form of family history information when they visit health professionals, there is wide variation in the way family history is collected and used by health care providers. Moreover, the accuracy of a patient-gathered history may be limited by an individual's awareness, understanding, and recollection of his or her family members' health issues. Important questions remain regarding the effectiveness of family history information for disease prediction and improvement of patient health outcomes.

There may also be adverse effects for both individuals and society, thus far not fully understood, of depending too heavily on a family history to assess disease risk. It is possible that emphasizing family history may have economic costs as well, as limited resources are allocated across a wide variety of health promotion activities in the primary care setting.

In order to take a closer look at this important topic, the National Human Genome Research Institute and the Office of Medical Applications of Research of the National Institutes of Health will convene a State-of-the-Science conference from August 24 to 26, 2009, to assess the available scientific evidence related to the following questions:

- What are the key elements of a family history in a primary care setting for the purposes of risk assessment for common diseases?
- What is the accuracy of the family history, and under what conditions does the accuracy vary?
- What is the direct evidence that getting a family history will improve health outcomes for the patient and/or family?
- What is the direct evidence that getting a family history will result in adverse outcomes for the patient and/or family?
- What are the factors that encourage or discourage obtaining and using a family history?
- What are future research directions for assessing the value of family history for common diseases in the primary care setting?

An impartial, independent panel will be charged with reviewing the available published literature in advance of the conference, including a systematic literature review commissioned through the Agency for Healthcare Research and Quality. The first day and a half of the conference will consist of presentations by expert researchers and practitioners and open public discussions. On Wednesday, August 26, the panel will present a statement of its collective assessment of the evidence to answer each of the questions above. The panel will also hold a press conference to address questions from the media. The draft statement will be published online later that day, and the final version will be released approximately six weeks later. The primary sponsors of this meeting are the NIH National Human Genome Research Institute and the NIH Office of Medical Applications of Research.

Advance information about the conference and conference registration materials may be obtained from American Institutes for Research of Silver Spring, Maryland, by calling 888–644–2667, or by sending e-mail to *consensus@mail.nih.gov.* American Institutes for Research's mailing address is 10720 Columbia Pike, Silver Spring, MD 20901. Registration information is also available on the NIH Consensus Development Program Web site at *http://consensus.nih.gov.*

Please Note: The NIH has instituted security measures to ensure the safety of NIH employees, property, and guests. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorsecurity.htm.*

Dated: June 30, 2009.

Lawrence A. Tabak,

Acting Deputy Director, National Institutes of Health.

[FR Doc. E9–16191 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Child Conflicts Review.

Date: July 29, 2009.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Enid Light, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–0322, *elight@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16209 Filed 7–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ410–09.L12320000.AL0000.LVRDAZ020000.241A]

Final Supplementary Rules for the Hot Well Dunes Recreation Area, Public Lands Administered by the Bureau of Land Management Gila District and Safford Field Office, Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is issuing new supplementary rules for the Hot Well Dunes (HWD) Recreation Area, which is located in Graham County, Arizona, and is managed by the Gila District and Safford Field Office. The rules address vehicle rider capacity, clinging to or being towed by a vehicle, safety flags, vehicle use, public nudity, firearms, pets, speed limit, camping, waste disposal, and length of stay. All current supplementary rules for the HWD Recreation Area are rescinded and replaced by these revised rules.

DATES: These rules will become effective August 10, 2009.

ADDRESSES: Bureau of Land Management, Safford Field Office, 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Larry Ramirez, Law Enforcement Ranger, at the above address, telephone 928–348–4400, or *Larry_Ramirez@blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose
II. Public Comment
III. Discussion of Supplementary Rules
IV. Procedural Matters

I. Background and Purpose

The Hot Well Dunes Recreation Area is an off-highway vehicle (OHV) play

area in southeastern Arizona that is managed by the BLM Safford Field Office.

Due to increases in visitation at the HWD and the types of vehicles in use, in light of the nature of the terrain and vegetation, the BLM proposed new supplementary rules to reduce threats to public health, safety, and property. The proposal was published in the **Federal Register** on October 16, 2008, with a 60-day public comment period that ended December 15, 2008 (see 73 FR 61437).

These supplementary rules will allow the BLM to increase law enforcement efforts that will help mitigate damage to natural resources and provide for public health and safe public recreation.

II. Public Comment

The 60-day public comment period closed December 15, 2008. The BLM received three comments. The first comment thanked the BLM for keeping the area open but asked the BLM to include a helmet requirement for riders less than 18 years of age. That requirement was not made part of the supplementary rules because it is part of Arizona Senate Bill 1167 that was passed by the Legislature, signed by the Governor, and became effective on January 1, 2009. The BLM will enforce the State requirement within the HWD, but will not include it in these supplementary rules in order to avoid redundancy.

The second comment commended the BLM on the proposed supplementary rules but expressed concern that there are not enough BLM law enforcement rangers to enforce them. That comment is not within the scope of the supplementary rules as it is a budget and staffing issue. The second comment also expressed a concern about people using shampoo in the hot tubs. BLM rangers already have the authority to cite recreation users for pollution or contamination of the water; this is covered by Title 43 Code of Federal Regulations (CFR) Part 8365.1–1. Therefore, a new supplementary rule addressing this problem is unnecessary.

The third comment related to vehicle rider capacity. The commenter was concerned that not allowing additional riders on all-terrain vehicles would prevent parents and grandparents from giving young children rides. He suggested amending the rule to allow double riding as long as the driver was at least 21 years old and the child was 6 years old or younger. We are not going to adopt this suggestion, in view of the purpose of enhancing public safety at the HWD. Children riding tandem with an adult can be injured, especially during busy times of the year and in areas where visibility is limited. Additionally there are hundreds of backcountry roads in the Safford Field Office where this restriction is not in place.

III. Discussion of Supplementary Rules

The BLM Gila District/Safford Field Office replaces all prior supplementary rules for the HWD Recreation Area with the new supplementary rules. This action falls within the Federal Land Policy and Management Act (FLPMA), Title 43 United States Code (U.S.C.) 1740 and Title 43 CFR 8365.1–6. The supplementary rules set forth requirements and prohibited acts that are applicable within the BLM's Hot Well Dunes Recreation Area, Graham County, Arizona.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules do not comprise a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The supplementary rules will not have an annual effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, environment, public health or safety, or State, local, or Tribal governments or communities. They will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients, nor do they raise novel legal or policy issues. They merely impose rules of conduct on recreational visitors for health and safety reasons in a limited area of the public lands.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. No public comments were received that questioned the clarity of the supplementary rules' language.

National Environmental Policy Act

The supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969, Title 42 U.S.C. 4332(2)(C). The Safford Field Office completed an Environmental Assessment of the rules (AZ–410–2008–0039). A Finding of No Significant Impact (FONSI) and Decision Record were signed by Acting Safford Field Manager Jeff Wilbanks on June 1, 2008.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, Title 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not have a significant economic impact on entities of any size, but provide for the protection of persons, property, and resources on specific public lands. Therefore, the BLM has determined under the RFA that the supplementary rules will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These supplementary rules do not constitute a major rule as defined at Title 5 U.S.C. 804(2). They merely contain rules of conduct for recreational use of certain public lands. The supplementary rules will have little or no effect on the economy.

Unfunded Mandates Reform Act

The supplementary rules do not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector, of more than $100 million per year; nor will they have a significant or unique effect on small governments. These supplementary rules do not require anything of State, local, or Tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by section 202 of the Unfunded Mandates Reform Act (Title 2 U.S.C. 1532).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights or cause the impairment of anybody's property rights. Therefore, the BLM has determined that these supplementary rules will not cause a ''taking'' of private property or require further discussion of ''takings'' implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules apply to a limited area of land in only one State, Arizona. Therefore, the BLM determined that the supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that the supplementary rules will not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met. The supplementary rules contain rules of conduct for recreational use of certain public lands to protect human health and the environment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM found that these supplementary rules do not include policies that have Tribal implications. The rules do not affect lands held for the benefit of Indians, Aleuts, or Eskimos.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, Title 44 U.S.C. 3501 *et seq.*

Author

The principal author of the supplementary rules is Larry Ramirez, Law Enforcement Ranger for the BLM Gila District/Safford Field Office.

Supplementary Rules for the Hot Well Dunes Recreation Area, Graham County, Arizona

Under the Federal Land Policy and Management Act of 1976 (FLPMA), Title 43 U.S.C. 1740, and Title 43 Code of Federal Regulations (CFR) 8365.1–6, the Bureau of Land Management establishes the following supplementary rules for public lands within the Hot Well Dunes Recreation Area.

1. Vehicle Rider Capacity

A person operating an off-road vehicle within the HWD Recreation Area shall ride only on the permanent, regular seat attached to the off-road vehicle. The operator of an off-road vehicle shall not carry any additional person(s) on an off-road vehicle unless the vehicle is designed and manufactured to carry such additional person(s). No person shall ride an off-road vehicle unless the vehicle is designed and manufactured to carry that person.

2. Clinging to or Being Towed by a Vehicle

No person operating an off-road vehicle within the HWD Recreation Area shall attach the off-road vehicle to any object or person and tow such object or person. No person shall cling to, or be towed by, an off-road vehicle.

3. Safety Flags

Safety flags are required on all off-road vehicles used within the HWD Recreation Area. An exception to this requirement is made for Recreation Vehicles (RVs), Sport Utility Vehicles (SUVs), pickup trucks, and passenger sedans. Safety flags must be brilliant orange or red in color, and at least six (6) inches by 12 inches in size. Masts must be securely mounted on the off-road vehicle and extend eight (8) feet from the ground to the mast tip. Safety flags must be firmly attached to the top portion of a mast.

4. Vehicle Use

No off-road vehicle within the HWD Recreation Area will be allowed within areas enclosed by the metal, tube railings or where signed as prohibited.

5. Nudity

Public nudity within the HWD Recreation Area and, in particular, in the hot tubs there, is prohibited.

6. Firearms and Archery

Archery and the discharge of firearms or other weapons, including pneumatic and spring-loaded BB guns and pellet guns, are prohibited within the HWD Recreation Area.

7. Pets

Pets must be leashed or otherwise physically restricted at all times within the HWD Recreation Area.

8. Speed Limit

The speed limit for off-road vehicles within the HWD Recreation Area is 10 miles per hour on the main access road and within 50 feet on either side of the main access road. The speed limit is also 10 miles per hour within 50 feet of a campsite or any concentration of three (3) or more people. Operating an off-road vehicle above this speed is prohibited.

9. Camping

Camping within the HWD Recreation Area is not allowed within the designated parking area; within areas enclosed by metal, tube railings; or where signed as prohibited.

10. Waste Disposal

Dumping of sewage or gray water is prohibited within the HWD Recreation Area.

11. Length of Stay

To ensure that everyone has an opportunity to enjoy the area, camping is limited to 14 days within any 28-day period.

Penalties

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. 43 U.S.C. 1733(a); 43 CFR 8360.0–7; 43 CFR 2932.57(b). Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Arizona law.

Authority: 43 CFR 8365.1–6(c).

Helen Hankins,

Arizona Associate State Director.

[FR Doc. E9–16140 Filed 7–8–09; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2009–N126, 97600–9792–0000–5d]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, Fish and Wildlife Service, announce a public meeting of the Sport Fishing and Boating Partnership Council (Council).

DATES: The meeting will be held on Thursday, August 6, 2009, from 12 p.m. to 5 p.m. and Friday, August 7, 2009 from 8:30 a.m. to 3 p.m. (Eastern time). Members of the public wishing to participate in the meeting must notify Douglas Hobbs by close of business on Monday, July 27, 2009, per instructions under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, Maine; telephone (207) 775–2311.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2336; fax (703) 358–2548; or via e-mail at *doug_hobbs@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a meeting on Thursday, August 6, 2009, from 12 p.m. to 5 p.m. and Friday, August 7, 2009 from 8:30 a.m. to 3 p.m. (Eastern time).

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director, U.S. Fish and Wildlife Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Director of the Service and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are Directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc.*

The Council will convene to consider: (1) The Council's continuing role in providing input to the Fish and Wildlife Service on the Service's strategic plan for its Fisheries Program; (2) the Council's work to assess the Service's Fisheries Program; (3) the Council's work in addressing the issue of boating and fishing access; (4) the Council's work to assess the Sport Fish Restoration Boating Access Program; (5) information pertaining to Sport Fish Restoration and Boating Trust Fund; (6) the Council's role in providing the Secretary with information about the implementation of the Strategic Plan for the National Outreach and Communications Program, authorized by the 1998 Sportfishing and Boating Safety Act, that is now being implemented by the Recreational Boating and Fishing Foundation, a private, nonprofit organization; (7) the council's work to assess the activities of the Recreational Boating and Fishing Foundation; and (8) other Council business. The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc.*

Procedures for Public Input: Interested members of the public may submit relevant written or oral information for the Council to consider during the public meeting. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements or those who had wished to speak but could not be accommodated on the agenda are invited to submit written statements to the Council.

Individuals or groups requesting an oral presentation at the public Council meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Douglas Hobbs, Council Coordinator, in writing (preferably via e-mail), by Monday, July 20, 2009, (See **FOR FURTHER INFORMATION CONTACT**) to be placed on the public speaker list for this meeting. Written statements must be received by Thursday, July 30, 2009, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

In order to attend this meeting, you must register by close of business Monday, July 27, 2009. Please submit your name, time of arrival, e-mail address and phone number to Douglas Hobbs. Mr. Hobbs' e-mail address is *doug_hobbs@fws.gov,* and his phone number is (703) 358–2336.

Summary minutes of the conference will be maintained by the Council Coordinator at 4401 N. Fairfax Drive, MS–3103–AEA, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

Dated: June 18, 2009.

Marvin Moriarty,

Acting Director.

[FR Doc. E9–16200 Filed 7–8–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–AL; GP9–0226]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, Eastern Washington Resource Advisory Council will meet as indicated below.

DATES: Thursday, July 30, 2009, at the Colville National Forest Supervisor's Office, 765 S. Main, Colville, WA 99114.

SUPPLEMENTARY INFORMATION: The meeting will start at 10 a.m. and end at 3:30 p.m. The meeting will be open to the public and there will be an opportunity for public comments at 10:30 a.m. Discussion will focus on the management of the Colville National Forest Roadless Areas, Forest Plan Revision, and updates on other projects of interest. The Eastern Washington Resource Advisory Council is composed of 15 members appointed by the Secretary of the Interior to provide advice to the Bureau of Land Management Spokane District and the Colville and Okanogan National Forests.

FOR FURTHER INFORMATION CONTACT: BLM Spokane District, 1103 N. Fancher Rd., Spokane Valley, WA 99212, or call (509) 536–1200.

Dated July 2, 2009.

Sally Sovey,

Acting District Manager.

[FR Doc. E9–16220 Filed 7–8–09; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–345]

Recent Trends in U.S. Services Trade, 2010 Annual Report

AGENCY: United States International Trade Commission.

ACTION: Schedule for 2010 report and opportunity to submit information; availability of 2009 report.

SUMMARY: The Commission has prepared and published annual reports in this series under investigation No. 332–345 since 1996. The 2009 report is now available from the Commission

online and in CD and printed form. The 2010 report, which the Commission plans to publish in June 2010, will cover cross-border trade for the period ending in 2008 and transactions by affiliates based outside the country of their parent firm for the period ending in 2007. The Commission is inviting interested members of the public to furnish information in connection with the 2010 report.

DATES: October 13, 2009: Deadline for filing written submissions of information to the Commission. June 30, 2010: Anticipated date for publishing the report.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader Samantha Brady (202–205–3459 or *samantha.brady@usitc.gov*) or Services Division Chief Richard Brown (202–205–3438 or *richard.brown@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Under this investigation, the Commission publishes two annual reports, one on services trade (*Recent Trends in U.S. Services Trade*), and a second on merchandise trade (*Shifts in U.S. Merchandise Trade*). The latest version of the Commission's *Recent Trends in U.S. Services Trade* is now available online at *http://www.usitc.gov;* it is also available in CD and printed form from the Office of the Secretary at 202–205–2000 or by fax at 202–205–2104.

The initial notice of institution of this investigation was published in the **Federal Register** on September 8, 1993 (58 FR 47287) and provided for what is now the report on merchandise trade. The Commission expanded the scope of the investigation to cover services trade in a separate report, which it announced in a notice published in the **Federal Register** of December 28, 1994 (59 FR 66974). The separate report on services trade has been published annually since 1996, except in 2005. As in past years, the report will summarize trade in services in the aggregate and provide analyses of trends and developments in selected services during the latest period for which data are published by the U.S. Department of Commerce, Bureau of Economic Analysis (for the 2010 report, data for the periods described above). The 2010 report will focus on selected infrastructure services, alternating with the focus of the 2009 report on business and professional services.

Written Submissions: Interested parties are invited to submit written statements and other information concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written submissions related to the Commission's report should be submitted at the earliest practical date and should be received not later than 5:15 p.m., October 13, 2009. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission intends to prepare only a public report in this investigation. The report that the Commission makes available to the public will not contain confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: July 6, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–16276 Filed 7–8–09; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 8–9, 2009.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Georgetown University Law Center, 600 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 1, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–16018 Filed 7–8–09; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2), authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on February 13, 2009, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, 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
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670)	II

The company plans to import narcotic raw materials to be used in ancillary activities including product development and analytical studies.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import raw opium and concentrate of poppy straw. As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 *(2007)*, comments and requests for hearings on applications to import narcotic raw material are not appropriate.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than August 10, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: June 24, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–16296 Filed 7–8–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–314E]

Established Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2009

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Assessment of Annual Needs for 2009.

SUMMARY: This notice establishes the initial 2009 Assessment of Annual Needs for certain List I chemicals in accordance with the Combat Methamphetamine Epidemic Act of 2005 (CMEA), enacted on March 9, 2006.

DATES: *Effective Date:* August 10, 2009.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 713 of the Combat Methamphetamine Epidemic Act of 2005 (Title VII of Pub. L. 109–177) (CMEA) amended Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) by adding ephedrine, pseudoephedrine, and phenylpropanolamine to existing language to read as follows: ''The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.'' Further, section 715 of CMEA amended 21 U.S.C. 952 ''Importation of controlled substances'' by adding the same List I chemicals to the existing language in paragraph (a), and by adding a new paragraph (d) to read as follows:

(a) Controlled substances in schedule I or II and narcotic drugs in schedule III, IV, or V; exceptions

It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of subchapter I of this chapter, or ephedrine, pseudoephedrine, and phenylpropanolamine, except that—

(1) such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves, and of ephedrine, pseudoephedrine, and phenylpropanolamine, as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes * * * may be so imported under such regulations as the Attorney General shall prescribe.

* * * * *

(d)(1) With respect to a registrant under section 958 who is authorized under subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine, at any time during the year the registrant may apply for an increase in the amount of such chemical that the registrant is authorized to import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

Editor's Note: This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 952(a) and (d)(1).

Background and Legal Authority

Section 713 of the Combat Methamphetamine Epidemic Act of 2005 (CMEA) (Title VII of Pub. L. 109–177) amended section 306 of the Controlled Substances Act (CSA) (21

U.S.C. 826) to require that the Attorney General establish quotas to provide for the annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine. Section 715 of the CMEA amended 21 U.S.C. 952 by adding ephedrine, pseudoephedrine, and phenylpropanolamine to the existing language concerning importation of controlled substances.

The 2009 Assessment of Annual Needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and/or imported into the United States in 2009 to provide adequate supplies of each chemical for: The estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

The responsibility for establishing the assessment has been delegated to the Administrator of the DEA by 28 CFR Section 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR Section 0.104.

On December 29, 2008, a notice entitled, ''Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2009'' was published in the **Federal Register** (73 FR 79508). This notice established, on an interim basis, the 2009 Assessment of Annual Needs for ephedrine (for sale), ephedrine (for conversion), pseudoephedrine (for sale), phenylpropanolamine (for sale) and phenylpropanolamine (for conversion). All interested persons were invited to comment on or object to the interim assessments on or before January 28, 2009.

Comments Received

DEA received a total of four comments, one regarding the assessment for ephedrine (for sale) and the other three regarding the assessment for phenylpropanolamine (for sale). The first commenter was from a law firm representing an industry group comprised of distributors and retailers of over-the-counter (OTC) medications. This commenter believes that quota requests for ephedrine (for sale) are not comparable to the products sold and recommended that the 2009 ephedrine assessment be the same as the 2008 assessment (*i.e.* 11,500 kg).

The second comment was from a DEA registered chemical manufacturer of phenylpropanolamine who requested that DEA ''consider revising the calculation methodology for establishing (individual) quotas'' and also encouraged ''the establishment of a safety reserve'' for the list I chemicals.

The third and fourth comments were received from two distributors of veterinary prescription products containing phenylpropanolamine. These commenters encouraged DEA to consider in its evaluation the medical needs of the companion animal population and for DEA to include in its phenylpropanolamine (for sale) assessment a safety reserve to ensure an uninterrupted supply of the substance. All comments received during the comment period are discussed further below.

DEA did not receive any comments on its Interim Final Assessment of Annual Needs for ephedrine (for conversion), phenylpropanolamine (for conversion), and pseudoephedrine (for sale). DEA is adjusting the interim established assessment for these chemicals based on additional information provided by DEA registered importers and manufacturers whose quota applications were received as of April 1, 2009 (*i.e.* one year after the April 1, 2008, application due date). DEA also is providing the underlying data used in establishing these assessments.

Comment Regarding DEA's Interim Final Assessment for Ephedrine (For Sale)

DEA received one comment on its Interim Final assessment for ephedrine (for sale) from a law firm representing an industry group comprised of distributors and retailers of over-the-counter (OTC) medications. The comment stated that ''DEA's projection of decreased demand is inaccurate'' and recommended that the 2009 ephedrine assessment be the same as the 2008 (for sale) assessment (*i.e.* 11,500 kg). The commenter made the following statements: (1) ''On an annualized basis, the level of 941 [sic] kg requested as of July 2008 (134 kg per month) may well grow to 1,608 kg for all of 2009;'' (2) ''Comparing requests for raw materials to actual sales of finished product does not provide an accurate basis to measure consumer demand or medical need;'' (3) ''DEA's projection of decreased demand is not based on the medical needs of consumers, but on the effects of increased regulation and decreased supply;'' and (4) the commenter stated its concern with the DEA's reliance on data provided by IMS Health's (IMS) National Sales Perspective™ (NSP) database.

DEA Response

In response to the first comment that ''On an annualized basis, the level of 941 [sic] kg requested as of July 2008 (134 kg per month) may well grow to 1,608 kg for all of 2009,'' DEA believes that the commenter misinterpreted its original statement. DEA stated the following in its interim assessment:

> At the time DEA drafted the 2009 proposed assessment (*i.e.,* July 15, 2008), DEA considered applications for procurement quotas from DEA registered manufacturers of ephedrine. These applications were due on or before April 1, 2008. These firms requested authority to purchase a total of 921 kg of ephedrine (for sale) in 2009. (73 FR 79510)

The commenter interpreted the statement above to mean that the manufacturers' request to purchase 921 kg represented purchase requirements for the first 7 months of the calendar year, or 134 kg/month (134.4 kg × 7 = 941 kg [sic]). By this logic, the commenter believed the annual requirement for ephedrine could be as much as 1,608 kg (134 kg × 12 months = 1,608 kg). This is an incorrect interpretation. DEA registered manufacturers of ephedrine that had submitted applications on or before July 15, 2008, requested the authority to purchase a total of 921 kg of ephedrine for the entire calendar year of 2009. This means that the total annual requirement of ephedrine (for sale) for 2009 for the United States was 921 kg, as reported by DEA registered manufacturers.

In response to the commenter's second comment that ''comparing requests for raw materials to actual sales of finished product does not provide an accurate basis to measure consumer demand or medical need,'' DEA notes that the regulations require DEA to consider the ''projected demand for each chemical [ephedrine] as indicated by procurement and import quotas requested pursuant to section 1315.32.'' (see 21 CFR 1315.11(b)(4)). DEA also notes that requests for raw material consider not only the raw material necessary to meet medical needs, but also the raw material needed for other uses. For instance, raw material requests include the additional quantities necessary to bring a finished product to market, to cover production losses occurring during manufacturing and packaging operations, to allow for quality assurance/control testing, and to provide additional quantities for the reserve stocks of distributors and retailers.

The commenter's third comment is that the DEA's projection of decreased demand is not based on the medical needs of consumers, but on the effects of increased regulation and decreased supply. In response to this comment, DEA notes that the regulation at 21 CFR 1315.11(b) clearly articulates those

factors that DEA is to consider when making its determination, which include:

1. Total net disposal of the chemical by all manufacturers and importers during the current and preceding two years;
2. Trends in the national rate of net disposal of each chemical;
3. Total actual (or estimated) inventories of the chemical and of all substances manufactured from the chemical, and trends in inventory accumulation;
4. Projected demand for each chemical as indicated by procurement and import quotas requested pursuant to section 1315.32, and
5. Other factors * * * as the Administrator finds relevant.

Medical need could impact one or several of these factors. For instance, increased medical need could result in an increased number of quota applications, decreased inventories, and changes upward in the national rate of disposals. Thus, it is not necessary to consider medical need separately from the factors mandated by the regulation.

Finally, in response to the fourth comment, in which the commenter noted its ''concern over the DEA's reliance on data provided by IMS in proposing the 2009 assessment,'' DEA notes that data provided by IMS Health provides national estimates of sales at the retail level which are used to consider trends in the rate of net disposals (*i.e.*, sales) as mandated by regulation. The most recent IMS data available reports retail level sales totaling 1,267 kg in 2007 and 1,489 kg in 2008; this represents an 18 percent increase in retail sales from 2007 to 2008. During the same period registered manufacturers of ephedrine reported sales totaling approximately 5,409 kg in 2007 and 2,465 kg in 2008; this represents a 54 percent decrease in sales reported by these firms from 2007 to 2008. The retail sales reported by IMS Health are expected to be lower than the sales to distributors and retailers reported by manufacturers because a manufacturer's sales include quantities which are necessary to provide reserve stocks for distributors and retailers. DEA also believes that manufacturers' sales in 2007 may have been artificially inflated as manufacturers, distributors, and retailers built unusually large reserve stocks due to concerns over newly codified regulations that were thought to limit or restrict the availability of substances. DEA thus believes that the manufacturers' reported sales of 2,465 kg fairly represent the net disposals of ephedrine products. DEA notes that IMS data is one of several considerations that DEA uses to evaluate trends and projected demand of ephedrine-based products. As the calculations and methodology demonstrate, the assessment of annual needs for ephedrine is based primarily on the information provided by DEA registered manufacturers and importers of ephedrine products.

DEA has received additional quota applications from DEA registered manufacturers and importers for the 2009 assessment year. Based on an analysis of the underlying data from quota applications received through April 1, 2009, DEA is establishing the 2009 assessment of annual needs for ephedrine (for sale) at 3,400 kg.

Ephedrine Data

EPHEDRINE (FOR SALE) DATA FOR 2009 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Ephedrine	2006	2007	2008[1]	2009 Request
Sales * (DEA 250)	5,435	5,409	2,465	3,088
Imports ** (DEA 488)	3,886	10,480	2,104	2,678
Export Declarations (DEA 486)	313	168	91	n/a
Inventory * (DEA 250)	1,245	1,457	423	n/a
IMS *** (NSP)	1,256	1,267	1,489	n/a

* Reported sales and inventory from applications for 2009 procurement quotas (DEA 250) received as of April 1, 2009.
** Reported imports from applications for 2009 import quotas (DEA 488) received as of April 1, 2009.
*** IMS Health, IMS National Sales Perspectives™, January 2006 to December 2008, Retail and Non-Retail Channels, Data Extracted April 1, 2009.

Underlying Data and DEA's Analysis

The DEA considered total net disposals (*i.e.* sales) of ephedrine for the current and preceding two years, actual and estimated inventories, projected demand (2009), industrial use, and export requirements from data provided by DEA registered manufacturers and importers in procurement quota applications (DEA 250), from manufacturing quota applications (DEA 189), and from import quota applications (DEA 488).[2]

DEA further considered trends as derived from information provided in applications for import, manufacturing, and procurement quotas and in import and export declarations. DEA notes that the inventory, acquisitions (purchases) and disposition (sales) data provided by DEA registered manufacturers and importers reflects the most current information provided by manufacturers and importers. This information includes applications which have been newly submitted, amended or withdrawn as of April 1, 2009, for the 2009 quota year.

Ephedrine Calculation

DEA calculated the 2009 Assessment of Annual Needs for ephedrine as follows. DEA developed a calculation that considers the criteria defined in 21 U.S.C. 826: Estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

As of April 1, 2009, DEA registered manufacturers of dosage form products containing ephedrine reported sales totaling approximately 5,409 kg in 2007 and 2,465 kg in 2008; this represents a 54 percent decrease in sales reported by these firms from 2007 to 2008. Additionally, exports of ephedrine products from the United States as reported on export declarations (DEA 486), totaled 168 kg in 2007 and 91 kg in 2008; this represents a 46 percent decrease from levels observed in 2007. DEA also considered information on trends in the national rate of net disposals from sales data provided by IMS Health's NSP database. IMS NSP data reported the average sales volume of ephedrine for the calendar years 2007 and 2008 to be approximately 1,378 kg.

[1] 2008 data represents estimated sales, imports, and inventories as reported on applications for quotas.

[2] Applications and instructions for procurement, import and manufacturing quotas can be found at *http://www.deadiversion.usdoj.gov/quotas/quota_apps.htm.*

DEA notes that the 2008 sales figure reported by manufacturers (2,465 kg) is higher than the sales reported by IMS (1,378 kg). As previously explained, this is expected because a manufacturer's reported sales include quantities which are necessary to provide reserve stocks for distributors and retailers. DEA in considering the manufacturer's reported sales thus believes that 2,465 kg fairly represents the U.S. sales of ephedrine for 2009 and that 91 kg fairly represents the export requirements of ephedrine.

For the establishment and maintenance of reserve stocks, DEA notes that 21 CFR 1315.24 allows for an inventory allowance (reserve stock) of 50 percent of a manufacturer's estimated sales. DEA also considered the estimated 2008 year end inventory as reported by DEA registrants in determining the inventory allowance.

DEA calculated the ephedrine (for sale) assessment by the following methodology:

2008 sales + reserve stock + export requirement − existing inventory = AAN

2,465 + (50 percent * 2,465) + 91 − 423 = 3,366 kg ephedrine (for sale) for 2009

This calculation suggests that DEA's Assessment of Annual Needs for ephedrine can be revised to 3,400 kg rather than the 1,500 kg established in the Interim Final Rule. DEA notes that this upward revision is attributed to DEA's consideration of applications for 2009 quotas received as of April 1, 2009, a one-year time period since the application due date.

Accordingly, DEA is establishing the Assessment of Annual Needs for ephedrine (for sale) at 3,400 kg.

Comments Regarding DEA's Interim Final Assessment for Phenylpropanolamine (For Sale)

The second commenter, a manufacturer of phenylpropanolamine products used by veterinary professionals, urged DEA ''to consider revising the calculation methodology for establishing quotas'' to consider whether the market need was met in the prior year. Additionally, the commenter suggested that there ''should be a factor inserted in the calculation that would more accurately reflect market need and the changing demand.'' The commenter also encouraged ''the establishment of a safety reserve so that the DEA and manufacturers can be responsive to the ever-changing health care needs of companion animals.''

The third and fourth comments were received from two distributors that sell phenylpropanolamine products used by veterinarians. These commenters stated that ''To base quotas on last year's sales and inventories and formulas does not allow for the increased need.'' The commenters encouraged DEA ''to consider increasing the quotas based on the aging of the companion animal population.'' Additionally, the commenter encouraged DEA ''to work with individual manufacturers of PPA in order to assure the uninterrupted supply of PPA.''

DEA Response

As a preliminary matter, this **Federal Register** notice establishes the assessment of annual needs for List I chemicals and the methodology used by the DEA to set that number. The assessment of annual needs is different than individual quotas and this rulemaking does not address the regulatory process for evaluating individual import, manufacturing and procurement quotas issued to DEA registered manufacturers and importers.

With regard to the establishment of the assessment of annual needs for phenylpropanolamine (for sale), DEA believes that the sales information provided in requests for quotas for the manufacture of phenylpropanolamine products fairly represents the legitimate medical needs of the companion animal population. Additionally, DEA notes that the requirements of the two distributors and one manufacturer of phenylpropanolamine were considered as part of the assessment for phenylpropanolamine. DEA notes that there was a 3 percent increase in reported sales of phenylpropanolamine from 2007 to 2008. For the 2009 assessment, DEA has determined that the higher 2008 sales fairly represent the manufacturing requirements of phenylpropanolamine. In calculating the assessment, DEA provides for quantities to support sales of phenylpropanolamine and also for a reserve stock of 50 percent. This is not only consistent with the 50 percent inventory allowance permitted under 21 CFR 1315.24, but also provides manufacturers with sufficient material to account for slight increases in demand that may occur in 2009.

Additionally, DEA notes that pursuant to 21 CFR 1315.32, DEA registered manufacturers and importers may request adjustments to their individual quotas at any time. This option allows the DEA and DEA registrants to respond to the changing needs of the companion animal population.

Considering that 2008 was the first year of implementation of quotas for the List I chemicals, DEA is revising the 2009 assessments to consider applications received as of April 1, 2009 (*i.e.* one year after the April 1, 2008, application due date). This ensures that DEA considered the most recent information provided by DEA registered manufacturers and importers for 2009. A summary of the underlying data from quota applications and other sources, as well as DEA's analysis of that data, are provided below.

Phenylpropanolamine (For Sale) Data

PHENYLPROPANOLAMINE (FOR SALE) DATA FOR 2009 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Phenylpropanolamine (for sale)	2006	2007	2008 [3]	2009 Request
Sales * (DEA 250)	4,179	4,224	4,362	5,462
Imports ** (DEA 488)	1,119	9,381	3,032	5,295
Export Declarations (DEA 486)	0	1,002	0	n/a
Inventory * (DEA 250)	3,555	3,976	1,696	n/a

* Reported sales and inventory from applications for 2009 procurement quotas (DEA 250) and manufacturing quotas (DEA 189) received as of April 1, 2009.

** Reported imports from applications for 2009 import quotas (DEA 488) received as of April 1, 2009.

[3] 2008 data represents estimated sales, imports, and inventories as reported on applications for quotas.

Phenylpropanolamine (for sale) Analysis

DEA utilized the same general methodology and calculation to establish the assessment for phenylpropanolamine (for sale) as was described for the assessment of ephedrine (for sale), above.

As of April 1, 2009, DEA registered manufacturers of dosage form products containing phenylpropanolamine reported sales totaling approximately 4,224 kg in 2007 and 4,362 kg in 2008; this represents a 3 percent increase in sales reported by these firms from 2007 to 2008. DEA notes that phenylpropanolamine is sold primarily as a veterinary product for the treatment for canine incontinence and is not approved for human consumption. IMS Health's NSP Data does not capture sales of phenylpropanolamine to these channels and is therefore not included.

DEA calculated the phenylpropanolamine (for sale) assessment by the following methodology:

2008 sales + reserve stock + export requirement − existing inventory = AAN

4,362 + (50 percent * 4,362) + 0 − 1,696 = 4,847 kg phenylpropanolamine (for sale) for 2009

This calculation suggests that DEA's Assessment of Annual Needs for phenylpropanolamine (for sale) can be revised to be 4,900 kg rather than the 4,500 kg established in the Interim Final Rule.

DEA is establishing the Assessment of Annual Needs for phenylpropanolamine (for sale) at 4,900 kg.

Pseudoephedrine, Ephedrine (for Conversion), and Phenylpropanolamine (for Conversion)

DEA did not receive any comments on its interim Assessment of Annual Needs for pseudoephedrine, ephedrine (for conversion), and phenylpropanolamine (for conversion). However, DEA is providing the underlying data, analysis, methodology and calculation for the establishment of the assessments for these List I chemicals. These assessments reflect new information received from applications for quota received as of April 1, 2009 (*i.e.* one year after the April 1, 2008 application due date).

Pseudoephedrine (for Sale) Data

PSEUDOEPHEDRINE (FOR SALE) DATA FOR 2009 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Pseudoephedrine (for sale)	2006	2007	2008 [4]	2009 Request
Sales * (DEA 250)	232,721	215,877	262,159	273,659
Sales * (DEA 189)	56,563	100,300	111,292	105,967
Imports ** (DEA 488)	133,802	225,973	165,708	205,783
Export Declarations (DEA 486)	37,069	42,142	85,756	n/a
Inventory * (DEA 250)	83,104	115,307	89,921	n/a
IMS *** (NSP)	207,509	183,382	151,013	n/a

* Reported sales and inventory from applications for 2009 procurement quotas (DEA 250) and manufacturing quotas (DEA 189) received as of April 1, 2009.

** Reported imports from applications for 2009 import quotas (DEA 488) received as of April 1, 2009.

*** IMS Health, IMS National Sales Perspectives™, January 2006 to December 2008, Retail and Non-Retail Channels, Data Extracted April 1, 2009.

Pseudoephedrine (for Sale) Analysis

DEA utilized the same general methodology and calculations to establish the assessment for pseudoephedrine (for sale) as was described for the assessment of ephedrine (for sale), above.

As of April 1, 2009, DEA registered manufacturers of dosage form products containing pseudoephedrine reported sales totaling approximately 215,877 kg in 2007 and 262,159 kg in 2008; this represents a 21 percent increase in sales reported by these firms from 2007 to 2008. During the same period exports of pseudoephedrine products from the United States as reported on export declarations (DEA 486) totaled 42,142 kg in 2007 and 85,756 kg in 2008; this represents a 103 percent increase from levels observed in 2007. Additionally, DEA considered information on trends in the national rate of net disposals from sales data provided by IMS Health. IMS NSP data reported the average retail sales volume of pseudoephedrine for the calendar years 2007 and 2008 to be approximately 167,171 kg. DEA thus believes that 262,159 kg of sales reported by manufacturers fairly represents the U.S. sales of pseudoephedrine for 2009 and that 85,756 kg fairly represents the export requirements of pseudoephedrine. DEA notes that manufacturer reported sales (262,159 kg) are higher than the retail sales reported by IMS (167,171 kg). This is expected because a manufacturer's reported sales include quantities which are necessary to provide reserve stocks for distributors and retailers. DEA calculated the pseudoephedrine (for sale) assessment by the following methodology:

2008 sales + reserve stock + export requirement − existing inventory = AAN

262,159 + (50 percent * 262,159) + 85,756 − 89,921 = 389,074 kg pseudoephedrine (for sale) for 2009

This calculation suggests that based on quota applications received as of April 1, 2009, DEA's Assessment of Annual Needs for pseudoephedrine (for sale) should be established at 390,000 kg rather than the 380,000 kg established in the December 29, 2008 Interim Final Rule. DEA is establishing the Assessment of Annual Needs for pseudoephedrine (for sale) at 390,000 kg.

Phenylpropanolamine (for Conversion) Data

[4] 2008 data represents estimated sales, imports, and inventories as reported on applications for quotas.

PHENYLPROPANOLAMINE (FOR CONVERSION) DATA FOR 2009 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Phenylpropanolamine (for conversion)	2006	2007	2008 [5]	2009 Request
Sales * (DEA 250)	8,004	9,991	15,498	13,606
Imports ** (DEA 488)	14,476	9,370	15,776	14,175
Export Declarations (DEA 486)	0	0	0	n/a
Inventory * (DEA 250)	4,863	3,742	4,566	n/a
APQ Amphetamine ***	17,000	22,000	22,000	n/a

* Reported sales and inventory from applications for 2009 procurement quotas (DEA 250) received as of April 1, 2009.
** Reported imports from applications for 2009 import quotas (DEA 488) received as of April 1, 2009.
*** Amphetamine Aggregate Production Quota History *http://www.deadiversion.usdoj.gov/quotas/quota_history.htm.*

Phenylpropanolamine (for Conversion) Analysis

As of April 1, 2009, DEA registered manufacturers of phenylpropanolamine (for conversion) requested the authority to purchase a total of 13,606 kg phenylpropanolamine (for conversion). Additionally, DEA registered importers of phenylpropanolamine (for conversion) requested the authority to import a total of 14,175 kg of phenylpropanolamine (for conversion). DEA had not received any requests to synthesize phenylpropanolamine in 2009.

DEA has determined that 13,606 kg of phenylpropanolamine (for conversion) would be insufficient to meet the requirements for phenylpropanolamine for the production of amphetamine as established by DEA as the Aggregate Production Quota (APQ) for amphetamine (*i.e.,* 22,000 kg for 2008). 13,606 kg would be sufficient to manufacture only 30 percent of the APQ of amphetamine. DEA further considered manufacturer's conversion yields of phenylpropanolamine to amphetamine of 50 percent in its calculation of the phenylpropanolamine assessment. DEA calculated the phenylpropanolamine (for conversion) assessment by the following methodology:

(2008 APQ/50 percent yield) + reserve stock − inventory = AAN

(22,000/50 percent yield) + 50 percent * (22,000/50 percent yield) − 4,566 = 61,434 kg PPA (for conversion) for 2009

This calculation suggests that DEA's Assessment of Annual Needs for phenylpropanolamine (for conversion) should be established as 62,000 kg, as established in the Interim Final Rule.

DEA is establishing the Assessment of Annual Needs for phenylpropanolamine (for conversion) at 62,000 kg.

Ephedrine (for Conversion) Data

EPHEDRINE (FOR CONVERSION) DATA FOR 2009 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Ephedrine (for conversion)	2006	2007	2008 [6]	2009 Request
Sales * (DEA 250)	49,973	100,093	133,209	112,277
Imports ** (DEA 488)	43,612	107,230	122,683	111,365
Inventory * (DEA 250)	77	28	10	n/a
APQ Methamphetamine ***	3,130	3,130	3,130	n/a

* Reported sales and inventory from applications for 2009 procurement quotas (DEA 250) and manufacturing quotas (DEA 189) received as of April 1, 2009.
** Reported imports from applications for 2009 import quotas (DEA 488) received as of April 1, 2009.
*** Methamphetamine Aggregate Production Quota History *http://www.deadiversion.usdoj.gov/quotas/quota_history.htm*

Ephedrine (for Conversion) Analysis

For ephedrine (for conversion), DEA utilized the same general methodology and calculation as was described for the assessment of phenylpropanolamine (for conversion), above.

As of April 1, 2009, DEA registered manufacturers of ephedrine (for conversion) requested the authority to purchase a total of 112,277 kg ephedrine (for conversion) for the manufacture of two substances: methamphetamine and pseudoephedrine.

DEA in its methodology considered the ephedrine (for conversion) requirements for the manufacture of these two substances: methamphetamine and pseudoephedrine. DEA has determined the established assessments for the manufacture of these two substances are the best indicators of the need for ephedrine (for conversion). The assessment of need for methamphetamine was determined by DEA as the Aggregate Production Quota (APQ) for methamphetamine. The assessment of need for pseudoephedrine was determined by DEA as the estimated sales of pseudoephedrine as referenced in the 2008 Annual Assessment of Need (AAN) for pseudoephedrine. Reported sales of ephedrine (for conversion) are included as reference to DEA's methodology.

DEA further considered the reported conversion yields of these substances. These firms reported a conversion yield of 39 percent for the synthesis of methamphetamine. DEA cannot disclose the conversion yield for the synthesis of pseudoephedrine because this information is proprietary to the one manufacturer involved in this type of manufacturing.

DEA calculated the ephedrine (for conversion) assessment by the following methodology:

methamphetamine requirement + pseudoephedrine requirement = AAN

The calculation for the ephedrine (for conversion) requirement for the

[5] 2008 data represents estimated sales, imports, and inventories as reported on applications for quotas.

[6] 2008 data represents estimated sales, imports, and inventories as reported on applications for quotas.

manufacture of methamphetamine is as follows:

(2008 APQ methamphetamine/39 percent yield) + reserve stock − inventory = ephedrine (for manufacture of methamphetamine)

(3,130/39 percent yield) + 50 percent * (3,130/39 percent yield) − 35 = 12,003 kg

The calculation for the ephedrine (for conversion) requirement for the manufacture of pseudoephedrine leads to a result of 106,424 kg. DEA cannot provide the details of the calculation because this would reveal the conversion yield for the synthesis of pseudoephedrine, which is proprietary to the one manufacturer involved in this type of manufacturing.

Therefore, the assessment for ephedrine was determined by the sum total of the ephedrine (for conversion) requirements as described by the following methodology:

methamphetamine requirement + pseudoephedrine requirement = AAN

12,003 + 106,424 = 118,427 kg ephedrine (for conversion) for 2009

This calculation suggests that based on applications received as of April 1, 2009, DEA's Assessment of Annual Needs for ephedrine (for conversion) should be established as 120,000 kg rather than the 110,000 kg established on an interim basis in the December 29, 2008, notice. Under this rulemaking, DEA is establishing the Assessment of Annual Needs for ephedrine (for conversion) as 120,000 kg.

Conclusion

DEA has carefully considered the comments received in connection with the 2009 Assessment of Annual Needs. Based on information provided in the comments, along with information provided by DEA-registered manufacturers and importers of these List I chemicals on applications for individual import, manufacturing, and procurement quotas pursuant to DEA regulations, DEA has fully addressed the relevant issues set forth in the comments. Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR Section 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR Section 0.104, the Deputy Administrator hereby orders that the 2009 Assessment of Annual Needs for ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in kilograms of anhydrous acid or base, be established as follows:

List I chemical	Established 2009 Assessment of Annual Needs
Ephedrine (for sale)	3,400
Ephedrine (for conversion)	120,000
Pseudoephedrine (for sale)	390,000
Phenylpropanolamine (for sale)	4,900
Phenylpropanolamine (for conversion)	62,000

The Office of Management and Budget has determined that notices of quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have any federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will not have a significant economic impact upon a substantial number of small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601–612. The establishment of Assessment of Annual Needs for ephedrine, pseudoephedrine, and phenylpropanolamine is mandated by law. The assessments are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States; for lawful export requirements; and the establishment and maintenance of reserve stocks. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: June 26, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–16152 Filed 7–8–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2007, and published in the **Federal Register** on June 20, 2007, 72 FR 34040, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616–3466, made application by letter 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
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the basic classes of controlled substances for manufacture of active pharmaceutical ingredients 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 Cambrex Charles City, 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 Cambrex Charles City, 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: June 24, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–16295 Filed 7–8–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 26, 2007, and published in the **Federal Register** on July 3, 2007 (72 FR 36481), Johnson Matthey Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Coca Leaves (9040), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to manufacture bulk Cocaine HCL for sale to finished dosage form manufacturers.

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 Johnson Matthey Inc. to import the basic class of controlled substance 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 Johnson Matthey 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 class of controlled substance listed.

Dated: June 24, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–16293 Filed 7–8–09; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–063)]

NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Monday, July 13, 2009, 8:30 a.m. to 5 p.m., and Tuesday, July 14, 2009, 8:30 a.m. to 5 p.m. Eastern Daylight Time.

ADDRESSES: L'Enfant Plaza Hotel, Renoir Room, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Heliophysics Division Overview and Program Status;

—Annual Review of Heliophysics Science Performance for Fiscal Year 2009;

—Status of Proposed Revision to Heliophysics Data Policy;

—Discussion of Decadal Survey Assessment and NASA Response;

—Update on Interagency Planning for Space Weather Monitor at the L1 Libration Point.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register. For future information, you may contact Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–16215 Filed 7–8–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 74 FR 13270, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the

submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: New Project Data Form.

OMB Control No.: 3145–0201.

Abstract: The New Project Data Form (NSF 1295) is a component of all grant proposals submitted to NSF's Division of Undergraduate Education. This form collects information needed to direct proposals to appropriate reviewers and to report the estimated collective impact of proposed projects on institutions, students, and faculty members. Requested information includes the discipline of the proposed project, collaborating organizations involved in the project, the academic level on which the project focuses (*e.g.*, lower-level undergraduate courses, upper-level undergraduate courses), characteristics of the organization submitting the proposal, special audiences (if any) that the project would target (*e.g.*, women, minorities, persons with disabilities), strategic foci (if any) of the project (*e.g.*, research on teaching and learning, international activities, integration of research and education), and the number of students and faculty at different educational levels who would benefit from the project.

Respondents: Investigators who submit proposals to NSF's Division of Undergraduate Education.

Estimated Number of Annual Respondents: 2,500.

Burden on the Public: 20 minutes (per response) for an annual total of 833 hours.

Dated: July 6, 2009.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–16190 Filed 7–8–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–454 and 50–455; NRC–2009–0292]

Exelon Generation Company, LLC; Byron Station, Unit Nos. 1 and 2; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Proposed Merger Between Exelon Corporation and NRG Energy, Inc. and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80 approving the indirect transfer of Facility Operating Licenses, which are numbered NPF–37 and NPF–66 for Byron Station, Unit Nos. 1 and 2 (Byron), and the associated spent fuel storage installation, currently held by Exelon Generation Company, LLC (EGC), as owner and licensed operator of Byron. EGC is a wholly-owned subsidiary of Exelon Corporation (Exelon).

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. Exelon is the ultimate parent company of EGC and Exelon's proposed merger with NRG Energy would result in NRG Energy becoming the ultimate parent company of EGC and thus result in the indirect transfer of control of the Byron licenses to NRG Energy. The applicants request that the NRC consent to this indirect transfer of control of the Byron licenses.

No physical changes to the Byron facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

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 should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital 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 ViewerJ 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 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.

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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *HEARING.DOCKET@NRC.GOV*.

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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@nrc.gov*.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland, this 1st day of July 2009.

For the Nuclear Regulatory Commission.

Marshall J. David,

Senior Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16240 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311; NRC–2009–0288]

Exelon Generation Company, LLC; Salem Nuclear Generating Station, Units 1 and 2; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Proposed Merger Between Exelon Corporation and NRG Energy, Inc. and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal

Regulations (10 CFR), Section 50.80, approving the indirect transfer of Facility Operating Licenses, which are numbered DPR–70 and DPR–75, for the Salem Nuclear Generating Station, Units 1 and 2 (Salem), currently held, in part, by Exelon Generation Company, LLC (EGC), as an owner. EGC is a wholly-owned subsidiary of Exelon Corporation (Exelon).

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. The applicants request that the NRC consent to the indirect transfer to NRG Energy of control of the Salem licenses, to the extent held by EGC. EGC owns 42.59 percent of Salem. PSEG Nuclear LLC, which owns the remaining 57.41 percent of Salem, is not involved in the merger.

No physical changes to the Salem facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

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 should contact the Office of the Secretary by e-mail at *HEARING.DOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital 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 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.

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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *HEARING.DOCKET@NRC.GOV.*

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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@nrc.gov.*

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland, this 1st day of July 2009.

For the Nuclear Regulatory Commission.

Christopher Gratton, Sr.,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16243 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353; NRC–2009–0287]

Exelon Generation Company, LLC; Limerick Generating Station, Units 1 and 2; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Proposed Merger Between Exelon Corporation and NRG Energy, Inc. and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80 approving the indirect transfer of the Facility Operating Licenses NPF–39 and NPF–85, for Limerick Generating Station, Units 1 and 2 (LGS), including its associated independent spent fuel storage installation, currently held by Exelon Generation Company, LLC (EGC), as owner and licensed operator of LGS. EGC is a wholly owned subsidiary of Exelon Corporation (Exelon).

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. Exelon is the ultimate parent company of EGC and Exelon's proposed merger with NRG Energy would result in NRG Energy becoming the ultimate parent company of EGC and thus result in the indirect transfer of control of the LGS licenses to NRG Energy. The applicants request that the NRC consent to this indirect transfer of control of the LGS licenses.

No physical changes to the LGS facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

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). 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.

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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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *HEARING.DOCKET@NRC.GOV*.

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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@nrc.gov*.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland this 30th day of June 2009.

For the Nuclear Regulatory Commission.

Peter Bamford,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16246 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499; NRC–2009–0296]

Exelon Corporation and NRG Energy, Inc.; South Texas Project, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Merger of NRG Energy, Inc. and Exelon Corporation, and Indirect Transfers of NRG South Texas LP's Facility Operating Licenses, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission, NRC) is considering the issuance of an order under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80 approving the indirect transfer of control of the Facility Operating Licenses, which are numbered NPF–76 and NPF–80, for the South Texas Project (STP), Units 1 and 2, respectively, to the extent held by NRG South Texas LP (NRG South Texas).

According to an application for approval filed by Exelon Corporation (Exelon), acting on behalf of itself, Exelon Xchange Corporation (Xchange Corp.), Exelon Ventures Company, LLC (Exelon Ventures), and Exelon Generation Company, LLC (Exelon Generation) (together, the applicants), Exelon Corporation is planning to merge with NRG Energy, Inc., which is the ultimate parent company of NRG South Texas. The applicants requested that the NRC consent to the indirect transfer of control of the STP, Units 1 and 2, licenses, to the extent owned by NRG South Texas, that would result from this merger. NRG South Texas owns 44 percent of the STP, Units 1 and 2. The City Public Service Board of San Antonio and City of Austin, Texas, own, respectively 40 percent and 16 percent of STP, Units 1 and 2, but are not involved in the proposed merger.

In addition to NRG South Texas' 44 percent undivided ownership interest in STP, Units 1 and 2, NRG South Texas holds a corresponding interest in STP Nuclear Operating Company (STPNOC), a not-for-profit Texas corporation, which is the licensed operator of STP, Units 1 and 2. Thus, the indirect transfer of control of NRG South Texas would also result in the indirect transfer of control of this interest in STPNOC. The applicants state that this is not a controlling interest in STPNOC and, therefore, there will be no indirect transfer of STPNOC's licenses to operate on behalf of the owners. The applicants indicate that if the NRC concludes that indirect transfer of control of NRG South Texas' interest in STPNOC requires prior NRC consent, it requests such consent.

No physical changes to STP, Units 1 and 2, or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention via electronic submission through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C, ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

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 should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital 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 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 toll-free help line number is 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.

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The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the e-filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *hearing.docket@nrc.gov.*

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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's (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.*

Attorney for applicants: Mr. J. Bradley Fewell, Associate General Counsel, Counsel for Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Attorney for NRG Energy, Inc.: Mr. Daniel F. Stenger, Partner, Hogan & Hartson, LLP, 555 Thirteenth Street, NW., Washington, DC 20004.

Dated at Rockville, Maryland, this 1st day of July 2009.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16248 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 AND 50–265; NRC–2009–0294]

Exelon Generation Company, LLC, Quad Cities Nuclear Power Station, Units 1 and 2; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Proposed Merger Between Exelon Corporation and NRG Energy, Inc., and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80, approving the indirect transfer of Renewed Facility Operating Licenses, which are numbered DPR–29 and DPR–30, for the Quad Cities Nuclear Power Station, Units 1 and 2 (QCNPS), including its associated independent spent fuel storage installation, currently held by Exelon Generation Company, LLC (EGC). EGC is the owner and licensed operator of QCNPS. EGC is a wholly owned subsidiary of Exelon Corporation (Exelon).

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. The applicants request that the NRC consent to the indirect transfer to NRG Energy of control of the QCNPS licenses, to the extent held by EGC. EGC owns 75 percent of QCNPS. MidAmerican Energy Company, which owns the remaining 25 percent of QCNPS, is not involved in the merger.

No physical changes to the QCNPS facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

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 should contact the Office of the Secretary by e-mail at *HEARING.DOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital 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 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.

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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *HEARING.DOCKET@NRC.GOV*.

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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@nrc.gov*.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland, this 1st day of July 2009.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Sr. Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16242 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304; NRC–2009–0295]

Exelon Generation Company, LLC; Zion Nuclear Power Station, Units 1 and 2; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Proposed Merger Between Exelon Corporation and NRG Energy, Inc. and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80, approving the indirect transfer of Facility Operating Licenses, which are numbered DPR–39 and DPR–48, for the Zion Nuclear Power Station, Units 1 and 2 (Zion), currently held by Exelon Generation Company, LLC (EGC), as the owner and licensed operator. EGC is a wholly-owned subsidiary of Exelon Corporation (Exelon). The Zion units are permanently shutdown.

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. Exelon is the ultimate parent company of EGC and Exelon's proposed merger with NRG Energy would result in NRG Energy becoming the ultimate parent company of EGC and thus result in the indirect transfer of control of the Zion licenses to NRG Energy. The applicants request that the NRC consent to this indirect transfer of control of the Zion licenses.

No physical changes to the Zion facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

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.

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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.

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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.

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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *HEARING.DOCKET@NRC.GOV*.

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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@nrc.gov*.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland this 1st day of July 2009.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Sr. Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16250 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2009–0286]

Exelon Generation Company, LLC; Oyster Creek Nuclear Generating Station; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Proposed Merger Between Exelon Corporation and NRG Energy, Inc. and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80 approving the indirect transfer of the Facility Operating License DPR–16, for

Oyster Creek Nuclear Generating Station (OCNGS), including its associated independent spent fuel storage installation, currently held by Exelon Generation Company, LLC (EGC), as owner and licensed operator of OCNGS. EGC is a wholly owned subsidiary of Exelon Corporation (Exelon).

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. Exelon is the ultimate parent company of EGC and Exelon's proposed merger with NRG Energy would result in NRG Energy becoming the ultimate parent company of EGC and thus result in the indirect transfer of control of the OCNGS license to NRG Energy. The applicants request that the NRC consent to this indirect transfer of control of the OCNGS license.

No physical changes to the OCNGS facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

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 should contact the Office of the Secretary by e-mail at *HEARING.DOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital 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.

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The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *HEARING.DOCKET@NRC.GOV.*

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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@nrc.gov.*

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland, this 30th day of June 2009.

For the Nuclear Regulatory Commission.

G. Edward Miller,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16249 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–171, 50–277, 50–278, and 72–1027; NRC–2009–0285]

Exelon Generation Company, LLC; Peach Bottom Atomic Power Station, Units 1, 2 and 3; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Proposed Merger Between Exelon Corporation and NRG Energy, Inc. and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80 approving the indirect transfer of the Facility Operating License DPR–12 for Peach Bottom Atomic Power Station (PBAPS), Unit 1, and Renewed Facility Operating Licenses, which are numbered, DPR–44 and DPR–56, for PBAPS Units 2 and 3, including its associated independent spent fuel storage installation, currently held by Exelon Generation Company, LLC (EGC), as owner and licensed operator of PBAPS. EGC is a wholly owned subsidiary of Exelon Corporation (Exelon). PBAPS Unit 1 is permanently shut down.

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. The applicants request that the NRC consent to the indirect transfer to NRG Energy of control of the PBAPS licenses, including the associated independent spent fuel storage installation, to the extent held by EGC. EGC owns 50 percent of PBAPS. PSEG Nuclear LLC, which owns the remaining 50 percent of PBAPS, is not involved in the merger.

No physical changes to the PBAPS facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C, ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

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). 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.

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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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *hearing.docket@nrc.gov.*

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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@nrc.gov.*

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland, this 30th day of June 2009.

For the Nuclear Regulatory Commission.

John D. Hughey,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16247 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456 AND 50–457; NRC–2009–0289]

Exelon Generation Company, LLC, Braidwood Station, Units 1 and 2; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Proposed Merger Between Exelon Corporation and NRG Energy, Inc. and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80 approving the indirect transfer of Facility Operating Licenses, which are numbered NPF–72 and NPF–77 for Braidwood Station, Units 1 and 2 (Braidwood), including the independent spent fuel storage installation, currently held by Exelon Generation Company, LLC (EGC), as owner and licensed operator of Braidwood. EGC is a wholly-owned subsidiary of Exelon Corporation (Exelon).

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. Exelon is the ultimate parent company of EGC and Exelon's proposed merger with NRG Energy would result in NRG Energy becoming the ultimate parent company of EGC and thus result in the indirect transfer of control of the Braidwood licenses to NRG Energy. The applicants request that the NRC consent to this indirect transfer of control of the Braidwood licenses.

No physical changes to the Braidwood facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-Filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

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). 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.

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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.

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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *HEARING.DOCKET@nrc.gov*.

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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@nrc.gov*.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland, this 1st day of July 2009.

For the Nuclear Regulatory Commission.

Marshall J. David,

Senior Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16244 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–461; NRC–2009–0293]

Exelon Generation Company, LLC; Clinton Power Station, Unit No. 1; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Proposed Merger Between Exelon Corporation and NRG Energy, Inc. and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80, approving the indirect transfer of the Facility Operating License, which is numbered NPF–62, for the Clinton Power Station, Unit No. 1 (CPS), currently held by Exelon Generation Company, LLC (EGC), as owner and licensed operator of CPS. EGC is a wholly owned subsidiary of Exelon Corporation (Exelon).

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. Exelon is the ultimate parent company of EGC and Exelon's proposed merger with NRG Energy would result in NRG Energy becoming the ultimate parent company of EGC and thus result in the indirect transfer of control of the CPS license to NRG Energy. The applicants request that the NRC consent to this indirect transfer of control of the CPS license.

No physical changes to the CPS facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's

financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions To Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek 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 should contact the Office of the Secretary by e-mail at *HEARING.DOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital 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 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.

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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary,

U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *HEARING.DOCKET@NRC.GOV*.

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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@nrc.gov*.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland, this 1st day of July 2009.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Senior Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16241 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 AND 50–374; NRC–2009–0291]

Exelon Generation Company, LLC; LaSalle County Station, Units 1 and 2; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Merger Between Exelon Corporation and NRG Energy, Inc. and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80, approving the indirect transfer of the Facility Operating Licenses, which are numbered NPF–11 and NPF–18, for the LaSalle County Station, Units 1 and 2 (LSCS), including its associated independent spent fuel storage installation, currently held by Exelon Generation Company, LLC (EGC), as owner and licensed operator of LSCS. EGC is a wholly-owned subsidiary of Exelon Corporation (Exelon).

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. Exelon is the ultimate parent company of EGC and Exelon's proposed merger with NRG Energy would result in NRG Energy becoming the ultimate parent company of EGC and thus result in the indirect transfer of control of the LaSalle licenses to NRG Energy. The applicants request that the NRC consent to this indirect transfer of control of the LaSalle licenses.

No physical changes to the LSCS facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

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 should contact the Office of the Secretary by e-mail at *HEARING.DOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital 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 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.

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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *HEARING.DOCKET@NRC.GOV*.

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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@nrc.gov*.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland, this 1st day of July 2009.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Senior Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16239 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289; NRC–2009–0284]

Exelon Generation Company, LLC; Three Mile Island Nuclear Station, Unit 1; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Proposed Merger Between Exelon Corporation and NRG Energy, Inc. and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80 approving the indirect transfer of the Facility Operating License DPR–50, for Three Mile Island Nuclear Station, Unit 1 (TMI–1) currently held by Exelon Generation Company, LLC (EGC), as owner and licensed operator of TMI–1. EGC is a wholly-owned subsidiary of Exelon Corporation (Exelon).

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. Exelon is the ultimate parent company of EGC and Exelon's proposed merger with NRG Energy would result in NRG Energy becoming the ultimate parent company of EGC and thus result in the indirect transfer of control of the TMI–1 license to NRG Energy. The applicants

request that the NRC consent to this indirect transfer of control of the TMI–1 license.

No physical changes to the TMI–1 facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-Filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

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.

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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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *HEARING.DOCKET@NRC.GOV*.

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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*.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland, this 30th day of June 2009.

For the Nuclear Regulatory Commission.

Peter Bamford,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16237 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–010, 50–237, and 50–249; NRC–2009–0290]

Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 1, 2, and 3; Notice of Consideration of Approval of an Application for Indirect License Transfer Resulting From the Proposed Merger Between Exelon Corporation and NRG Energy, Inc. and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80, approving the indirect transfer of Facility Operating License DPR–2, and Renewed Facility Operating Licenses, which are numbered DPR–19 and DPR–25, for Dresden Nuclear Power Station, Units 1, 2, and 3 (DNPS), including the independent spent fuel storage installation, currently held by Exelon Generation Company, LLC (EGC), as owner and licensed operator of DNPS. EGC is a wholly owned subsidiary of Exelon Corporation (Exelon). DNPS Unit 1 is permanently shut down.

According to an application for approval filed by Exelon, acting on behalf of itself, Exelon Xchange Corporation, Exelon Ventures Company, LLC, and EGC (together, the applicants), Exelon is considering a merger with NRG Energy Inc. (NRG Energy), with NRG Energy as the surviving entity. Exelon is the ultimate parent company of EGC and Exelon's proposed merger with NRG Energy would result in NRG Energy becoming the ultimate parent company of EGC and thus result in the indirect transfer of control of the DNPS licenses to NRG Energy. The applicants request that the NRC consent to this indirect transfer of control of the DNPS licenses.

No physical changes to the DNPS facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license if the Commission determines that the proposed transaction effecting the indirect transfer (here, the proposed merger) will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. In this instance, Exelon asserts that the proposed indirect transfer will not result in any change in the licensee's financial qualifications or operating organization.

The Commission is reviewing the application and has not made any decision regarding the outcome of its review.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek 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 should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital 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 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.

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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments are not subject to the E-Filing rule and should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be sent by e-mail to *HEARING.DOCKET@nrc.gov*.

For further details with respect to this license transfer application, see the application dated January 29, 2009, as supplemented by letter dated March 18, 2009, available for public inspection at the Commission'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@nrc.gov*.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland, this 1st day of July 2009.

For the Nuclear Regulatory Commission.

Christopher Gratton, Sr.,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation.

[FR Doc. E9–16238 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7005; NRC–2009–0283]

Issuance of Environmental Assessment and Draft Finding of No Significant Impact for Modification of Exemption From Certain NRC Licensing Requirements for Special Nuclear Material for Waste Control Specialists, LLC, Andrews County, TX

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Draft Finding of No Significant Impact.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has prepared an Environmental Assessment for the issuance of an Order under Section 274f of the Atomic Energy Act that would modify an Order issued to Waste Control Specialists, LLC (WCS) on November 5, 2004. In accordance with 10 CFR 51.33, the NRC has also prepared a draft Finding of No Significant Impact (FONSI) for public review and comment. The current action is in response to a request by WCS dated December 10, 2007. The November 5, 2004 Order was published in the **Federal Register** on November 12, 2004 (69 FR 65468). The November 5, 2004 Order, which modified an initial Order issued to WCS on November 21, 2001, exempted WCS from certain NRC regulations and permitted WCS, under specified conditions, to possess waste containing special nuclear material (SNM), in greater quantities than specified in 10 CFR Part 150, at WCS's facility located in Andrews County, Texas, without obtaining an NRC license pursuant to 10 CFR part 70.

DATES: The public comment period on the draft FONSI closes on August 10, 2009. Written comments should be submitted as described in the **ADDRESSES** section of this notice. Comments submitted by mail should be postmarked by August 10, 2009 to ensure consideration. Comments received or postmarked after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before August 10, 2009.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rulemaking and Directives Branch, Mail Stop TWB–05 B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 70–7005 when submitting comments. Comments will also be accepted by e-mail at *NRCREP@nrc.gov* or by facsimile to (301) 415–5369, Attention: David D. Brown.

FOR FURTHER INFORMATION CONTACT: David D. Brown, Sr. Project Manager, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–6116; Fax number: (301) 415–5369; e-mail: *david.brown@nrc.gov.*

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 1–899–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Environmental Assessment

Background

As stated above, the 2004 Order exempted WCS from certain NRC regulations and permitted WCS, under specified conditions, to possess waste containing SNM, in greater quantities than specified in 10 CFR part 150, at WCS's facility located in Andrews County, Texas, without obtaining a NRC license pursuant to 10 CFR part 70. The 2004 Order permits WCS to possess SNM without regard for mass. Rather than relying on mass to ensure criticality safety, concentration-based limits were applied, such that accumulations of SNM at or below these concentration limits would not pose a criticality safety concern. The methodology used to establish these limits is discussed in two Safety Evaluation Reports (SERs) prepared by NRC in support of the initial Order issued in November 2001 and an amended Order issued in November 2004.

In its December 2007 request, WCS seeks NRC approval to modify the conditions of the 2004 Order to: Discontinue confirmation sampling upon receipt of waste that WCS verifies is adequately characterized by a waste generator to be uniform and which contains less than one-thousandth of the SNM concentration limits presented in Condition 1; and to meet the confirmatory sampling requirements of Condition 7 of the Order for sealed sources using surface smear surveys. By letter dated January 22, 2008, the NRC informed WCS that it would also clarify Condition 2, which states that waste must not contain ''pure forms'' of chemicals containing carbon, fluorine, magnesium, or bismuth in bulk quantities. As a result of its review of WCS' December 10, 2007, request, the NRC, upon its own initiative, is clarifying the requirements for spatial uniformity of SNM concentrations in the waste, as described in Conditions 1, 6, and 7 of the Order. In addition, NRC is revising Condition 4 of the Order, which limits the amount of highly water soluble SNM WCS may possess.

Site and Facility Description

WCS operates a 5.4 km^2 (1,338-acre) hazardous waste disposal facility and a hazardous waste, low-level radioactive waste (LLW), and mixed waste (MW) processing and storage facility in western Andrews County, TX and eastern Lea County, NM. The WCS facility is located near the southwestern edge of the Southern High Plains where surface elevations range from about 1,040 to 1,070 meters (3,415 to 3,500 ft) above mean sea level. The site lies on a broad topographic ridge that forms a surface water drainage divide between the Pecos and Colorado Rivers. The region receives approximately 23 cm (9 inches) of rain annually and is atop a solid base of Triassic red bed clay (Hydraulic Conductivity: 10^{-8} cm/s, [3×10^{-5} ft/day]) with the first groundwater, which is not potable and too salty for irrigation use, found 240–300 m (800–1000 ft) below the surface.

The primary land use within an eight-kilometer (five-mile) radius of the WCS facility is grazing and ranching. Future water uses in the area will include industrial, domestic, livestock, and agricultural purposes. Oil and gas exploration and production activities have also been conducted in the vicinity of the WCS facility. Other businesses in proximity to the site include the Wallach Quarry (crushed stone, sand and gravel) and Sundance, Inc. (oil recovery and solids disposal), both located about 1.6 kilometers (one mile) west of the facility. The Lea County Landfill is located approximately 1.6 kilometers (one mile) southwest of the facility. In addition, construction of the Louisiana Enrichment Services (LES) uranium enrichment facility is currently underway in Lea County, NM and is located approximately 1.6 kilometers (one mile) west of the WCS facility.

Major structures at the WCS facility include:

- On-site rail spur and rail-unloading facility for hazardous waste only;
- Maintenance building;
- Administration building with analytical and radiological laboratories;
- Container Storage Building;
- Stabilization and Mixed Waste Treatment (Combined) Building;
- Bulk/Bin Storage Units;
- RCRA subtitle C landfill;
- Ten-acre storage area for low-specific-activity (LSA) waste;
- 11e(2) byproduct material landfill Facility (*Authorized May 2008—under construction*);
- Federal LLW/MW landfill Facility (license issuance pending);
- Texas Compact LLW landfill Facility (license issuance pending); and
- Chemical oxidation (*Proposed*).

Licenses and Permits Issued Under Various Federal and State Laws

On January 14, 2009, WCS received a licensing order that denied hearing requests, and allowed a license for disposal of LLW to be issued once ownership in fee can be demonstrated by the applicant. The LLW disposal license may not be issued, signed, or granted until surface and mineral ownership can be demonstrated. WCS has proposed two separate LLW disposal facilities:

1. The compact waste disposal facility (CWF) would be allowed to accept LLW as defined in Section 401.004 of the Texas Health and Safety Code for commercial disposal of compact waste; and

2. The Federal Waste Facility (FWF) would be allowed to accept LLW that is the responsibility of the Federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985.

The LLW land disposal facilities have the following limits in the pending license:

- 736,238 m^3 (962,963 yd^3) of LLW and MW generated/owned by the Federal government of which approximately 229,366 m^3 (300,000 yd^3) is expected to be canister disposal and 506,872 m^3 (662,963 yd^3) is expected to be non-canister (bulk) disposal; and
- 65,412 m^3 (85,556 yd^3) of LLW generated within the Texas Compact.

Other WCS permits and authorizations are summarized below:

Byproduct Material Disposal Facility License

- *Issued:* May 29, 2008, by the Texas Commission on Environmental Quality (TCEQ).
- *Authorization:* Receipt and disposal of byproduct material as defined in Title 25 of the Texas Administrative Code, Section 289.260(c)(4).
- Authorization covers dry, discrete solid objects and containerized bulk (*i.e.,* soil or soil-like) byproduct material received by road only (no rail).
- Containers shall be flexible or rigid drums, pails, boxes, sacks, or similar containers that are sealed and do not tear, split, or rupture upon handling, placement, and compaction in the disposal unit, or lose their structural strength and integrity when contacting water. Acceptable containers include (but are not limited to) U.S. Department of Transportation (U.S. DOT) containers. Containers shall not contain free liquids or more than 15% void space.

Low Level Radioactive Waste Treatment, Processing & Storage License (License R04971)

- *Issued:* February 1997.
- *Amended:* April 29, 2009, by the TCEQ.
- *Authorization:* Treatment, processing, and storage of low-level radioactive wastes shipped by road only (including Greater Than Class C (GTCC), sealed sources, solids, and liquids).
- November 5, 2004—Exemption from Part 70 (Special Nuclear Material (SNM) concentration-based limitations).

Industrial Solid Waste and Hazardous Waste Storage, Processing, and Disposal Resource Conservation and Recovery Act Wastes (RCRA) Permit

- *Issued:* August 5, 1994 by the Texas National Resource Conservation Commission (TNRCC).
- *Renewed:* October 5, 2005, by the TCEQ.
- *Authorization:* Treatment, storage, and land disposal of over 2,000 RCRA waste codes.
- WCS holds a RCRA part B equivalent permit to receive ignitable, corrosive, toxic, and select reactive hazardous waste.

Texas Pollutant Discharge Elimination System Permit

- *Issued:* December 2, 1999 by TCEQ.
- *Renewed:* May 31, 2005.
- *Authorization:* Treatment and discharge of liquid wastes.

Toxic Substances Control Act Land Disposal Authorization

- *Issued:* November 22, 1999 by the United States Environmental Protection Agency (EPA).
- *Renewed:* September 19, 2005, by the EPA.
- *Authorization:* Treatment, storage, and land disposal of Toxic Substances Control Act (TSCA) wastes, including polychlorinated biphenyl (PCB) and PCB contaminated materials such as debris, spill solids, transformers (drained and flushed), and transformer carcasses.
- PCB liquids are acceptable for bulking and off-site treatment.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

- March 21, 1997 letter from EPA, Region 6.
- *Authorization:* EPA determination under 40 CFR 300.440 that the WCS facility is acceptable for receipt of hazardous substances, pollutants or contaminants from CERCLA response actions.

Under the State and Federal permits and authorizations described above, WCS is authorized to use the following waste treatment technologies:

- Chemical oxidation.
- Chemical reduction.
- Deactivation.
- Micro- and macro-encapsulation (debris only).
- Neutralization.
- Stabilization.
- Controlled reaction.

Waste shipments are received in a variety of sealed packages such as standard 208-liter (55-gallon) steel drums, rectangular steel boxes, intermodal, roll-offs, waste generator-designed canisters, or from a list of 400 radioactive material packages certified by the DOE for transport by road only. The facility is accessible by rail or nearby interstate highway. It can accommodate over 110 rail cars within its secured and guarded fence perimeter. It has a ten-kilometer (approximately six-mile) private rail spur leading to the site and on-site rail and truck off-loading capabilities. Although rail facilities are available on-site, radioactive waste is currently not authorized to be received at the site by rail.

Review Scope

The purpose of this EA is to assess the environmental impacts of WCS's December 10, 2007, request to modify its 2004 Order and additional actions taken by NRC staff to:

(1) Clarify Condition 2 of the November 2004 Order;

(2) Clarify the requirements for spatial uniformity of the waste; and

(3) Revise Condition 4 of the 2004 Order, which limits the amount of highly water soluble SNM WCS may possess.

This EA does not approve nor deny the requested action. A separate Safety

Evaluation Report (SER) has been prepared in support of approval of the requested action. The 2004 Order is only applicable to activities authorized by TCEQ License R04971 for processing and storage of LLW.

Proposed Action

The proposed action is to grant WCS's December 10, 2007, request to modify the conditions of the 2004 Order, with certain additional modifications. As modified by NRC staff, the proposed action is to discontinue confirmation sampling upon receipt of waste that WCS verifies is adequately characterized by a waste generator to be uniform and which contains less than one-tenth of the SNM concentration limits presented in Condition 1, and to discontinue the confirmatory sampling requirements of Condition 7 of the 2004 Order for sealed sources. By letter dated January 22, 2008, the NRC informed WCS that it would also clarify Condition 2, which states that waste must not contain ''pure forms'' of chemicals containing carbon, fluorine, magnesium, or bismuth in bulk quantities. The NRC is also clarifying the requirements for spatial uniformity of SNM concentrations in the waste, as described in Conditions 1, 6, and 7 of the 2004 Order, and revising Condition 4 of the 2004 Order, that limits the amount of highly water soluble SNM WCS may possess pursuant to TCEQ License R04971 for processing and storage of LLW.

Purpose and Need for Proposed Action

WCS is making this request as a result of two issues it has identified with the implementation of the 2004 Order. The first issue pertains to the potential for WCS workers to receive radiation dose without commensurate benefit to overall public and worker safety. This issue arises when certain high dose rate and debris waste is received by WCS and WCS workers, in accordance with the requirements of the 2004 Order, are in close proximity to, or in contact with, the waste for the purpose of taking confirmatory samples to measure SNM concentrations in the waste, even when the SNM concentration in these wastes are known by other means to be very low.

The second issue identified by WCS also pertains to how the confirmatory sampling requirements of the Order should be applied to sealed sources. WCS states that direct confirmatory sampling is not practical, and recommends that it perform surface smear surveys in lieu of destructive direct sampling.

In its December 10, 2007, request, WCS also informed the NRC that it plans to accept bulk quantities of waste containing very low concentrations of SNM that have been homogeneously commingled by the generator with inert compounds so that the final waste no longer contains just SNM or ''pure forms'' of carbon, fluorine, magnesium, and bismuth. Condition 2 of the November 2004 Order prohibits receipt of ''pure forms'' of these chemicals. In its review of this information, the NRC determined that Condition 2 of the November 2004 Order should be more clearly stated. As noted in a letter to WCS dated January 22, 2008, the NRC stated that it finds no criticality safety concerns with the waste that WCS plans to accept, provided the waste is less than 40% magnesium fluoride by volume and less then 50% magnesium fluoride by weight. In its January 22, 2008, letter, the NRC also stated that it plans to clarify the meaning of Condition 2 in this modification to the 2004 Order.

During review of the proposed changes requested by WCS, the NRC staff also decided to clarify the requirements for spatial uniformity of SNM concentrations in waste received by WCS contained within Conditions 1, 6, and 7 of the 2004 Order. The spatial uniformity requirement in Condition 1 states that, ''The SNM must be homogeneously distributed throughout the waste. If the SNM is not homogeneously distributed, then the limiting concentrations must not be exceeded on average in any contiguous mass of 600 kilograms.'' This requirement is based on an NRC nuclear criticality safety evaluation described in the SER for the November 2001 Order. However, there is a second requirement in Conditions 6 and 7 of the 2004 Order, that prescribe a statistical test for spatial uniformity that would be performed on sample results. The statistical test states that waste is non-homogeneous when the maximum sample result, that cannot exceed the limits in Condition 1, and minimum testing values performed by the generator, is greater than five times the average value. The definition of spatial uniformity in Condition 1 has a technical basis founded on principles of nuclear criticality safety. The requirement in Condition 6 and 7 does not. Therefore, the NRC is removing the second requirement contained in Conditions 6 and 7 and making conforming changes to the remainder of the Order.

The NRC is also revising Condition 4 of the 2004 Order, as described in a separate Safety Evaluation Report, to:

(1) Eliminate the individual package mass limits for highly water soluble SNM, because 10 CFR part 71 and 49 CFR provide sufficient regulation of packaging and transportation of fissile materials, from which this Order does not exempt WCS; and

(2) Impose a limit on the total mass of highly water soluble SNM that may be possessed pursuant to this Order to amounts less than those of SNM of low strategic significance, as defined in 10 CFR 73.2.

Therefore, the purpose and need for the proposed action is four-fold:

(1) To revise and clarify certain requirements of the November 2004 Order to address potential worker safety concerns associated with the implementation of waste generator and WCS confirmatory sampling requirements;

(2) To clarify the prohibition on the presence of certain chemicals contained in the waste, as stated in Condition 2 of the 2004 Order;

(3) To clarify the requirements in the 2004 Order for spatial uniformity of SNM concentrations in waste; and

(4) To revise Condition 4, which pertains to limits on highly water soluble forms of SNM.

Alternatives

In addition to the proposed action, the NRC considered one alternative. The alternative action was to deny WCS' request and thus not revise the Order (*i.e.,* the no-action alternative).

Environmental Impacts of No Action Alternative

For the no-action alternative, the environmental impacts would be the same as those evaluated in the EA that supports the 2004 Order. The 2004 EA concluded that the 2004 Order would have no significant radiological or non-radiological environmental impacts. However, as noted above, the current confirmatory sampling requirement for high dose and debris waste may result in doses to workers without a commensurate benefit to overall nuclear safety.

Environmental Impacts of Proposed Action

With regard to the confirmatory sampling requirements of the November 2004 Order, and as described further in the SER for the current modification to the Order, the NRC believes that when SNM concentrations in waste are expected to be below 10% of the limits in Condition 1, as determined by a waste generator in support of the written certification required by Condition 6, the radiation hazard to

workers involved in both generator sampling and WCS confirmatory waste sampling activities will, in many cases, outweigh the benefit to criticality safety. As a result, the NRC, in consultation with WCS and the TCEQ, will remove the graded-approach to sampling requirements from the Order, in favor of a simpler threshold for sampling requirements, which applies to both the generator and WCS, at 10% of the Condition 1 limits.

No detrimental environmental impacts are expected as a result of modifying the waste generator and confirmatory sampling requirements of the Order. Sampling requirements do not alter in any way the types, amounts, or characteristics of wastes received at the facility. As a result, there would be no substantive changes in the handling, storage, or treatment of wastes at the facility. The change in sampling requirements is not expected to significantly alter the need for labor resources at WCS. However, as further described in the SER for this modified Order, there is a benefit to overall worker radiological safety as a result of reducing generator and WCS confirmatory sampling requirements for high dose rate and debris waste containing low concentrations of SNM, and not requiring destructive direct sampling of sealed sources.

No detrimental environmental impacts are expected as a result of clarifying Condition 2 of the Order. As described further in the SER, Condition 2 is modified such that specific mass limits for carbon, fluorine and bismuth in the waste are provided in lieu of a vague general prohibition on ''pure forms'' of magnesium, carbon, fluorine and bismuth. This clarification is not expected to significantly alter the types, amounts, or characteristics of wastes received at the facility. In addition, worker radiation doses are not expected to change as a result of a change in specific mass limits for carbon, fluorine and bismuth. As a result, there would be little or no substantive changes in the handling, storage, or treatment of wastes at the facility.

No detrimental environmental impacts are expected as a result of clarifying the requirements for spatial uniformity of SNM concentrations in wastes received at WCS. No changes are made to either the Condition 1 SNM concentration limits, or the maximum contiguous mass of waste over which the limiting concentrations of Condition 1 must be met (*i.e.,* 600 kilograms). Therefore, these modifications to the 2004 Order do not alter in any way the types, amounts, or characteristics of wastes received at the facility, and worker doses would remain unchanged. As a result, there would be no substantive changes in the handling, storage, or treatment of wastes at the facility.

No detrimental environmental impacts are expected as a result of revising the requirements for highly water soluble forms of SNM in wastes received at WCS. There is a reduction of the risk of container leaks involving highly water soluble forms of SNM, given that the Order now limits the total possession of highly water soluble forms of SNM to amounts of SNM less than SNM of low strategic significance, as defined by 10 CFR 73.2. As a result, there would be no substantive changes in the handling, storage, or treatment of wastes at the facility, and no significant changes in radiation hazards to workers.

Other conditions of the Order would remain unchanged. As before, WCS is permitted to possess SNM without regard for mass, except that possession of highly water soluble forms of SNM is limited to amounts of SNM less than SNM of low strategic significance, as defined by 10 CFR 73.2. To ensure criticality safety, an SNM concentration limit is applied to wastes containing both soluble and insoluble forms, such that accumulations of SNM at or below this concentration limit would not pose a criticality safety concern.

Effluent releases and potential doses to the public are regulated by the State of Texas and are not anticipated to change as a result of this action. WCS will continue to conduct its radiation protection program with an emphasis on maintaining doses as low as reasonably achievable. Occupational exposure is expected to remain within regulatory limits, and may decrease as a result of eliminating sampling intervals for high dose rate and debris waste.

The proposed action would not result in any changes in the transportation impacts identified in the 2001 EA. All other environmental impacts would be the same as evaluated in the EAs that support the 2001 and 2004 Orders.

Agencies and Persons Consulted

A draft copy of this EA was provided to officials from the Texas Commission on Environmental Quality (TCEQ). By e-mails dated March 11 and April 14, 2009, the TCEQ recommended certain changes to clarify the descriptions of certain WCS facilities, to identify the correct State agencies having authority in certain areas, and to clarify the status of the pending LLW disposal facility license. The NRC staff has modified the EA to address the TCEQ comments.

The proposed action does not involve the development of additional land. Hence, the NRC has determined that the proposed action will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff has determined that the proposed action does not have the potential to adversely affect cultural resources. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

II. Draft Finding of No Significant Impact

The NRC has concluded that the proposed action to grant a modification to WCS' exemption from the requirements of 10 CFR Part 70 is, pursuant to 10 CFR 70.17, authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

The NRC has prepared this EA in support of the proposed action to modify WCS' November 2004 Order which grants an exemption from the requirements of 10 CFR Part 70. On the basis of this EA, NRC has concluded that there are no significant environmental impacts and the issuance of a modified Order does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

Pursuant to 10 CFR 51.33(e), a final determination to prepare an environmental impact statement or a final FONSI for the proposed action will not be made until the last day of the public comment period has expired on August 10, 2009.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Document description	Accession No.
January 2009 Safety Evaluation Report	ML081550674
January 22, 2008, NRC acknowledgement of WCS request	ML080150622

Document description	Accession No.
December 10, 2007, WCS request for modification to Order	ML073550638
November 2004 Letter to WCS re: SNM exemption request	ML043020621
November 2001 Letter to WCS re: SNM exemption request	ML030130085

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 30th day of June 2009.

For the Nuclear Regulatory Commission.

Patrice M. Bubar,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–16143 Filed 7–8–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting

Board Votes To Close July 15, 2009, Meeting

At its closed session meeting on June 23, 2009, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting to be held on July 15, 2009, in Washington, DC via teleconference. The Board determined that no earlier public notice was possible.

ITEMS CONSIDERED:

1. Financial Matters.
2. Strategic Issues.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—discussion of prior agenda items and Board Governance.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting is properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E9–16373 Filed 7–7–09; 4:15 pm]

BILLING CODE 7710–12– P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60188; File No. SR–Phlx–2009–48]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Cancellation Fee

June 29, 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 June 19, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to aggregate options orders within a specified time period for the purpose of assessing the Cancellation Fee. In addition, the Exchange purposes several technical amendments to delete obsolete language and further clarify the Fee Schedule.

While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective on July 1, 2009.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the manner in which the Cancellation Fee is assessed on members. In order to calculate the Cancellation Fee, the Exchange proposes to aggregate and count as one executed customer[3] option order all customer orders from the same member organization that are executed in the same series on the same side of the market at the same price within a 300 second period. The Exchange believes the level of cancelled orders remains high. Some customers are seeking to avoid the fee by executing large quantities of small orders in out-of-the-money options to offset their cancellation activity in more actively traded options. The Exchange believes this modification to the calculation of the Cancellation Fee is necessary for the Exchange to recover costs associated with system congestion.

Currently, the Exchange assesses a Cancellation Fee of $ 2.10 per order on member organizations for each cancelled electronically[4] delivered

[3] *See e.g.*, Exchange Rule 1080(b)(i)(A) which defines customer order as [sic] ''* * * is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.''

[4] The Exchange previously referred to the electronic order delivery, routing, execution and reporting system as AUTOM. This system provided for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. See Exchange Rule 1080. The Exchange filed a rule change which replaced the terms AUTOM and AUTO–X with the Phlx XL System, such that references to both terms refer to Phlx XL. *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). Therefore, in light of the rule change references to AUTOM have been replaced with the

Continued

customer order in excess of the number of customer orders executed on the Exchange by that member organization in a given month. The Exchange calculates the Cancellation Fee by aggregating all customer orders and cancels received by the Exchange and totaling those orders by member organization. At least 500 customer cancellations must be made in a given month by a member organization in order for a member organization to be assessed the Cancellation Fee. The Cancellation Fee is not assessed in a month in which fewer than 500 electronically delivered customer orders are cancelled. Simple cancels and cancel-replacement orders are the types of orders that are counted when calculating the number of electronically delivered orders.[5] The following order activity is exempt from the Cancellation Fee: (i) Pre-market cancellations;[6] (ii) Complex Orders[7] that are submitted electronically; (iii) unfilled Immediate-or-Cancel[8] customer orders; and (iv) cancelled customer orders that improved the Exchange's prevailing bid or offer (PBBO) market at the time the customer orders were received by the Exchange.

Additionally, the Exchange proposes to amend the Fee Schedule at endnote 5 to replace the current language: ''Firm Proprietary Options Transaction Charge applies to firm proprietary orders (''F'' account type) in all products'' to state instead that it applies to ''* * * equity option products.'' The language in the Fee Schedule was amended by a previous rule change[9] and was inadvertently omitted from the corresponding endnote. The Exchange also proposes to make a technical amendment to the Fee Schedule to replace all references to AUTOM with the words ''electronically delivered.'' As previously stated herein, the Exchange has modified Rule 1080 to replace the terms AUTOM and AUTO–X with the Phlx XL System, such that references to both terms refer to Phlx XL. Therefore, in light of the rule change the Exchange proposes to replace references to AUTOM with the words ''electronically delivered'' to correspond with Exchange Rule 1080.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposed amendments to the Cancellation Fee will continue to fairly allocate costs among members according to system use as well as ease system congestion. Additionally, the proposed technical amendments will clarify the Fee Schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and paragraph (f)(2) of Rule 19b–4[13] 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–Phlx–2009–48 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2009–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–48 and should be submitted on or before July 30, 2009.

words electronically delivered in describing the Cancellation Fee.

[5] A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such number. *See* Exchange Rule 1066(c)(7).

[6] *See* Securities Exchange Act Release Nos. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006)(SR–Phlx–2005–92); and 53670 (April 18, 2006), 71 FR 21087 (April 24, 2006) (SR–Phlx–2006–21). *See also* Securities Exchange Act Release No. 60046 (June 4, 2009), 74 FR 28083 (June 12, 2009) (SR–Phlx–2009–44).

[7] A Complex Order is composed of two or more option components and is priced as a single order (a ''Complex Order Strategy'') on a net debit or net credit basis.

[8] An Immediate-or-Cancel (IOC) order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed shall be cancelled.

[9] *See* Securities Exchange Act Release No. 59545 (March 9, 2009); 74 FR 11158 (March 16, 2009) (SR–Phlx–2009–20).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16172 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60210; File No. SR–Phlx–2009–53]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Relating to Fees Applicable to ''P'' and ''P/A'' Orders

July 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 29, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for a one-year period until July 31, 2010, a pilot program relating to transaction fees applicable to the execution of Principal Acting as Agent Orders (''P/A Orders'')[3] and Principal Orders (''P Orders'')[4] sent to the Exchange via the Intermarket Option Linkage (''Linkage'') under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Plan'').[5] The current pilot plan is scheduled to expire July 31, 2009.[6]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program for one year, through July 31, 2010. No substantive changes are being made to the pilot as it currently operates other than to extend the pilot through July 31, 2010.

Currently, the Exchange charges $0.45 per option contract for P Orders sent to the Exchange and $0.30 per option contract for P/A Orders.[7]

By extending the current pilot program, the Exchange should remain competitive with other exchanges that charge fees for P Orders and P/A Orders. Consistent with current practice, the Exchange will charge the clearing member organization of the sender of P Orders and P/A Orders. Also, consistent with current practice, the Exchange will not charge for the execution of Satisfaction Orders sent through Linkage.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4)[9] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities. The Exchange believes that its proposal to extend the pilot program relating to transaction fees for Linkage P and P/A Orders provides for the equitable allocation of reasonable dues, fees, and other charges among its members by charging the same fees to all such members using the Exchange's facilities for transaction services relating to Linkage P Orders, and by charging the same fees to all such members using the Exchange's facilities for transaction services relating to Linkage P/A Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A P/A order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent public customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1083(k)(i).

[4] A Principal Order is an order for the principal account of an Eligible Market Maker and is not a P/A Order. *See* Exchange Rule 1083(k)(ii).

[5] *See* Securities Exchange Act Release Nos. 44482 (July [sic] 27, 2001), 66 FR 35470 (July 5, 2001) (Amendment to Plan to Conform to the Requirements of Securities Exchange Act Rule 11Acl–7); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Notice [sic] of Phlx Joining the Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Plan).

[6] *See* Securities Exchange Act Release No. 58144 (July 11, 2008), 73 FR 41394 (July 18, 2008) (SR–Phlx–2008–49).

[7] In May 2009, the Exchange increased its transaction fees for P/A Orders from $0.15 per option contract to $0.30 per option contract, and for P Orders from $0.25 per option contract to $0.45 per contract. The fee increase was made part of the current pilot program, which is scheduled to expire July 31, 2009. *See* Securities Exchange Act Release No. 59891 (May 8, 2009), 74 FR 22990 (May 15, 2009) (SR–Phlx–2009–24).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–53 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2009–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–53 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16178 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60225; File No. SR–NYSEAmex–2009–35]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 960NY–Trading Differentials

July 1, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 29, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its option trading rules in order to extend the Penny Pilot in options classes in certain issues (''Pilot Program'') previously approved by the Securities and Exchange Commission (''Commission'') through October 31, 2009. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to extend the time period of the Pilot Program[4] which is currently scheduled to expire on July 3, 2009 through October 31, 2009. This filing does not propose any substantive changes to the Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

The Exchange agrees to submit a report to the Commission that includes data and written analysis of information collected from May 1, 2009 through August 31, 2009 which will be submitted by the close of September 2009. The report will analyze the impact of the Pilot Program on market quality and options systems capacity. This report will include, but is not limited to: (1) Data and written analysis on the number of quotations generated for options selected for the Pilot Program; (2) an assessment of the quotation spreads for the options selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the NYSE Amex's automated systems; (4) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them; and (5) an assessment of trade through complaints that were sent by the Exchange during the operation of the Pilot Program and how they were addressed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 34–55162 (January 24, 2007), 72 FR 4738 (February 1, 2007); Securities Exchange Act Release No. 34–56567 (September 27, 2007), 72 FR 56396 (October 7, 2007).

[5] 15 U.S.C. 78f(b).

objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Pilot Program offers market participants additional flexibility in their investment choices, which can help promote a fair, orderly and competitive market.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through October 31, 2009.[11] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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–NYSEAmex–2009–35 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–NYSEAmex–2009–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEAmex–2009–35 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16187 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[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)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60224; File No. SR–NYSEArca–2009–61]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.72 Trading Differentials

July 1, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 29, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its option trading rules in order to extend the Penny Pilot in options classes in certain issues (''Pilot Program'') previously approved by the Securities and Exchange Commission (''Commission'') through October 31, 2009. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to extend the time period of the Pilot Program [4] which is currently scheduled to expire on July 3, 2009 through October 31, 2009. This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

The Exchange agrees to submit a report to the Commission that includes data and written analysis of information collected from May 1, 2009 through August 31, 2009 which will be submitted by the close of September 2009. The report will analyze the impact of the Pilot Program on market quality and options systems capacity. This report will include, but is not limited to: (1) Data and written analysis on the number of quotations generated for options selected for the Pilot Program; (2) an assessment of the quotation spreads for the options selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the NYSE Arca's automated systems; (4) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them; and (5) an assessment of trade through complaints that were sent by the Exchange during the operation of the Pilot Program and how they were addressed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) [6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) [7] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Pilot Program offers market participants additional flexibility in their investment choices, which can help promote a fair, orderly and competitive market.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through October 31, 2009.[11] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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.

[4] *See* Securities Exchange Act Release No. 34–55156 (January 23, 2007), 72 FR 4759 (February 21, 2007); Securities Exchange Act Release No. 34–56568 (September 27, 2007), 72 FR 56422 (October 3, 2007).

[5] 15 U.S.C. 78f(b).

[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)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–61 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2009–61. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2009–61 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16186 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60223; File No. SR–CBOE–2009–043]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

July 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE rules relating to the Penny Pilot Program. 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, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The industry-wide Penny Pilot Program is scheduled to expire on July 3, 2009. CBOE is filing this proposed rule change to amend the Penny Pilot Program such that it will continue ''as is'' until October 31, 2009, in the option classes that have been selected to participate in the Penny Pilot Program. Extending the Pilot Program as proposed in this rule filing will allow further analysis of the Pilot Program.

Additionally, CBOE states that it intends to submit to the SEC a report analyzing the Penny Pilot Program for the period May 1, 2009 through July 31, 2009. CBOE's report should be submitted by the end of August 2009.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest, in that extending the Penny Pilot Program will allow for further analysis.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) [6] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) [8] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that extending the Penny Pilot Program until October 31, 2009, will allow further analysis of the Penny Pilot Program, and that waiving the 30 days will allow the Penny Pilot Program to continue uninterrupted.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through October 31, 2009.[10] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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–2009–043 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–2009–043. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2009–043 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16185 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60222; File No. SR–ISE–2009–37]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Penny Pilot Program

July 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend, until October 31, 2009, a pilot program to quote and to trade certain options in pennies. The text of the proposed rule amendment is available at the Exchange and at the Commission's Public Reference Room.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that as of July 1, 2009, the proposed rule change is also available on the Exchange's Web site at *https://www.ise.com.*

sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 24, 2007, the SEC approved ISE's rule filing, SR–ISE–2006–62, which initiated a pilot program to quote and to trade certain options in penny increments (the ''Penny Pilot Program'').[4] Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. The QQQQs are quoted in $0.01 increments for all options series. Through subsequent expansions, the Penny Pilot now consists of 63 underlying securities.[5] The Penny Pilot Program is scheduled to expire on July 3, 2009.

The Exchange recently submitted a proposal to extend and expand the Penny Pilot Program, which the Commission recently published for comment.[6] The Commission also recently published for comment two alternative proposals.[7] In order to give the Commission and market participants time to evaluate the varying proposals, ISE proposes to extend the Penny Pilot Program in its current pilot until October 31, 2009.

As proposed in the Initial Filing, ISE represents that options trading in penny increments will not be eligible for split pricing, as permitted under ISE Rule 716. In the Initial Filing, the Exchange also made references to quote mitigation strategies that are currently in place and proposed to apply them to the Penny Pilot Program. The Exchange proposes to continue applying those quote mitigation strategies during the extension of the Penny Pilot Program, as contemplated by this rule filing. Specifically, as proposed in Rule 804, ISE will continue to utilize a holdback timer that delays quotation updates for up to, but not longer than, one second. The Exchange's monitoring and delisting policies, as proposed in the Initial Filing, shall also continue to apply.

Finally, ISE intends to submit an additional report to the Commission analyzing the Penny Pilot Program for the following time period: May 1, 2009–July 31, 2009.

The Exchange anticipates its report will analyze the impact of penny pricing on market quality and options system capacity. The Exchange will submit the report no later than August 31, 2009.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to continue the Penny Pilot Program uninterrupted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow the Penny Pilot Program to continue uninterrupted.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through October 31, 2009.[12] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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

[4] *See* Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (the ''Initial Filing''). The Penny Pilot Program was subsequently extended for an additional two month period, until September 27, 2007. *See* Securities Exchange Act Release No. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007).

[5] *See* Securities Exchange Act Release Nos. 56564 (September 27, 2007), 72 FR 56412 (October 3, 2007) and 57508 (March 17, 2008), 73 FR 15243 (March 21, 2008).

[6] *See* Securities Exchange Act Release No. 60146 (June 19, 2009) (SR–ISE–2009–32).

[7] *See* Securities Exchange Act Release Nos. 60018 (June 1, 2009), 74 FR 27211 (June 18, 2009) (Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange To Expand the Penny Pilot Program); 59944 (May 20, 2009), 74 FR 25294 (May 27, 2009) (Notice of Filing of Proposed Rule Change by NYSE Arca To Expand the Penny Pilot Program).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–37 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–ISE–2009–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2009–37 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16184 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60221; File No. SR–BX–2009–033]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the BOX Fee Schedule To Remove Three Classes From the Liquidity Make or Take Pricing Structure

July 1, 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 June 26, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ OMX BX, Inc. (the ''Exchange'') proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC (''BOX''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Liquidity Make or Take Pricing Structure on BOX, as described in Section 7 of the BOX Fee Schedule, currently applies to all classes participating in the Penny Pilot, as referenced in Chapter V, Section 33 of the BOX Rules. The Exchange proposes to remove the following three (3) classes from the Liquidity Make or Take Pricing Structure: (1) Standard & Poor's Depositary Receipts® (SPY); (2) Powershares® QQQ Trust Series 1 (QQQQ); and (3) iShares Russell 2000® Index Fund (IWM).

The Exchange also proposes to remove references and pricing from the Fee Schedule pertaining to 'Tier 2' Penny Pilot Classes, as these three (3) classes currently make up the entirety of Tier 2. However, the Exchange is leaving references to 'Tier 1' Penny Pilot classes in the BOX Fee Schedule should it choose to designate classes as other than Tier 1 in the future.

The Exchange believes that this proposed fee change will align its pricing so as to better compete with other exchanges in these classes. If approved,[3] the Liquidity Make or Take Pricing Structure will no longer apply to the three (3) classes listed above and instead standard execution fees will be applied.

The Exchange is proposing that these changes become effective on July 1, 2009. In conjunction with this proposal, the Exchange proposes to issue a Regulatory Circular explicitly listing the classes being removed from the Liquidity Make or Take Pricing Structure and the resulting changes to the fees for transactions in these classes.

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, the proposed rule change will apply fees

[3] The Commission notes that this proposed rule change was submitted pursuant to Section 19(b)(3)(A)(ii) of the Act and was, therefore, effective upon filing. The Commission does not approve proposed rule changes submitted pursuant to this section of the Act.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

more appropriate for the level of liquidity in the specific classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [6] and Rule 19b–4(f)(2) thereunder,[7] because it establishes or changes a due, fee, or other charge applicable only to a member.

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–2009–033 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–2009–033. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–033 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16183 Filed 7–8–09; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60214; File No. SR–BATS–2009–021]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

July 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2009, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to use of the Exchange. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on July 1, 2009.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective July 1, 2009, in order to change the fee charged by the Exchange for its ''CYCLE'' and ''RECYCLE'' routing strategies from $0.0025 per share to $0.0026 per share. To be consistent with this change, the Exchange proposes to charge 0.26%, rather than 0.25%, of the total dollar value of the execution for any security (all Tapes) priced under $1.00 per share

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

that is routed away from the Exchange through CYCLE or RECYCLE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder,[8] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

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.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BATS–2009–021 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–BATS–2009–021. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2009–021 and should be submitted on or before July 30, 2009.

[9] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16182 Filed 7–8–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60213; File No. SR–BX–2009–032]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program on the Boston Options Exchange Facility

July 1, 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 June 25, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Section 33 (Penny Pilot Program) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to extend, through October 31, 2009, the pilot program that permits certain classes to be quoted in penny increments on BOX (''Penny Pilot Program''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to extend the effective date of the Penny Pilot Program on BOX for approximately four additional months, through October 31, 2009.[5] The Penny Pilot Program permits certain classes to be quoted in penny increments on BOX. The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, will continue to be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs will continue to be quoted in $0.01 increments for all options series. The Exchange is not currently proposing any changes to the classes included within the Penny Pilot Program.

BOX will deliver a report (''Penny Pilot Report'') to the Commission which will be composed of data from approximately three months of trading, from May 1, 2009 through July 31, 2009. This Penny Pilot Report will be delivered to the Commission during the month of August 2009. The Penny Pilot Report will analyze the impact of penny pricing on market quality and options system capacity.[6]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed 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 for a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposed extension will allow the Penny Pilot Program to remain in effect on BOX without interruption.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will permit the Exchange to immediately implement the proposed rule change without interruption of the Penny Pilot Program and allow BOX to remain competitive with other exchanges.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through October 31, 2009.[13] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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–2009–032 on the subject line.

[5] The Penny Pilot Program has been in effect on BOX since January 26, 2007. *See* Securities Exchange Act Release No. 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007) (SR–BSE–2006–49). The Penny Pilot Program was later extended through September 27, 2007. *See* Securities Exchange Act Release No. 56149 (July 26, 2007), 72 FR 42450 (August 2, 2007) (SR–BSE–2007–38). A subsequent rule filing by the Exchange on September 27, 2007 initiated a two-phased expansion of the Penny Pilot Program. *See* Securities Exchange Act Release No. 56566 (September 27, 2007), 72 FR 56400 (October 3, 2007) (SR–BSE–2007–40). *See also* Securities Exchange Act Release No. 57566 (March 26, 2008), 73 FR 18013 (April 2, 2008) (SR–BSE–2008–20). The Penny Pilot Program was later extended and is currently set to expire on July 3, 2009. *See* Securities Exchange Act Release No. 59629 (March 26, 2009), 74 FR 15021 (April 2, 2009) (SR–BX–2009–017). The extension of the effective date is the only change to the Penny Pilot Program being proposed at this time.

[6] BOX has previously delivered several Penny Pilot Reports to the Commission composed of data from preceding time periods during which the Penny Pilot Program has been in effect on BOX.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

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–2009–032. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2009–032 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16181 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60212; File No. SR–NASDAQ–2009–061]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Penny Pilot Program

July 1, 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 June 25, 2009, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing a proposal for the NASDAQ Options Market (''NOM'' or ''Exchange'') to amend Chapter VI, Section 5 to extend until October 31, 2009, a pilot program to quote and to trade certain options in pennies.

The text of the proposed rule change is available on Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Exchange's pilot program in Chapter VI, Section 5 that allows quoting and trading certain options in penny increments (the ''Penny Pilot Program'' or ''Pilot'').

Pursuant to the Exchange's Penny Pilot Program that has been operational since 2008, as many as sixty-three options are quoted in increments of $0.01.[3] The purpose of the proposed rule change is to extend the Pilot through October 31, 2009.

Prior to the Penny Pilot Program, options were being quoted in nickel and dime increments. For options that are not in the Pilot, the minimum price variation for quotations in options series that are priced (trading) at less than $3 per contract is $0.05 and the minimum price variation for quotations in options series that are priced at $3 per contract or greater is $0.10.

Under the Penny Pilot Program, market participants are able to quote in penny increments in certain series of option classes. The minimum price variation for all classes included in the Pilot, except for the QQQQs, is $0.01 for option series that are priced at less than $3 per contract and $0.05 for series that are priced at $3 per contract or greater. The QQQQs are quoted in $0.01 increments for all options series.

During the extended Penny Pilot Program, the Exchange will submit a report addressing the impact of the Pilot on the quality of the Exchange's markets and option quote traffic and capacity by August 31, 2009, covering the period from May 1, 2009, through July 31, 2009.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by extending the Penny Pilot Program to the benefit of market participants and the public.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness). The Pilot was subsequently extended through July 3, 2009. *See* Securities Exchange Act Release No. 59632 (March 26, 2009), 74 FR 14829 (April 1, 2009) (SR–NASDAQ–2009–030) (notice of filing and immediate effectiveness).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) [6] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) [8] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change is consistent with the protection of investors and the public interest in that it would provide the ability to continue trading products on the Exchange that are traded or available on other option exchanges.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through October 31, 2009.[10] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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–NASDAQ–2009–061 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–NASDAQ–2009–061. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2009–061 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16180 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60211; File No. SR–Phlx–009–51]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Penny Pilot Program

July 1, 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 June 26, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot (the ''pilot'') that permits certain options series to be quoted and traded in increments of $0.01. The Exchange proposes to extend the pilot through October 31, 2009.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to continue to permit specified options series to be quoted and traded in increments of $0.01 by extending the pilot through October 31, 2009.

The pilot began on January 26, 2007.[3] All series in options included in the pilot (''pilot options'') trading at a price of less than $3.00 are currently quoted and traded in minimum increments of $0.01, and pilot options with a price of $3.00 or higher are currently quoted and traded in minimum increments of $0.05, except that options overlying the PowerShares QQQQ Trust (''QQQQ'') are quoted and traded in minimum increments of $0.01 for all series regardless of the price. A list of all pilot options was communicated to membership via Exchange circular.[4]

Report to the Commission

Throughout the pilot, the Exchange has prepared and submitted periodic analytical reports (''reports'') to the Commission that address the impact of the pilot on the quality of the Exchange's markets and option quote traffic and capacity. The Exchange will submit another such report not later than the last business day of August, 2009, covering the period from May 1, 2009 through July 31, 2009, and will submit further reports as requested by the Commission as the pilot continues. The Exchange will amend its rules accordingly.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by ensuring the orderly continuity of the pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing to ensure continuity of the pilot, which is scheduled to expire July 3, 2009.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot to continue without interruption through October 31, 2009.[11] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–51 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2009–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[3] *See* Securities Exchange Act Release No. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74). In that filing, the Exchange also made conforming amendments to various Exchange rules in order to be consistent with the pilot. These conforming changes were also approved on a pilot basis. The pilot was subsequently extended through July 3, 2009. *See* Securities Exchange Act Release No. 59631 (March 26, 2009), 74 FR 15022 (April 2, 2009) (SR–Phlx–2009–25).

[4] Any additions to or deletions from the list will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

[5] 15 U.S.C. 78f(b).

[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)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2009–51 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16179 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60233; File No. SR–ISE–2009–44]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Amounts That Direct Edge ECN, in Its Capacity as an Introducing Broker for Non-ISE Members, Passes Through to Such Non-ISE Members

July 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2009, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the amounts that Direct Edge ECN (''DECN''), in its capacity as an introducing broker for non-ISE Members, passes through to such non-ISE Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA. On June 30, 2009, the ISE filed for immediate effectiveness a proposed rule change to amend DECN's fee schedule for ISE Members[3] to: (1) Reinstate the Super Tier Rebates that apply to ISE Members whose transactions meet certain volume thresholds;[4] (2) adopt new Ultra Tier Rebates that apply to ISE Members whose transactions meet certain other volume thresholds;[5] (3) adopt a new fee of $0.0015 per share for securities priced at or above $1.00 any time the ROUQ or ROUC routing strategy is used on either EDGX or EDGA and this routing strategy results in an execution by an Enhanced Liquidity Provider;[6] and (4) make certain other clean-up changes.[7] The fee changes made pursuant to SR–ISE–2009–43 became operative on July 1, 2009.

In its capacity as a member of ISE, DECN currently serves as an introducing broker for the non-ISE Member subscribers of DECN to access EDGX and EDGA. DECN, as an ISE Member and introducing broker, receives rebates and is assessed charges from DECN for transactions it executes on EDGX or EDGA in its capacity as introducing broker for non-ISE Members. Since the amounts of such rebates and charges were changed pursuant to SR–ISE–2009–43, DECN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive and are charged will be the same as the amounts that ISE Members receive and are charged.

ISE is seeking accelerated approval of this proposed rule change, as well as a retroactive effective date of July 1, 2009. ISE represents that this proposal will ensure that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will in effect receive and be charged equivalent amounts and that the imposition of such

[3] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[4] In SR–ISE–2009–43, the Exchange amended the DECNs' fee schedule to include a per share rebate in securities reported to Tape A and Tape C of $0.003 for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the ISE Member satisfies any of the following three criteria on a daily basis, measured monthly: (i) Adding 40,000,000 shares or more on either EDGX, EDGA or EDGX and EDGA combined; (ii) adding 20,000,000 shares or more on either EDGX, EDGA or EDGX and EDGA combined and routing 20,000,000 shares or more through EDGA; or (iii) adding 10,000,000 shares or more of liquidity to EDGX, so long as added liquidity on EDGX is at least 5,000,000 shares greater than the previous calendar month.

[5] In SR–ISE–2009–43, the Exchange adopted Ultra Tier Rebates that provide ISE Members a $0.0032 rebate per share for securities priced at or above $1.00 when ISE Members add liquidity on EDGX if the attributed MPID satisfies one of the following criteria on a daily basis, measured monthly: (i) Adding 100,000,000 shares or more on EDGX; or (ii) adding 50,000,000 shares or more of liquidity to EDGX, so long as added liquidity on EDGX is at least 20,000,000 shares greater than the previous calendar month. The liquidity required to qualify for criteria (i) above shall be adjusted in the event that Total Consolidated Volume (''TCV''), defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tape A, B and C securities, falls below an average of 10,000,000,000 shares per day (''Target TCV'') in the relevant calendar month. In such circumstances, the adjusted amount of liquidity required to qualify under criteria (i) above shall be the percentage that actual reported TCV represents of Target TCV, multiplied by 100,000,000.

[6] *See* SR–ISE–2009–43.

[7] *Id.*

amounts will begin on the same July 1, 2009 start date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposal will ensure that dues, fees and other charges imposed on ISE Members are equitably allocated to both ISE Members and non-ISE Members (by virtue of the pass-through described above).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2009–44 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2009–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–44 and should be submitted on or before July 30, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)[11] of the Act, which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.

As described more fully above, ISE recently amended DECN's fee schedule for ISE Members to, among other things, reinstate volume thresholds applicable to the Super Tier Rebates, adopt a new Ultra Tier Rebate, and adopt a new fee in connection with the use of the ROUQ and ROUC routing strategies.[12] The fee changes made pursuant to the Member Fee Filing became operative on July 1, 2009. DECN receives rebates and is charged fees for transactions it executes on EGDX or EDGA in its capacity as an introducing broker for its non-ISE member subscribers.

The current proposal, which will apply retroactively to July 1, 2009, will allow DECN to pass through the revised rebates and fees to the non-ISE member subscribers for which it acts an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide rebates and charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.[13]

ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register**. As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the revised rebate and fees established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebates and fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised rebates and fees retroactively to July 1, 2009, the revised rebates and fees will have the same effective date, thereby promoting consistency in the DECN's fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ISE–2009–44) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16189 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

[11] 15 U.S.C. 78f(b)(4).

[12] *See* File No. SR–ISE–2009–43 (the ''Member Fee Filing'').

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60226; File No. SR–NYSEAmex–2009–33]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Amending the Linkage Fees Portion of the Schedule of Fees and Charges for Exchange Services

July 1, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 26, 2009, the NYSE Amex LLC (''NYSE Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to [sic] the Linkage Fees portion of the Schedule of Fees and Charges for Exchange Services (''Schedule''). The Exchange intends for these changes to become operative on July 1, 2009 in conjunction with changes to the equivalent transaction fees. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the existing Schedule in order to revise the Linkage Fees portion of the Schedule, so as to match the fee changes the Exchange has proposed in a separate filing concerning certain Broker Dealer and Firm executions.

Executions on NYSE Amex resulting from orders sent via the InterMarket Linkage System (''Linkage Orders'') are presently subject to the same billing treatment as other Broker Dealer and Firm orders. In a separate filing, the Exchange proposed to charge $0.15 for electronic Broker Dealer and Firm transactions. By this filing, the Exchange proposes to match the Linkage Fees to the electronic Broker Dealer and Firm charges and now charge $0.15 per contract for electronically executed Linkage orders. The Exchange intends to implement this new Linkage fee in conjunction with the implementation of the new transaction fees on July 1, 2009.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[4] in general, and Section 6(b)(5) [sic], in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities for the purpose of executing Linkage orders that are routed to the Exchange from other market centers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–33 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–NYSEAmex–2009–33. 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 am and 3 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–33 and should be submitted on or before July 30, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78f.

a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires that the rules of an exchange to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register.** The proposal seeks to conform Linkage Fees with the fees charged on other Broker Dealer and Firm executions. The Exchange plans to implement this new Linkage Fee in conjunction with the implementation of the new transactions fees on July 1, 2009.[7] The reduction of transactions fees charged on Linkage Orders to conform with the fees charged on other Broker Dealer and Firm executions does not appear to present any new or significant regulatory concerns. Therefore, the Commission believes that accelerating approval of this proposal would allow the Exchange to implement this new lower Linkage Fee in conjunction with the implementation of the new transactions fees on July 1, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSEAmex-2009–33) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16188 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[5] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* SR–NYSEAmex–2009–38

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60209; File No. SR–Phlx–2009–55]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Related to a Specialist Fee Credit for Linkage Orders

July 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 29, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for a one-year period until July 31, 2010, its current pilot programs relating to: (1) An option transaction charge credit of $0.21 per contract for Exchange options specialist units[3] that incur Phlx option transaction charges when a customer order is delivered electronically via Phlx XL[4] or via the Exchange's Options Floor Broker Management Systems (''FBMS''),[5] and is then executed via the Intermarket Option Linkage (''Linkage'')[6] as a Principal Acting as Agent Order (''P/A Order''); and (2) the Floor Broker Linkage P/A fee and Options Specialist Unit Credit, which charges floor brokers an amount equal to the transaction fee(s) assessed on options specialist units by another exchange in connection with customer orders that are delivered to the limit order book via FBMS and executed via Linkage as P/A Orders. The Exchange then provides to options specialist units a credit in an amount equal to the transaction fee(s) assessed on them by another exchange in connection with executing customer orders that are delivered to the limit order book via FBMS and executed via Linkage as P/A Orders.

While changes to the fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated the changes to be in effect for transactions settling on or after July 31, 2009.[7]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently provides for an option transaction charge credit of $0.21 per contract for Exchange options specialist units that incur Phlx option transaction charges when a customer order is delivered electronically via Phlx XL or via FBMS and then is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange uses the terms ''specialists'' and ''specialist units'' interchangeably herein.

[4] *See* Exchange Rule 1080.

[5] FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Exchange Rule 1080, Commentary .06.

[6] Linkage is governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Plan'') approved by the Commission. The registered U.S. options markets are linked together on a real-time basis through a network capable of transporting orders and messages to and from each market.

[7] This proposal is scheduled to be in effect for the same time period as a pilot program relating to fees for Linkage Principal Orders and P/A Orders. *See* Securities Exchange Act Release No. 58144 (July 11, 2008), 73 FR 41394 (July 18, 2008) (SR–Phlx–2008–49). *See also,* SR–Phlx–2009–53 filed June 29, 2009.

executed via Linkage as a P/A Order. In addition, the Exchange charges floor brokers an amount equal to the transaction fee(s) assessed on options specialist units by another exchange in connection with customer orders that are delivered to the limit order book via FBMS and executed via Linkage as P/A Orders. Options specialist units are then credited an amount equal to the transaction fee(s) assessed on them by another exchange in connection with executing customer orders that are delivered to the limit order book via FBMS and executed via Linkage as a P/A Order.

The purpose of extending the current pilot programs discussed above is to encourage the use of Linkage, remain competitive with other exchanges with respect to the assessment of Linkage-related fees and to help alleviate the potential economic burden of multiple transaction charges imposed on Exchange specialist units in connection with routing these types of Linkage orders. Additionally, the purpose of assessing a fee on floor brokers who send customer orders that are delivered to the limit order book via FBMS and executed via Linkage as P/A Orders is to more equitably assess the applicable transaction fee(s) on the member originally entering the order to be executed. Floor brokers may choose to route these orders through other systems and not place these orders on the limit order book.

The above-referenced pilot programs are currently scheduled to expire on July 31, 2009.[8] This proposal would extend the pilot programs for another year, through July 31, 2010.

2. Statutory Basis

The Exchange believes 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)[10] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities. The Exchange believes that these pilot programs, in part, help alleviate the undue financial burden of multiple transaction charges that are incurred by specialist units in connection with P/A orders executed via Linkage. By assessing a fee on floor brokers and giving a corresponding credit to specialist units allows for the transaction fee(s) to be assessed on the member who submits the order and for the credit to be given to the specialist unit that routed the order to another exchange in order to obtain the National Best Bid or Offer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either 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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–55 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2009–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–55 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16177 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* Securities Exchange Act Release No. 58234 (July 25, 2008), 73 FR 45263 (August 4, 2008) (SR–Phlx–2008–55).

[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)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60200; File No. SR–NYSEArca–2009–57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.9—Exercise Limits

June 30, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 24, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.9—Exercise Limits. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing to revise Rule 6.9—Execise [sic] Limits, to clarify that exercise limits applicable to a particular class of options shall be determined in accordance with the position limits established pursuant to Rule 6.8.

Rule 6.9(a) states that except with the prior approval of the Exchange, no OTP Holder or OTP Firm shall exercise a long position in any option contract if as a result thereof such OTP Holder or OTP Firm has or will have exercised within any five (5) consecutive business days aggregate long positions in that particular class of options in excess of such number of option contracts as shall be fixed from time to time by the Exchange as the exercise limit for that particular class of options.

Commentary .01 to Rule 6.9 goes on to list certain tiers for exercise limits, starting at 25,000 contracts and going up to 250,000 contracts. These exercise limits are equivalent to applicable position limits for a particular options class as prescribed by Rule 6.8.06(a)–(e). Commentary .01 goes on to say that whether an exercise limit is 25,000 or 50,000 or 75,000 or 200,000 or 250,000 shall be determined in the manner described in Rule 6.8.06. Rule 6.8.06, specifically subsections (f)–(g), also contains position limits, for certain specific products, that differ from the tiers cited in Rule 6.9.01. In addition, Rule 6.8.07–.09 contains provisions that exempt certain positions from standard position limits.

Because Rule 6.8.06 prescribes additional position limits that are not cited in Rule 6.9.01, plus the fact that Rule 6.8 contains Commentary other than .06, which includes additional criteria for determining position limits other than what is already cited in Rule 6.9.01, the Exchange now proposes to adopt new rule text to Rule 6.9.01 that explicitly states the exercise limits pursuant to Rule 6.9(a) shall be equivalent to the corresponding position limit, for the same particular class of options, as determined by Rule 6.8. and Commentary thereto.

The purpose of this rule change is to offer clarity to the existing rules governing exercise limits. It does not in any way attempt to alter the method in which the Exchange calculates position or exercise limits. NYSE Arca notes that over the years, it has at times, revised Rule 6.8 to increase position limits, as well as the sizes and scopes of available hedge exemptions to the applicable position limits.[4] While it has always been the intent to determine exercise limits based on the applicable position limits, Rule 6.9.01 has not necessarily been revised to reflect the various changes made to Rule 6.8. The rule simply serves to make it perfectly clear that the exercise limits for a particular class of options shall be equivalent to the corresponding position limit for the same particular class of options as determined by Rule 6.8 and any Commentary thereto.

In addition, rule changes contained in this proposal are consistent with similar rules of NYSE Amex LLC (''NYSE Amex''), [5] and NASDAQ OMX PHLX (''PHLX''), [6] governing the exercise of options contracts.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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. This rule change simply serves to offer clarity to an already existing rule. In addition, adopting similar rules to those that are in place at other options exchanges will help to alleviate any confusion on the part of market participants, when exercising option contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 57358 (February 20, 2008), 73 FR 11173 (February 29, 2008) (notice of filing and immediate effectiveness of NYSEArca–2008–17); *See* Securities Exchange Act Release No. 55347 (February 26, 2007), 72 FR 9823 (March 5, 2007) (notice of filing and immediate effectiveness of NYSEArca–2007–19); *See* Securities Exchange Act Release No. 54385 (August 30, 2006), 71 FR 53150 (September 8, 2006), (notice of filing and immediate effectiveness of NYSEArca–2006–49); *See* Securities Exchange Act Release No. 51286 (March 1, 2005), 70 FR 11297 (approval notice for PCX–2003–55); *See* Securities Release Act No. 45737 (April 11, 2005), [sic] 67 FR 18975 (approval order for PCX–2000–45).

[5] *See* NYSE Amex Rule 905(a)—Exercise Limits.

[6] *See* PHLX Rule 1002.—Exercise Limits.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–57 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2009–57. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–57 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16173 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60204; File No. SR–BATS–2009–020]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.9, Entitled ''Orders and Modifiers,'' and BATS Rule 11.12, Entitled ''Priority of Orders''

July 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2009, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.9, entitled ''Orders and Modifiers,'' and BATS Rule 11.12, entitled ''Priority of Orders,'' to permit Users to use a ''Replace Message'' to modify certain types of information originally submitted with an order without modifying the priority of such order.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit Users of the Exchange to change additional terms of an order through the use of a Replace Message. Currently, Rule 11.9(e)(3) states that the only terms of an order that may be changed through use of a Replace Message are the price and quantity terms of an order, including changing a limit order to a market order. Also, current Rule 11.12(a)(3) states that a decrease to the size of an order is the only change that a User can make that will not result in a loss of priority for an order compared to other orders in the BATS Book. The Exchange believes that Users should also be permitted to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

modify an order through a Replace Message in order to reflect a change from a long sale to a short sale and vice-versa. Under the proposed rule, Users will be permitted to use a Replace Message to modify the sale indicator associated with an order without canceling and resubmitting the order, and, with the proposed change to Rule 11.12(a)(3), without losing priority on the BATS Book. The Exchange does not currently associate the priority of an order with whether an order to sell is a long sale or a short sale, and therefore, does not believe that an update to an order to change the status from long to short or short to long should affect priority. The Exchange notes that it is not at this time proposing a rule change to require Users to update the position indicator associated with a sale order they have submitted, but rather, is amending its rule to make such updates permissible through use of a Replace Message.[5]

In addition to the proposed change discussed above, in the interest of developing rule text that is easier to understand, the Exchange has proposed modifying the language that permits use of a Replace Message to change a limit order to a market order.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by modifying its system specifications to permit Users to update the position indicated for a sale (long or short), to the extent such position changes while their order is resting on the Exchange's order book.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. BATS believes that the proposal will benefit the protection of investors and the public interest by permitting Users to elect to update the sale indicator associated with an order that has already been submitted to the Exchange. BATS expects to have technological changes in place to support the proposed rule change on July 2, 2009, and believes that benefits to Exchange Members expected from the proposed rule change should not be delayed.[12] Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the 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 No. SR–BATS–2009–020 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 No. SR–BATS–2009–020. 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 BATS. 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.

[5] The proposed rule does not affect Users' obligations contained in Regulation SHO under the Act, and Users must continue to comply with such obligations, including the order marking and locate requirements.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *Id.*

[12] *See* SR–BATS–2009–020, Item 7.

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

SR–BATS–2009–020 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16174 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60205; File No. SR–NYSEArca–2009–60]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services

July 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 29, 2009, the NYSE Arca Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services in order to extend until December 31, 2009 the current pilot program regarding transaction fees charged for trades executed through the intermarket options linkage (''Linkage''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room and *www.nyse.com.*

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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend the pilot program establishing an NYSE Arca fee for Principal (''P'') Orders and Principal Acting as Agent (''P/A'') Orders executed through Linkage. The fee currently is effective for a pilot program set to expire on July 31, 2009, and this filing would extend the fee through December 31, 2009. The fee that NYSE Arca charges for P and P/A orders is the basic execution fee for trading on NYSE Arca. This is the same fee that all NYSE Arca Option Trading Permit Holders pay for non-customer transactions executed on the Exchange. The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders. The Exchange is making no substantive changes to the operation of the pilot program, other than extending the pilot program through December 31, 2009.

The Exchange also proposes to revise the Linkage Fees portion of the Schedule, so as to delete the fee for manually executed orders. The Exchange does not manually execute orders via Linkage. All Linkage orders are executed electronically. Deleting this reference from the Schedule will more accurately reflect the way Linkage orders are executed.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [3], in general, and with Section 6(b)(4) [4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities for the purpose of executing P and P/A orders through Linkage.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(6) thereunder.[6]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–60 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.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR–NYSEArca–2009–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–60 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16175 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60208; File No. SR–ISE–2009–39]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PrecISE Fees

July 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend the fees for its PrecISE Trade® order entry terminals. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*—The purpose of this proposed rule change is to amend the ISE's fee schedule for its proprietary PrecISE Trade® order entry terminals. ''PrecISE'' is the Exchange's internally-developed proprietary order-routing terminal used by Electronic Access Members (''EAM'') to send order flow to ISE. ISE currently charges a monthly fee of $300 per user per month for the first 10 users; for all subsequent users, ISE charges $50 per user per month.[3] ISE recently upgraded PrecISE, enhancing it with certain new functionalities that, among other things, provide users with ''Greek'' calculations and the use of Attributable Orders.[4] Certain other user-requested enhancements have also been built into the new version. In order for ISE to cover the costs of building out the enhanced version, we propose to increase the fee for the first 10 users to $350 per month and for all subsequent users, $100 per month.

ISE also proposes to change the method for calculating this fee. Currently, EAMs are billed based on the number of maximum concurrent logins. For example, if an EAM uses five logins over the course of a month but only three logins were used simultaneously at any point during the month, that member is charged for just those three logins. The Exchange now proposes to charge EAMs for the total number of logins used during the month. Using the same example, EAMs will now be charged for all five logins that they used over the course of the month. This proposed fee change will be operative on July 1, 2009.

(2) *Basis*—The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') [sic] for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, these fees will enable the Exchange to cover its costs for providing an enhanced version of its front-end trading system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) [sic] of the Act[5] and Rule 19b–4(f)(2)[6] thereunder. At any time within 60 days of the filing of such proposed rule

[3] *See* Securities Exchange Act Release No. 55960 (June 26, 2007), 72 FR 36531 (July 3, 2007) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PrecISE Fees).

[4] Attributable Order is a market or limit order in which an EAM can choose to disclose their member ID. *See* Securities Exchange Act Release No. 58701 (October 1, 2008), 73 FR 59007 (October 8, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a New Order Type) (SR–ISE–2008–74).

[5] 15 U.S.C. 78s(b)(3)(A). [sic]

[6] 17 CFR 19b–4(f)(2). [sic]

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–ISE–2009–39 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–ISE–2009–39. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–39 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16176 Filed 7–8–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of the Results of the 2008 Annual Product Reviews

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces: (1) The disposition of the product petitions accepted for review in the 2008 GSP Annual Product Review; (2) the results of the 2008 Competitive Need Limitations (CNL) Waiver Review; (3) the results of the 2008 Competitive Need Limitation Waiver Revocation Review; (4) the addition of a product to the list of products that were not produced in the United States on January 1, 1995; (5) the results of the 2008 *De Minimis* Waiver and Redesignation Reviews; and (6) the continuation of the 2008 Country Practices Review.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 1724 F Street, NW., Room F–601, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the e-mail address is *Tameka_Cooper@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of designated articles when imported from beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*), as amended (the ''Trade Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In the 2008 Annual Product Review, the Trade Policy Staff Committee reviewed petitions to change product coverage of the GSP. The results of the 2008 GSP Annual Review, comprising nine lists, are available for public viewing at *http://www.regulations.gov* in docket USTR–2008–0045. The listed results of the 2008 GSP Annual Review are also available at: *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-reviews.*

The disposition of the petitions considered in the 2008 GSP Annual Review is described in: List I (Decisions on Petitions to Add Products to the List of Eligible Products for the Generalized System of Preferences); List II (Decisions on Petitions to Remove Duty-Free Status from a Beneficiary Developing Country for a Product on the List of Eligible Articles for the Generalized System of Preferences); and List III (Decisions on Petitions to Grant a Waiver to the Competitive Need Limitations).

Certain articles for which a waiver of the application of Section 503(c)(2)(A) of the 1974 Act was issued at least five years ago, but which are revoked pursuant to Section 503(d)(5) are listed in List IV (Decisions on Competitive Need Limit Waiver Revocations).

Certain articles for which it has been determined that a like or directly competitive product was not produced in the United States on January 1, 1995, for the purposes of section 503(c)(2)(E), are listed in List V (Addition to List of Products ''Not Produced in the United States'', Pursuant to Section 503(c)(2)(E)).

In the 2008 Product Review, the Trade Policy Staff Committee evaluated the 2008 value of U.S. imports of each GSP-eligible article to determine whether an article from a GSP beneficiary developing country exceeded the GSP CNLs. *De minimis* waivers were granted to certain articles that exceeded the 50-percent import-share CNL, but for which the aggregate value of all U.S. imports of that article was below the 2008 *de minimis* level of $19 million. List VI (Decisions on Products Eligible for *De Minimis* Waivers) provides the list of the articles and the associated countries granted *de minimis* waivers. No eligible products were redesignated to GSP eligibility. List VII (Decisions on Products Eligible for GSP Redesignation) provides the list of the articles and the associated countries reviewed for redesignation.

Articles that exceeded one of the GSP CNLs in 2008, and that are newly excluded from GSP eligibility when imported from a specific beneficiary country, are listed in List VIII (Products Newly Subject to CNL Exclusion).

The Trade Policy Staff Committee has determined to continue the review of GSP eligibility of certain beneficiary developing countries. The beneficiaries

that will continue to be under review for GSP eligibility include: Lebanon, Russia and Uzbekistan regarding intellectual property rights, and Bangladesh, Niger, the Philippines and Uzbekistan regarding worker rights. The disposition of petitions (*see* List IX, Petitions for Review of Country Practices) considered in the 2008 Country Practices Review and a decision whether to accept petitions submitted concerning Iraq and Sri Lanka will be announced in a later **Federal Register** notice.

Marideth J. Sandler,

Executive Director, GSP Program; Chairman, GSP Subcommittee.

[FR Doc. E9–16083 Filed 7–8–09; 8:45 am]

BILLING CODE 3190–W9–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council Public Meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to assess its priorities for the coming year, and to discuss other issues of importance to the Marine Transportation System. A public comment period is scheduled for 11 a.m.–11:30 a.m. on Friday, July 24, 2009. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Richard J. Lolich by July 17, 2009. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by August 4, 2009.

DATES: The meeting will be held on Thursday, July 23, 2009, from 9 a.m. to 5 p.m. and Friday, July 24, 2009, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Media Center at the U.S. Department of Transportation Headquarters, 1200 New Jersey Ave., SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, (202) 366–0704; Maritime Administration, MAR–540, Room W21–310, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; *richard.lolich@dot.gov.*

Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B.

Dated: July 1, 2009.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–16253 Filed 7–8–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

ACTION: Notice.

SUMMARY: By **Federal Register** notice (See 74 FR 16442; April 10, 2009) the National Park Service (NPS) and the Federal Aviation Administration (FAA) invited interested persons to apply to fill six upcoming openings on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). The notice invited interested persons to apply to fill six vacancies representing commercial air tour operators (2), general aviation (1), Native American tribal (1), and environmental (2) concerns due to the incumbent members' completion of three-year term appointments on October 9, 2009. This notice informs the public of the persons selected to fill four of the six vacancies on the NPOAG ARC. Vacancies filled include the two commercial tour operator openings, the general aviation opening, and one of the environmental openings. Since the previous notice did not draw enough responses from individuals for the Native American tribal opening or the remaining environmental vacancy, NPS and FAA are also using this notice to invite other interested individuals to apply for these two remaining openings. If you responded to the initial notice, for either the Native American tribal or environmental openings, you will still be under consideration and need not re-apply.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, 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_Trevin@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of 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.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The current NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests.

Current members of the NPOAG ARC are as follows:

Heidi Williams representing general aviation; Alan Stephen, Elling Halvorson, and Matthew Zuccaro representing commercial air tour operators; Chip Dennerlein, Greg Miller, Kristen Brengel, and Don Barger representing environmental interests; and Rory Majenty and Richard Deertrack representing Native American tribes.

Selection

Selected to fill the air tour operator vacancies, for additional terms, are returning members Alan Stephen and

Matthew Zuccaro. Selected to fill the general aviation vacancy and one of the environmental vacancies are new member Claire Kultgen and returning member Greg Miller, respectively. These members' new or additional terms begin on October 10, 2009. The term of service for NPOAG ARC members is 3 years.

Additional Openings

In order to retain balance within the NPOAG ARC with two remaining openings, the FAA and NPS invite persons interested in representing environmental and Native American tribal concerns on the ARC to contact Mr. Barry Brayer (contact information is written above in **FOR FURTHER INFORMATION CONTACT**).

Requests to serve on the ARC must be made to Mr. Brayer in writing and postmarked or e-mailed on or before August 25, 2009. The request should indicate whether or not you are a member of an association or group related to environmental or Native American tribal issues or concerns or have another affiliation with issues relating to aircraft flights over national parks. The request should also state what expertise you would bring to the NPOAG ARC as related to environmental or tribal concerns. The term of service for NPOAG ARC members is 3 years.

Issued in Hawthorne, CA, on July 1, 2009.

Barry Brayer,

Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. E9–16053 Filed 7–8–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–26]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before July 29, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0084 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, 800 Independence Ave., SW., Room 810, Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 6, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2009–0249

Petitioner: Lider Signature S/A (Lider)

Section of 14 CFR Affected: 14 CFR § 145.103(b)

Description of Relief Sought: The petitioner, a Brazilian company, seeks relief to operate two fixed-wing hangars that are not fully enclosed with doors.

[FR Doc. E9–16257 Filed 7–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0064]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Chantilly Lace III.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0064 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 10, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0064. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.*

All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Chantilly Lace III* is:

Intended Use: ''Hall 6 passengers or less also sport fishing charter boat.''

Geographic Region: ''Michigan.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: July 2, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–16245 Filed 7–8–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009–0065]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Ultimate Bitch*.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0065 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 10, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0065. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ULTIMATE BITCH is:

Intended Use: ''carry passengers for hire.''

Geographic Region: ''Rhode Island, Massachusetts, Connecticut, New York, North Carolina, South Carolina, Georgia, Florida, Louisiana, Texas, California.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: July 2, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–16252 Filed 7–8–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Kuwait

Lebanon

Libya

Qatar

Saudi Arabia

Syria

United Arab Emirates

Yemen, Republic of

Iraq is not included in this list, but its status with respect to future lists remains under review by the Department of the Treasury.

Dated: July 1, 2009.

John L. Harrington,

International Tax Counsel (Tax Policy).

[FR Doc. E9–16213 Filed 7–8–09; 8:45 am]

BILLING CODE 4810–25–M

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, Street and Pennsylvania Avenue, NW., Washington, DC, on August 4, 2009 at 11:30 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. 10 1–05, 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: July 1, 2009.

Karthik Ramanathan,

Acting Assistant Secretary for Financial Markets.

[FR Doc. E9–16026 Filed 7–8–09; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–161919–05 (FINAL)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning TD 9451, Guidance Necessary to Facilitate Business Election Filing.

DATES: Written comments should be received on or before September 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Dawn Bidne, at (202) 622–3933, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Dawn.E.Bidne@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Guidance Necessary to Facilitate Business Election Filing.

OMB Number: 1545–2019.

Regulation Project Number: REG–161919–05.

Abstract: This regulation provides guidance to taxpayers for determining which corporations are included in a controlled group of corporations.

Current Actions: REG–161919–05 has gone final and the NPRM 209828–05 was removed. The burden was unchanged by these actions.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 350,000.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 262,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–16216 Filed 7–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for RP 2006–30

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning RP 2006–30, Restaurant Tips—Attributed Tip Income Program (ATIP).

DATES: Written comments should be received on or before September 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Restaurant Tips—Attributed Tip Income Program (ATIP).

OMB Number: 1545–2005.

Form Number: RP 2006–30.

Abstract: This revenue procedure sets forth the requirements for participating in the Attributed Tip Income Program (ATIP). ATIP provides benefits to employers and employees similar to those offered under previous tip reporting agreements without requiring one-on-one meetings with the Service to determine tip rates or eligibility.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 610.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 6,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 27, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–16222 Filed 7–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–29

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–29, Model Amendments and Prototype Program for SIMPLE IRAs.

DATES: Written comments should be received on or before September 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Model Amendments and Prototype Program for SIMPLE IRAs.

OMB Number: 1545–1543.

Revenue Procedure Number: Revenue Procedure 97–29.

Abstract: Revenue Procedure 97–29 provides guidance to drafters of prototype SIMPLE IRAs on obtaining opinion letters and provides permissive amendments to sponsors of nonSIMPLE IRAs.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 3,205.

Estimated Time per Respondent: 8 hours, 4 minutes.

Estimated Total Annual Reporting Burden hours: 25,870.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 27, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–16224 Filed 7–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for TD 9178

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning TD 9178, Testimony or Production of Records in a Court or Other Proceeding.

DATES: Written comments should be received on or before September 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Testimony or Production of Records in a Court or Other Proceeding.

OMB Number: 1545–1850.

Form Number: TD 9178.

Abstract: These final regulations replace the existing regulation that establishes the procedures to be followed by IRS officers and employees upon receipt of a request or demand for disclosure of IRS records or information. The purpose of the final regulations is to provide specific instructions and to clarify the circumstances under which more specific procedures take precedence. The final regulations extend the application of the regulation to former IRS officers and employees as well as to persons who are or were under contract to the IRS. The final regulations affect current and former IRS officers, employees and contractors, and persons who make requests or demands for disclosure.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Individuals and households, Not-for-Profit institutions, and Farms.

Estimated Number of Respondents: 1,400.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 27, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–16193 Filed 7–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Corporate Planning and Performance

Division on Behalf of All IRS Operations Functions.

DATES: Written comments should be received on or before September 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Surveys To Implement E.O. 1262 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions.

OMB Number: 1545–1432.

Abstract: This form is a generic clearance for an undefined number of customer satisfaction and opinion surveys and focus group interviews to be conducted over the next three years. Surveys and focus groups conducted under the generic clearance are used by the Internal Revenue Service to determine levels of customer satisfaction, as well as determining issues that contribute to customer burden. This information will be used to make quality improvements to products and services.

Current Actions: We will be conducting different customer satisfaction and opinion surveys and focus group interviews during the next three years than in the past. At the present time, it is not determined what these surveys and focus groups will be.

Type of Review: Revision of a currently approved collection. The burden hours have doubled in size due to the anticipated increase of surveys to this collection and the new respondents who will be affected by these surveys.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms and Federal, State, local or tribal governments.

Estimated Number of Respondents: 1,500,000.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 300,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–16217 Filed 7–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8824

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8824, Like-Kind Exchanges.

DATES: Written comments should be received on or before September 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at *(Evelyn.J.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Like-Kind Exchanges.

OMB Number: 1545–1190.

Form Number: 8824.

Abstract: Form 8824 is used by individuals, corporations, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under Internal Revenue Code section 1031. It is also used to report the deferral of gain under Code section 1043 from conflict-of-interest sales by certain members of the executive branch of the Federal government.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 200,000.

Estimated Time per Respondent: 4 hours, 10 minutes.

Estimated Total Annual Burden Hours: 834,979.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 29, 2009.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E9–16218 Filed 7–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–30

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–30, Alternative Fuel Motor Vehicle Credit.

DATES: Written comments should be received on or before September 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Alternative Fuel Motor Vehicle Credit.

OMB Number: 1545–1993.

Notice Number: Notice 2006–30.

Abstract: This notice sets forth a process that allows taxpayers who purchase alternative fuel motor vehicles to rely on the domestic manufacturer's (or, in the case of a foreign manufacturer, its domestic distributor's) certification that both a particular make, model, and year of vehicle qualifies as an alternative fuel motor vehicle under § 30B(a)(4) and (e) of the Internal Revenue Code and the amount of the credit allowable with respect to the vehicle.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 30.

Estimated Average Time per Respondent: 20 hrs.

Estimated Total Annual Burden Hours: 600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 27, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–16219 Filed 7–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006–16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2006–16, Renewal Community Depreciation Provisions.

DATES: Written comments should be received on or before September 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Renewal Community Depreciation Provisions.

OMB Number: 1545–2001.

Revenue Procedure Number: Revenue Procedure 2006–16.

Abstract: This revenue procedure provides the time and manner for states to make retroactive allocations of commercial revitalization expenditure amounts to certain buildings placed in service in the expanded area of a renewal community pursuant to § 1400E(g) of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments and businesses or other for-profit organizations.

Estimated Number of Respondents: 60.

Estimated Average Time per Respondent: 2 hours, 30 min.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 27, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–16221 Filed 7–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of forty-nine individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad. Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On July 1, 2009, the Director of OFAC removed from the SDN List the forty-nine individuals listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the unblocked individuals follows:

ACEVEDO SAENZ, Delcy Patricia, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o SEGECOL LTDA., Bucaramanga, Colombia; Cedula No. 63355575 (Colombia) (individual) [SDNT].

ANTIA SIERRA, Diurny Lorena, c/o COOPERATIVA MERCANTIL COLOMBIANA COOMERCOL, Cali, Colombia; DOB 28 Sep 1975; Cedula No. 66877933 (Colombia); Passport 66877933 (Colombia) (individual) [SDNT].

ARDILA A., Gabriel, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPIFARMA, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Carrera 100 No. 44B–10 ap. 102, Bogota, Colombia; Cedula No. 91177297 (Colombia) (individual) [SDNT].

BALLESTAS ARRIETA, Arturo Carlos, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOMULCOSTA, Barranquilla, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 8706711 (Colombia) (individual) [SDNT]

BARRAZA REYES, Raquel Emilia, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOMULCOSTA, Barranquilla, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 22636674 (Colombia) (individual) [SDNT].

BENAVIDES VASQUEZ, Jorge, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Cedula No. 9397198 (Colombia) (individual) [SDNT].

BLANCO ORTEGA, Marylin, c/o COOPDISAN, Bucaramanga, Colombia; c/o DROGAS LA REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; c/o COMUDROGAS LTDA., Bucaramanga, Colombia; Passport 63332075 (Colombia); Cedula No. 63332075 (Colombia) (individual) [SDNT].

CABALLERO, Oliverio, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPIFARMA, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Calle 47B Sur Bloque 7–8 Manz. E ap.101, Bogota, Colombia; Cedula No. 79473097 (Colombia) (individual) [SDNT].

CADAVID MAYA, Uriel, c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Carrera 6 No. 11–43

of. 505, Cali, Colombia; Carrera 9 No. 9–65, Florida, Valle, Colombia; DOB 16 Nov 1967; Cedula No. 16885028 (Colombia) (individual) [SDNT].

CALDERON ASCANIO, Mercedes, c/o SEGECOL LTDA., Bucaramanga, Colombia; Cedula No. 63319306 (Colombia) (individual) [SDNT].

CALDERON OLIVAR, Rafael Alfredo, c/o COOMULCOSTA, Barranquilla, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA PEREIRA S.A., Pereira, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Cedula No. 19582440 (Colombia) (individual) [SDNT].

CARDENAS GONGORA, Luis Fernando, c/o LATINFARMACOS S.A., Quito, Ecuador; RUC # 1719649129001 (Ecuador); Cedula No. 10105501 (Colombia) [SDNT].

CARDONA ACEVEDO, Carlos Arturo, c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador; RUC # 1791819624001 (Ecuador); Cedula No. 4383319 (Colombia) [SDNT].

CASILIMAS ESCOBAR, Lia Patricia, c/o COPSERVIR LTDA., Bogota, Colombia; c/o SU SERVICIO SOCIEDAD LTDA., Barranquilla, Colombia; Cedula No. 32761550 (Colombia) (individual) [SDNT].

CLAROS, Dario, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPCREAR, Bogota, Colombia; c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; c/o COOPERATIVA MULTIACTIVA DE COLOMBIA FOMENTAMOS, Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; c/o SOLUCIONES COOPERATIVAS, Bogota, Colombia; Cedula No. 83180350 (Colombia) (individual) [SDNT].

DE LA HOZ BULA, Hugo Rafael, c/o COOMULCOSTA, Barranquilla, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 8742278 (Colombia) (individual) [SDNT].

FIGUEROA PERALTA, Eduardo Alberto, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOMULCOSTA, Barranquilla, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Calle 63 No. 16–61, Barranquilla, Colombia; Cedula No. 8747807 (Colombia) (individual) [SDNT].

GOMEZ PABON, Humberto Henoc, c/o COPSERVIR LTDA., Bogota, Colombia; c/o TRIMARK LTDA., Bogota, Colombia; Cedula No. 7557394 (Colombia) (individual) [SDNT].

GOMEZ SUAREZ, Jose Alonso, c/o COOPDISAN, Bucaramanga, Colombia; c/o DROGAS LA REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; DOB 8 Jan 1956; Cedula No. 91066409 (Colombia); Passport 91066409 (Colombia) (individual) [SDNT].

GUTIERREZ, Teobaldo Jesus, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Cedula No. 72167412 (Colombia) (individual) [SDNT].

GUZMAN TROCHA, Luis Fernando, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Cedula No. 72170509 (Colombia) (individual) [SDNT].

HERNANDEZ VASQUEZ, Gladys Darlen, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOPIFARMA, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Carrera 34A No. 10–27 Sur, Bogota, Colombia; Cedula No. 52026909 (Colombia) (individual) [SDNT].

HERRERA AGUILERA, Gabriel, c/o COOPDISAN, Bucaramanga, Colombia; c/o DROGAS LA REBAJA BUCARAMANGA S.A., Bucaramanga, Colombia; Cedula No. 91236347 (Colombia); Passport 91236347 (Colombia) (individual) [SDNT].

HERRERA CARDONA, Libia Constanza, c/o COPSERVIR LTDA., Bogota, Colombia; c/o TRIMARK LTDA., Bogota, Colombia; Cedula No. 66978250 (Colombia) (individual) [SDNT].

IDARRAGA ORTIZ, Rogelio, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; DOB 10 Jan 1944; Cedula No. 3417272 (Colombia); Passport 3417272 (Colombia) (individual) [SDNT].

JIMENEZ CARDENAS, Amparo, c/o COOPERATIVA MERCANTIL DEL SUR LTDA., Pasto, Colombia; Cedula No. 30726230 (Colombia); Passport 30726230 (Colombia); (individual) [SDNT].

LINARES GUZMAN, Juan Carlos, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; c/o TRIMARK LTDA., Bogota, Colombia; Carrera 6B No. 33B–80, Barranquilla, Colombia; Cedula No. 72185736 (Colombia) (individual) [SDNT].

LUGO PALACIOS, Julian Alberto, c/o COOPERATIVA MERCANTIL COLOMBIANA COOMERCOL, Cali, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; DOB 8 Aug 1972; Cedula No. 94381586 (Colombia); Passport 94381586 (Colombia) (individual) [SDNT].

MARIMON SARMIENTO, Nayfe Maria, c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Calle 6 No. 8–19, Salgar, Puerto Colombia, Colombia; Cedula No. 22583054 (Colombia) (individual) [SDNT].

MARTINEZ VASQUEZ, Beatriz Elena, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Cedula No. 22437371 (Colombia) (individual) [SDNT].

MEDINA CASTILLO, Sandro, c/o SU SERVICIO SOCIEDAD LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Cedula No. 8538055 (Colombia) (individual) [SDNT].

MENDOZA ROJAS, Monica Jazmin, c/o COOPDISAN, Bucaramanga, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o SEGECOL LTDA., Bucaramanga, Colombia; Cedula No. 37728726 (Colombia) (individual) [SDNT].

MONSALVO RUIZ, Elkin Miguel, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Calle 35B No. 17–143, Barranquilla, Colombia; Cedula No. 72186915 (Colombia) (individual) [SDNT].

MONTERO MARTINEZ, Rafael Antonio, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o SU SERVICIO SOCIEDAD LTDA., Barranquilla, Colombia; Cedula No. 8778405 (Colombia) (individual) [SDNT].

MORENO MUNOZ, Liliana Judith, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; c/o SU SERVICIO SOCIEDAD LTDA., Barranquilla, Colombia; Carrera 6 No. 72–68, Barranquilla, Colombia; Cedula No. 32751536 (Colombia) (individual) [SDNT].

MUNERA FERNANDEZ, Pablo Jesus, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOMULCOSTA, Barranquilla, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 8719504 (Colombia) (individual) [SDNT].

NAVARRO HERNANDEZ, Yanet, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Cedula No. 32728558 (Colombia) (individual) [SDNT].

PADILLA ORTIZ, Marino, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia;

c/o MEGAPHARMA LTDA., Bogota, Colombia; Carrera 97 No. 39–75, Bogota, Colombia; DOB 1 Aug 1965; Cedula No. 80408422 (Colombia) (individual) [SDNT].

PALMA RODRIGUEZ, Geovanny, (a.k.a. PALMA RODRIGUEZ, Giovanny) (a.k.a. PALMA RODRIGUEZ, Giovanni) c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Carrera 8A No. 45B–82, Barranquilla, Colombia; Cedula No. 72175536 (Colombia) (individual) [SDNT].

RENGIFO SAAVEDRA, Carmen Hermencia, c/o COOPERATIVA DE TRABAJO ASOCIADO ACTIVAR, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Calle 14 No. 48A–19, Cali, Colombia; Carrera 6 No. 11–43 of. 505, Cali, Colombia; DOB 19 Dec 1969; Cedula No. 66738336 (Colombia) (individual) [SDNT].

REYES MONROY, Pablo, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o SEGECOL LTDA., Bucaramanga, Colombia; Cedula No. 91265116 (Colombia) (individual) [SDNT].

RIBON RODRIGUEZ, Wilmen, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Calle 61 No. 47–21, Barranquilla, Colombia; Calle 61 No. 47–22 Piso 2, Barranquilla, Colombia; Cedula No. 91223795 (Colombia) (individual) [SDNT].

ROMERO BERMUDEZ, Tomas, c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Carrera 13C No. 36B–100 ap. 403, Barranquilla, Colombia; Cedula No. 72206669 (Colombia) (individual) [SDNT].

SANABRIA SANABRIA, Pablo Emilio, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o FARMAVISION LTDA., Bogota, Colombia; Avenida Dorado No. 73–62, Bogota, Colombia; Cedula No. 79579826 (Colombia) (individual) [SDNT].

SANDOVAL AHIUMADA, Mavenka, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Cedula No. 32873688 (Colombia) (individual) [SDNT].

SANDOVAL GUARIN, Luz Stella, c/o COPSERVIR LTDA., Bogota, Colombia; c/o LITOPHARMA, Barranquilla, Colombia; Carrera 26C 7 No. 76A–75 ap. 2A, Barranquilla, Colombia; Cedula No. 32608167 (Colombia) (individual) [SDNT].

SOLIS HERNANDEZ, Damaris, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COOMULCOSTA, Barranquilla, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; Cedula No. 32669869 (Colombia) (individual) [SDNT].

URDINOLA BETANCOURT, Maritza, c/o CAJA SOLIDARIA, Bogota, Colombia; c/o COPSERVIR LTDA., Bogota, Colombia; DOB 16 Nov 1962; Cedula No. 31893467 (Colombia); Passport 31893467 (Colombia) (individual) [SDNT].

VARGAS GARCIA, Carlos Alberto, Quito, Ecuador; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; Cedula No. 4578620 (Colombia) (individual) [SDNT].

Dated: July 1, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–16153 Filed 7–8–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of VA Property for the Development and Operation of Parking and Commercial Facilities at the Department of Veterans Affairs Samuel S. Stratton VA Medical Center in Albany, NY

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of intent to enter into an enhanced-use lease.

SUMMARY: The Department of Veterans Affairs intends to enter into an enhanced-use lease of approximately 2.4 acres of underutilized land at the Samuel S. Stratton VA Medical Center in Albany, New York. The selected lessee will finance, design, develop, construct, operate, manage and maintain a parking facility, and potentially a commercial facility. As consideration for the lease, the lessee will be required to provide VA with a new office building, at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161, *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: May 26, 2009.

John R. Gingrich,

Chief, of Staff, Department of Veterans Affairs.

[FR Doc. E9–16297 Filed 7–8–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''Community Placement Program—VA'' (65VA122) as set forth in the **Federal Register** 56 FR 26186 and last amended in the **Federal Register** on June 6, 1991. VA is amending the system of records by revising the Routine Uses of Records Maintained in the System Including Categories of Users and the Purpose of Such Uses. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than August 10, 2009. If no public comment is received, the amended system will become effective August 10, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: Routine use 10 was added for the VA to disclose information from this system of records to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under authority of title 44, U.S.C.

Routine use 11 was added for the VA to disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

Routine Use 12 was added to disclose relevant information that may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such service as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

Routine use 13 was added to disclose information to other Federal agencies that may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

Routine use 14 was added so that the VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: June 22, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

65VA122

SYSTEM NAME:

Community Placement Program—VA.

SYSTEM LOCATION:

Records are maintained at each VA health care facility; the VA Data Processing Center (DPC), 1615 East Woodward Street, Austin, Texas 78772; and at VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Addresses for the VA health care system are listed in VA Appendix I at the end of this document.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who operate a Community Placement facility approved for placement of VA beneficiaries; VA beneficiaries in Community Placement facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record, or information contained in the record, may include personal identification information with data on the Community Placement facility, name of operator, address, phone number, name of veterans receiving care in these homes, a statement as to whether the veterans' medical conditions have been rated as service-connected or nonservice-connected, the veterans' social security number and the names, addresses and phone numbers of the veterans' next-of-kin; overall data regarding diagnoses of veterans in the facility, date the facility was last approved for participation, statement regarding whether or not the home is required to be licensed by the State and/or local government, copies of correspondence exchange between the VA and the persons interested in applying for participation in the Community Placement Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, U.S.C. 210(c), 610 and 4101.

PURPOSE:

Records is to provide administrative documentation of State and/or local active licensed Department of Veterans Affairs (VA) Community Placement Program agencies.

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

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system may be disclosed to a Federal agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding the hiring, retention or transfer of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans, will only be made with the veteran's prior written consent.

3. Any information in this system may be disclosed to a State or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision on the hiring, transfer or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit by that agency; provided that, if the information requested pertains to a veteran, the name and/or address of the veteran will not be disclosed unless the name and/or address is provided first by the requesting State or local agency.

4. Any information in this system may be disclosed to a Federal, State or local governmental agency maintaining civil or criminal violation records, or other pertinent information such as prior employment history, prior Federal employment background investigations, and personal or educational background at the request of the veteran in order for the VA to obtain information relevant to the hiring, transfer or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit.

5. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, Tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

6. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto, in response to its official request.

7. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to any foreign, State or local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address be provided or a purpose authorized by law.

8. Any information in this system including the name and address of a veteran may be disclosed to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38 U.S.C. (such disclosures include computerized lists of names and addresses.)

9. Any information in this system may be disclosed to a Federal agency, except for the name and address of a veteran, in order for the VA to obtain information relevant to the issuance of a benefit under Title 38 U.S.C. The name and address of a veteran may be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

10. Disclosure may be made to the National Archives and Records Administration (and the General Services Administration in records management inspections conducted under authority of Title 44 U.S.C.

11. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

12. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

13. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

14. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

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

STORAGE:

Records are maintained on magnetic tapes which are stored at the Austin DPC, and paper documents (printouts) are maintained at VA Central Office and the health care facilities.

RETRIEVABILITY:

Information can be retrieved by the use of veteran's name, social security number and by facility operator's name and location.

SAFEGUARDS:

Access to the basic file in the Austin DPC is restricted to authorized VA employees and vendors. Access to the computer room where the basic file is maintained within the DPC is further restricted to authorized VA employees and vendor personnel on a ''need to know'' basis and is protected from unauthorized access by an alarm system, the Federal Protective Service and VA security personnel. Access to paper documents at Central Office and VA health care facilities is restricted to authorized VA employees.

RETENTION AND DISPOSAL:

Working magnetic tapes at the DPC are disposed of as soon as the purpose for which they were established has been served. Paper documents are to be retained and disposed of in accordance with authorization approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Social Work Service (141A10), VA Central Office, Washington, DC 20420.

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his/her or other personal identifier, or wants to determine the contents of such record should submit a written request or apply in person to the Chief, Social Work Service (122) at the appropriate VA health care facility. Addresses for these offices may be found in VA Appendix I at the end of this document. Inquiries should include the individual's full name and identification number (social security number).

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of VA records in this system may write, call or visit the nearest appropriate health care facility.

CONTESTING RECORD PROCEDURES:

(*See* Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information contained in the records is obtained from individuals requesting participation in the Community Placement Program; the patient, family members or accredited representative, and friends, employers or other third parties when otherwise unobtainable from the patient or his family; various automated clinical and managerial systems providing support at selected VA health care facilities; and the patient Consolidated Medical Records sections of the VA Medical Records System.

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Federal Register

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Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 16 and 118

Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 118

[Docket No. FDA–2000–N–0190] (Formerly Docket No. 2000N–0504)

RIN 0910–AC14

Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that requires shell egg producers to implement measures to prevent *Salmonella* Enteritidis (SE) from contaminating eggs on the farm and from further growth during storage and transportation, and requires these producers to maintain records concerning their compliance with the rule and to register with FDA. FDA is taking this action because SE is among the leading bacterial causes of foodborne illness in the United States, and shell eggs are a primary source of human SE infections. The final rule will reduce SE-associated illnesses and deaths by reducing the risk that shell eggs are contaminated with SE.

DATES: This final rule is effective September 8, 2009. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in new 21 CFR 118.8 as of September 8, 2009. *Please see* section II.C of this document for the compliance dates of this final rule. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by August 10, 2009 (*see* the ''Paperwork Reduction Act of 1995'' section of this document).

FOR FURTHER INFORMATION CONTACT: John Sheehan, Center for Food Safety and Applied Nutrition (HFS–315), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1488.

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I. Background

A. FDA's Proposed Rule

On September 22, 2004, FDA proposed a rule to prevent SE contamination in shell eggs during production (the proposed rule) (69 FR 56824). The proposed rule set out several measures to be taken by egg producers to prevent the contamination of shell eggs with SE during egg production, such as implementation of biosecurity and pest control programs, environmental and egg testing requirements, and requirements concerning refrigerated storage of eggs at the farm and diversion from the table egg market of eggs from flocks in which SE has been detected (69 FR 56824).

In addition, in the proposed rule we solicited comments on whether we should include additional requirements in the final rule, particularly in two areas. First, we asked whether we should expand the proposed recordkeeping requirements to include a written SE prevention plan and records documenting compliance with the SE prevention measures (69 FR 56824 at 56825 and 56841 through 56842). Second, we asked whether the safe egg handling and preparation practices in FDA's Food Code (*see http://www.cfsan.fda.gov/~dms/fc05-toc.html* (accessed December 14, 2006)) should be federally mandated for establishments that specifically serve a highly susceptible population (such as nursing homes, hospitals, and daycare centers) (69 FR 56824 at 56825 and 56849 through 56852).

The proposed rule had a 90-day comment period, which ended on December 21, 2004. To discuss the proposed rule and solicit comments from interested stakeholders, FDA held three public meetings in 2004. Based on comments received in response to the proposed rule, FDA reopened the comment period on May 10, 2005, for the limited purpose of receiving comments and other information regarding industry practices and programs that prevent SE-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into laying hen houses (70 FR 24490). The term ''pullet'' refers to a chicken less than 20 weeks of age. On May 24, 2005, FDA received a request for an extension of the reopened comment period from two of the major trade associations representing egg producers and others affected by this

rule. We agreed to extend the reopened comment period until July 25, 2005.

B. What Are Salmonella and SE Infection?

As we described in greater detail in the proposed rule (69 FR 56824 at 56825 through 56827), *Salmonella* microorganisms are ubiquitous and are commonly found in the digestive tracts of animals, especially birds and reptiles. Human illnesses are usually associated with ingesting food or drink contaminated with *Salmonella,* although infection also may be transmitted person-to-person through the fecal-oral route where personal hygiene is poor or by the animal-to-man route (Ref. 1–2).

All people are at risk for salmonellosis, although the severity of the infection is influenced by a person's age and immune status. *Salmonella* infections are characterized by diarrhea, fever, abdominal cramps, headache, nausea, and vomiting. Symptoms usually begin within 6 to 72 hours after consuming a contaminated food or liquid and last for 4 to 7 days. Most healthy people recover without antibiotic treatment; however, the diarrhea can be severe, and the person may be ill enough to require hospitalization. In some patients, the infection can spread into the bloodstream, then to other areas of the body, such as the bone marrow or the meningeal linings of the brain. This infection can lead to a severe and fatal illness (Ref. 2). These complications associated with an infection are more likely to occur in children, the elderly, and persons with a weakened immune system.

In addition, about 2 percent of those who recover from salmonellosis may later develop recurring joint pain and reactive arthritis (Ref. 3, 4).

Salmonellosis is a serious health concern. It is a notifiable disease, i.e., physicians and health laboratories are required to report cases (single occurrences of illness) to local health departments in accordance with procedures established by each State. These cases are then reported to State health departments, and the *Salmonella* isolates are referred to State Public Health laboratories for serotyping (a method of distinguishing related organisms by their antigens). Each case and each serotyped isolate is reported to the U.S. Centers for Disease Control and Prevention (CDC). These reports are made only for diagnosed cases of *Salmonella* infection.

A case of illness is confirmed as salmonellosis only if an isolate is confirmed by a laboratory as being *Salmonella.* Although all cases may not be confirmed, all confirmed cases are associated with isolates of *Salmonella.* Reported cases are likely to represent only a small portion of the actual number of illnesses that occur because of the following reasons: (1) Ill individuals do not always seek care by medical professionals, especially if the symptoms are not severe; (2) medical professionals may not establish the cause of the illness but may simply treat the symptoms; and (3) medical professionals do not always report *Salmonella* cases to public health officials. CDC estimates that there are 38 cases of salmonellosis for every reported culture-confirmed case (Ref. 5). The overall burden of salmonellosis in 2001 was estimated to be 1,203,650 cases, including 14,000 hospitalizations, and 494 deaths (Refs. 6 and 7). Updated *Salmonella* surveillance data for 2004 indicate that the burden of salmonellosis in 2004 was somewhat higher, estimated to be 1,376,514 cases, including 14,264 hospitalizations, and 427 deaths (Refs. 5 and 8).

CDC surveillance data list close to 600 different *Salmonella* serotypes that have caused illness in the United States. Since 1995, *Salmonella enterica* serotype Enteritidis (SE) has been the second most frequently reported cause of *Salmonella* infection (Ref. 9). CDC reported that in 2008 SE was the leading reported cause of *Salmonella* infections, accounting for 20.1% of all of the *Salmonella* isolates that were serotyped (Ref. 10). The rate of SE isolates reported to CDC increased from 0.6 per 100,000 population in 1976 to 3.6 per 100,000 population in 1996 (Ref. 11–12). In 2001 the isolation rate for SE was 2.0 per 100,000 population, and the annual contribution of SE (corrected for underreporting) to salmonellosis was estimated to be 193,463 illnesses, including 2,004 hospitalizations and 60 deaths (Refs. 5 and 8). Estimated incidence of *Salmonella* infection in 2008 did not change significantly compared with estimates for the preceding 3 years, and in particular the apparent increase in *Salmonella* infections was not significant. However, the incidence of SE did increase by 19% (CI = 3%–39%) (Ref. 10). These data confirm the continued significance of SE as a cause of human infection in the United States.

In 1985, States reported to CDC 26 SE-related outbreaks (i.e., occurrences of 2 or more cases of a disease related to a common source); by 1990 the number of SE-related outbreaks reported to CDC had increased to 85. The number of outbreaks began declining in the 1990s; in 1995 there were 56 confirmed outbreaks of SE infection, in 2000 there were 50, and in 2002 there were 32 (Ref. 13). The number of outbreaks has remained roughly constant since 2002; in 2004 there were 28, in 2005 there were 35, and in 2006 there were 26 SE outbreaks in the United States (Ref. 13). Although these data indicate that there has been a decrease in reported outbreaks (and associated illness) linked to SE infection since the mid-1990s, the incidence of SE infection in the United States remains much higher than in the 1970s (Ref. 14), and the decrease in reported outbreaks of SE illness since 1999 has appeared to slow or stop compared to decreases seen in the mid-1990s (Ref. 15). CDC recently reported that, of the four pathogens with HP2010 targets, *Salmonella,* with 16.2 cases per 100,000 in 2008, is the farthest from its 2010 target (6.8) (Ref. 10). If current trends continue, we will fall short of the public health and foodborne illness gains required to meet the Healthy People 2010 goal of a 50 percent reduction from the 1997 baseline in both the number of SE foodborne outbreaks and the rate of isolation in the population of foodborne *Salmonella* infections (Ref. 16).

C. What Is the Connection Between Salmonella and Shell Eggs?

CDC established an epidemiological and laboratory association between eggs and *Salmonella* outbreaks in the mid-1980s (*see* 69 FR 56824 at 56826 through 56827). Shell eggs are the predominant source of SE-related cases of salmonellosis in the United States where a food vehicle is identified (a food vehicle is identified in approximately half of the outbreaks of illness associated with SE). Between 1985 and 2002, a total of 53 percent of all SE illnesses identified through CDC outbreak surveillance are attributable to eggs. Where a vehicle of transmission was identified, 81 percent of outbreaks and 79 percent of illnesses identified through outbreaks were attributed to eggs (Ref. 17). These data are in accord with a published analysis by CDC researchers reporting that between 1990 and 2001, 78 percent of vehicle-confirmed SE outbreaks were associated with eggs, primarily raw or undercooked (Ref. 15). Over that decade, 14,319 illnesses were attributed to SE associated with shell eggs (Ref. 15). Most of these attributed illnesses occurred before 1995 (10,406 illnesses), but 3,913 occurred during 1996 through 2001. We believe egg quality assurance programs (EQAPs), consumer and retailer education, and Federal regulations requiring egg refrigeration have contributed to the decrease in SE

illness since the mid-1990s, but that further reductions in SE illness and foodborne salmonellosis cannot be accomplished without additional Federal measures to address SE contamination of shell eggs.

The surface of an egg can become contaminated with any microorganism that might be excreted by a laying hen or through contact with contaminated nesting materials, dust, feedstuff, shipping and storage containers, human beings, and other animals. The likelihood of trans-shell penetration increases with the length of time that the eggs are in contact with contaminating materials. This mechanism of contamination was previously considered the source of all SE contamination of eggs.

However, while environmental contamination is still a route for *Salmonella* contamination, SE experts now believe that the predominant route through which eggs become contaminated with SE is the transovarian route. Although the mechanism is still not well understood, SE will infect the ovaries and oviducts of some egg-laying hens, permitting transovarian contamination of the interior of the egg while the egg is still inside the hen (Refs. 18 and 19). The site of contamination is usually the albumen (the egg white).

Researchers believe that only a small number of hens in an infected flock shed SE at any given time and that an infected hen may lay many uncontaminated eggs (Ref. 20). In a farm-to-table risk assessment of SE in eggs which was conducted by FDA and the U.S. Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) (''the 1998 joint SE risk assessment'') (Ref. 21), we estimated that of the 47 billion shell eggs consumed annually as table eggs (eggs consumed as shell eggs, as opposed to eggs that are used to make egg products), 2.3 million are SE-positive, exposing a large number of people to the risk of illness (Ref. 21). FDA and FSIS updated this risk assessment in 2005 and derived this same estimate (Ref. 22). This figure is based on data compiled from 1991 to 1995 (Ref. 23).

D. The U.S. Egg Industry

On a per capita basis, Americans consume about 234 eggs per year (Ref. 24). U.S. production is relatively stable and has increased only slightly over time. For example, it was at about 60 billion eggs in 1984 and at 67.3 billion eggs in 1998 (Ref. 25). Generally, about 70 percent of the edible shell eggs produced are sold as table eggs, while the remainder are processed into liquid, frozen, or dried pasteurized egg products. The majority of egg products are destined for institutional use or further processing into foods such as cake mixes, pasta, ice cream, mayonnaise, and bakery goods.

Geographically, commercial egg production in the western United States is concentrated in California, and in the eastern United States is centered in Ohio, Indiana, Iowa, and Pennsylvania. Other States in which major producers are located include Texas, Minnesota, and Georgia. Over 4,000 farm sites have 3,000 or more egg-laying hens, representing 99 percent of all domestic egg-laying hens and accounting for 99 percent of total egg production. There are an additional 65,000 farms with fewer than 3,000 egg-laying hens, accounting for the balance of eggs produced (Ref. 26).

E. Current On-Farm Practices

In the proposed rule we described in detail current farm practices to address the risk of SE contamination (69 FR 56824 at 56830 through 56831). Most of the information we provided came from a 1999 study (the Layers 99 study) (Refs. 27, 28, and 29) by USDA's Animal and Plant Health Inspection Service (APHIS) National Animal Health Monitoring System (NAHMS), as well as information on voluntary EQAPs, which are discussed more fully in section I.G of this document.

The Layers 99 study was designed to include information from States that account for at least 70 percent of the animal and farm population in the United States (Refs. 27, 28, and 29). Each operation participating in the study had more than 30,000 laying hens. The study found that egg laying operations varied considerably in size and style of poultry house; approximately 34 percent of the houses had fewer than 50,000 layers, 29 percent had 50,000 to 99,999 layers, 20 percent had 100,000 to 199,999 layers, and 17 percent had 200,000 or more layers. One-third of farm sites surveyed had only one layer house, while 16.5 percent had six or more layer houses. The study also found wide variability within the poultry houses with respect to style of housing and number and level of cages, although less than one percent were cage-free. Manure handling varied with house style and also varied regionally.

The study found that, when a poultry house is repopulated with new laying hens (also known as ''layers''), most of the new layers come from a pullet raising facility. Less than 10 percent of layer farms raised pullets at the layer farm site, although some layer farms had their own pullet-raising facilities at other locations. Most (95 percent) of pullets in pullet-raising facilities came as chicks from National Poultry Improvement Plan (NPIP) monitored breeder flocks. USDA's NPIP is a cooperative Federal-State-industry mechanism intended to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. NPIP has monitoring programs for many avian diseases and pathogens, including SE. Chicks are SE-monitored if they are hatched from eggs from flocks that are certified through NPIP as ''U.S. S. Enteritidis Clean'' breeder flocks (9 CFR 145.23(d)).

Many pullet-raising facilities in the Layers 99 study had their own programs for SE monitoring. In the West region, 83 percent of farms obtained layers from SE-monitored pullet facilities, and 70 percent of layers on all farms came from SE-monitored pullet facilities. Pullet facilities used one or more of the following methods to monitor SE: (1) Dead chick/chick paper testing, (2) environmental culture, (3) bird culture, and (4) serology. Some pullet facilities used competitive exclusion products and/or vaccines to protect pullets against SE.

The study found that in 1997, the average flock was placed for its first production cycle at 17.5 weeks of age. Flocks in their first production cycle reached peak production around 29 weeks of age. At peak production, the average maximum number of eggs produced was 90 eggs per 100 hens per day. Induced molting was used on many farms (83 percent of farm sites). In the West and Southeast regions, 95 percent or more of farms molted birds, while in the Central region just over half (57 percent) of the farms molted birds. On average, molted flocks ended production at 111 weeks of age, while non-molted flocks ended production at 74 weeks of age.

Approximately two-thirds of farms had biosecurity measures that did not allow visitors without a business reason to enter poultry houses. Sixty-two percent of farms that allowed visitors allowed business visitors provided they had not been on another poultry farm that day. Of the farms that allowed visitors in the layer house, most farms (76 percent) required that visitors wear clean boots. The majority of farms prohibited employees from being around other poultry and from owning their own birds.

With respect to pest control, the Layers 99 study estimated that rodents and flies had access to feed in feed troughs on nearly all farms. Fly control was practiced on 90 percent of all farms; baiting was the most common form of

fly control (72 percent of farms). Essentially all farms used some type of rodent control. Chemicals and baits were used for rodent control by 93 percent of farms. Professional exterminators were used on less than 15 percent of farms that used rodent control. Producers rated almost 30 percent of farms as having a moderate or severe problem with mice and almost 9 percent as having a moderate or severe problem with rats.

The Layers 99 study found essentially all farms emptied feeders, 91 percent emptied feed hoppers, 81 percent flushed water lines, 79 percent dry cleaned cages, walls, and ceilings, and 71 percent cleaned fans and ventilation systems. Approximately one-third of farm sites never cleaned or disinfected egg belts/elevators between flocks. Down time between flocks varied regionally; most farms had a down time of more than 11 days, although some were down for less than 4 days.

The Layers 99 study showed that, in 1997, 58 percent of farms tested for SE. The number of farms testing for SE varied by region. The number and regional distribution of farms doing testing for SE is very similar to the number and distribution of farms participating in an EQAP.

F. Voluntary EQAPs

The Layers 99 study found that 51 percent of all farm sites participated in an EQAP sponsored by a State or commodity group (e.g., United Egg Producers). The *Salmonella* Enteritidis Pilot Project (SEPP), begun in 1992 by USDA with special funding from Congress, was one of the first EQAPs in the United States (in 1994, SEPP became the Pennsylvania Egg Quality Assurance Program (PEQAP)). Currently, there are at least nine voluntary EQAPs operated and administered by States or other organizations (Refs. 30 through 36). In addition, certain egg companies operate an EQAP within their own facilities (Ref. 28).

Currently, EQAPs are voluntary for producers. These programs have similar requirements, but vary in how they implement these requirements. All programs require use of NPIP ''U.S. S. Enteritidis Clean'' chicks or equivalent, biosecurity, rodent control, and cleaning and disinfection of poultry houses. Although most programs require some environmental testing, the amount varies from once to four or five times during the life of a flock. If an environmental test is SE-positive (i.e., SE is detected at any level in any sample), several programs require egg testing, with diversion if the egg testing is SE-positive. Several programs also have State government oversight and recordkeeping requirements. All programs have some educational programs for participants.

G. The Food Code

FDA regularly publishes the Food Code, which provides guidance on food safety, sanitation, and fair dealing that can be uniformly adopted by State and local governments for the retail segment of the food industry. The Food Code provisions are not Federal requirements; however, they are designed to be consistent with Federal food laws and regulations. The Food Code is written so that all levels of government can easily adopt its text into a legal requirement.

Beginning with the 1993 edition, the Food Code was issued in its current format and was revised every 2 years. In 2002, with the support of the Conference for Food Protection, FDA decided to move to a 4-year interval between complete Food Code revisions. FDA published the 2005 Food Code, which is the first full edition to publish since the 2001 edition. During the 4-year interim period, a Food Code Supplement that updated, modified, and clarified certain provisions was made available. The provisions relevant to egg safety at establishments serving highly susceptible populations can be found in the 2001 Food Code in sections 3–202.11(C), 3–202.13, 3–202.14(A), 3–401.11(A)(1)(a) and 3–801.11(B)(1), (B)(2), (D)(1), (D)(2), (E)(1), and (E)(2). These Food Code provisions include the use of pasteurized eggs in recipes where eggs are raw or undercooked (e.g., Caesar salad, hollandaise sauce, eggnog), and if eggs are combined, unless the eggs are cooked to order and immediately served or combined immediately before baking and thoroughly cooked. The 2001 provisions all substantively remain the same in the 2005 Food Code, but sections 3–801.11(D)(1) and (D)(2) are now designated as 3–801.11(C)(1) and (C)(2), and sections 3–801.11(E)(1) and (E)(2) are now designated as 3–801.11(F)(1) and (F)(2). In addition, FDA amended the definitions of ''Eggs'' and ''Egg Products'' in the 2005 edition of the Food Code to clarify the difference between ''egg'' (shell egg) and ''egg product'' (liquid, frozen, or dry egg). Also, FDA clarified that baluts and reptile eggs are excluded from the egg-related provisions of the Food Code.

Through careful examination of State retail food codes, FDA has identified 47 States and territories (out of 56 States and territories) that have either adopted the 2005 Food Code or provisions that require the same prevention measures for highly susceptible populations (Ref. 37).

H. Rationale for the Final Rule

This rule is the most recent in a series of farm-to-table egg safety efforts begun by FDA and FSIS in the 1990s. These efforts are described in more detail in the proposed rule (69 FR 56824 at 56827 through 56829). Among these initiatives was the FDA and FSIS 1998 joint SE risk assessment (Ref. 21), discussed in detail in the proposed rule (69 FR 56824 at 56829), which concluded that a broad-based policy, encompassing interventions from farm to table, is likely to be more effective in eliminating egg-associated SE illnesses than a policy directed solely at one stage of the production-to-consumption continuum. In 2004, after FDA's proposed rule was published, FSIS published a draft risk assessment for SE in shell eggs and *Salmonella* spp. in egg products. This risk assessment was then published as final in October 2005 (Ref. 22).

There are currently several Federal regulations related to egg safety at the food service level. These regulations include a final rule issued by FSIS for refrigeration and labeling of eggs during transport and storage when packed for the ultimate consumer (63 FR 45663, August 27, 1998) and an FDA final rule that requires labeling of eggs and refrigeration of eggs at retail establishments (65 FR 76092, December 5, 2000). However, this is the first and only Federal rule that addresses the introduction of SE into the egg during production. Interventions that can reduce the number of SE-contaminated eggs at the production phase are of particular interest. Because progress in reducing the number of illnesses and outbreaks appears to have slowed or stopped, these additional preventive measures are needed to reduce further the risk of SE illnesses and meet our public health goals. Because eggs remain the primary source of SE infections, continued actions to improve egg safety are the most effective way to reduce the overall number of SE infections and outbreaks and to achieve our public health goals.

II. Highlights of the Final Rule and Summary of Significant Differences Between the Proposed and Final Rules

A. Highlights of the Final Rule

The provisions in the final rule are described briefly in the following paragraphs, and are discussed in more detail later in the preamble of this document.

- Persons who produce shell eggs from a farm operating with 3,000 or

more laying hens, unless that farm sells all of its eggs directly to consumers or does not produce shell eggs for the table market, are subject to this final rule (21 CFR 118.1(a)).

- Shell egg producers need only comply with refrigeration and registration requirements if all of their shell eggs from a particular farm receive a treatment as defined in the final rule (§ 118.1(a)(2)).
- Persons who transport or hold shell eggs for shell egg processing or egg products facilities are required to comply with the refrigeration requirements of this final rule (§ 118.1(b)).
- Shell egg producers are required to use the following SE prevention measures:
- Have and implement a written SE prevention plan that includes all mandatory SE prevention measures (21 CFR 118.4);
- Procure pullets that are SE-monitored, or raise pullets under SE-monitored conditions (§ 118.4(a));
- Use a biosecurity program, meaning a program that includes limiting visitors on the farm and in poultry houses; maintaining personnel and equipment practices that will protect against cross-contamination from one poultry house to another; preventing stray poultry, wild birds, cats, and other animals from entering poultry houses; and prohibiting employees from keeping birds at home (§ 118.4(b));
- Use a program to control rodents, flies, and other pests that includes monitoring for pest activity and removing debris and vegetation that may provide harborage for pests (§ 118.4(c)); and
- Clean and disinfect poultry houses before new laying hens are added if an environmental or egg test was positive for SE during the life of the flock; cleaning and disinfecting must include removing all visible manure, dry cleaning to remove dust, feathers, and old feed, and disinfecting (§ 118.4(d)).
- Shell eggs being held or transported are required to be refrigerated at or below 45 degrees Fahrenheit (°F) ambient temperature beginning 36 hours after time of lay (§ 118.4(e)).
- Shell egg producers must conduct environmental testing for SE when laying hens are 40 to 45 weeks of age and 4 to 6 weeks after molt (21 CFR 118.5).
- Shell egg producers must conduct egg testing for SE when an environmental test is positive for SE (21 CFR 118.6).
- Administration of the SE prevention measures requires having one or more supervisory personnel, who do not have to be onsite employees, who are responsible for ensuring compliance with each farm's SE prevention plan (21 CFR 118.9).
- Shell egg producers must maintain a written SE prevention plan and records documenting compliance with the requirements in the plan (21 CFR 118.10).
- Shell egg producers must retain records for 1 year after the flock to which they pertain has been taken permanently out of production (§ 118.10(c)).
- Shell egg producers must make records available within 24 hours from the time of receipt of the official request (§ 118.10(d)).
- Shell egg producers must register with FDA (21 CFR 118.11).

B. Significant Differences Between the Proposed and Final Rules

The final rule reflects the following significant changes from the proposed rule:

- Persons who transport or hold shell eggs for shell egg processing or egg products facilities must comply with the refrigeration requirements. Only shell egg producers were subject to the proposed refrigeration requirements.
- Shell egg producers are required to have and implement written SE prevention plans.

The proposed rule did not require that plans be written.

- The requirements for protective clothing and sanitizing stations have been removed from biosecurity program requirements.
- The requirement to ''wet clean the positive poultry house'' has been removed.
- Egg processors are now permitted to equilibrate refrigerated eggs to room temperature just prior to processing.
- The requirement to begin egg testing within 24 hours after notification of a positive environmental test has been changed to require that results of egg testing be obtained within 10 calendar days after receiving notification of the positive environmental test.
- The required time period to perform environmental testing for SE after molting has been changed from 20 weeks to 4 to 6 weeks after molt.
- Diverted eggs must have labeling on the shipping container, and all documents accompanying the shipment must state ''Federal law requires that these eggs must be treated to achieve at least a 5-log destruction of *Salmonella* Enteritidis or processed as egg products in accordance with the Egg Products Inspection Act, 21 CFR 118.6(f).''
- The requirement that one onsite supervisor at each farm be responsible for administration of the SE prevention measures has been changed to allow for more than one supervisor and for offsite supervisors to be responsible.
- Shell egg producers must document that pullets were SE-monitored or raised under SE-monitored conditions.
- ''SE monitored'' has been defined to mean that pullets are raised under SE control conditions that prevent SE, including the following: (1) Procurement of chicks from SE-monitored breeder flocks that meet NPIP's standards for ''U.S. S. Enteritidis Clean'' status (9 CFR 145.23(d)) or equivalent standard, (2) environmental testing, and (3) cleaning and disinfection of the environment as needed based upon the results of the environmental testing.
- Shell egg producers must maintain records documenting compliance with each of the SE prevention measures.
- Shell egg producers must maintain records documenting review and modifications of the SE prevention plan and corrective actions.
- Shell egg producers must register with FDA.

C. Compliance Dates

The compliance date is July 9, 2010; except that, for producers with fewer than 50,000 but at least 3,000 laying hens, the compliance date is July 9, 2012. The compliance date for persons who must comply with only the refrigeration requirements is July 9, 2010.

III. Comments on the Proposed Rule

FDA received approximately 2,000 timely submissions in response to the initial comment period on the proposed rule. In addition, approximately 20 timely submissions were received in response to the reopened comment period. The majority of submissions came from individuals and groups advocating animal welfare issues that, for reasons discussed later in this document, are outside the scope of this rulemaking. The remaining comments came from various trade associations, State government agencies, industry, consumer groups, scientific associations, and individual consumers. These comments raised approximately 60 major issues. To make it easier to identify comments and our response to the comments, the word ''Comment'' will appear in parentheses before the description of the comment, and the word ''Response'' will appear in parentheses before our response. We have also numbered each comment to make it easier to identify a particular comment. The number assigned to each comment is purely for organizational

purposes and does not signify the comment's value or importance or the order in which it was submitted.

A. General Comments

1. Enforcement by Voluntary EQAPs

(Comment 1) Several comments stated that FDA should implement what some comments referred to as a ''recognition regime,'' under which parts of the final rule would not apply to (or would be presumptively complied with by) State and industry EQAPs with standards equivalent to the Federal rule. Some comments suggested that all shell egg producers should be subject to the testing and diversion requirements of the final rule, but that egg producers participating in recognized EQAPs would have to meet only the on-farm SE control measures specified by the EQAP. The comments suggested that, as part of the recognition of the EQAPs, FDA should also recognize audits and inspections conducted by State agencies to measure compliance with those programs, rather than conducting separate Federal inspections.

(Response) FDA recognizes that existing voluntary EQAPs have been successful in reducing SE contamination in poultry houses in certain States (*see* discussion in section I.G of this document). However, for several reasons, we do not agree that States with EQAPs that are recognized by FDA should not be subject to this rule.

First, as discussed, these programs are not uniformly administered or equally comprehensive in their prevention measures. In addition, currently the EQAPs that exist are voluntary for shell egg producers. Although the existing EQAPs all have similar requirements, they vary in how those requirements are implemented. This rule will establish uniform, nationwide requirements to prevent SE in shell eggs during production, storage, and transportation. FDA believes that these requirements will further reduce SE illness and deaths associated with egg consumption.

On the other hand, we agree that we can enlist the assistance of existing EQAP organizations and officials in implementing FDA's regulation. The rule provides that a State or locality may, in its own jurisdiction, enforce this rule by carrying out inspections under § 118.12(b) (21 CFR 118.12(b)) and by using the administrative remedies in § 118.12(a) unless FDA notifies the State or locality in writing that its assistance is no longer needed. FDA plans to provide guidance to States and localities through an enforcement and implementation guidance subsequent to this final rule.

2. Vaccination of Layers Against SE

(Comment 2) Some comments agreed with FDA's conclusion, discussed in the proposed rule, that there is insufficient scientific support for a requirement that layers be vaccinated against SE (69 FR 56824 at 56847). Some of these comments stated that FDA should encourage voluntary vaccination efforts by, for example, allowing producers that can demonstrate the effectiveness of their vaccination programs to follow an alternative protocol for environmental testing before depopulation. One comment encouraged the use of SE vaccinations as an added prevention measure against SE contamination of shell eggs and recommended that an option of using a vaccination program should be available to shell egg producers. In support, the comment stated that data exists from the United States and Europe that the comment said demonstrates the efficacy of vaccination programs. The comment did not provide additional data in support of these statements.

Another comment stated that the available research and field evidence support a conclusion that vaccines used with other SE control measures will reduce SE.

(Response) FDA agrees with the comments supporting only voluntary vaccination of layers. As we stated in the proposed rule, there are insufficient data on the efficacy of vaccines, particularly data reflecting field trials under ''real world'' conditions, to support a mandatory vaccination requirement (69 FR 56824 at 56847). We also believe that data on the efficacy of vaccines are insufficient to allow substitution of vaccination for any of the SE prevention measures required in this final rule. If individual producers have identified vaccines that are effective for their particular farms, we encourage the use of the vaccine as an additional SE prevention measure.

3. Delegation of Inspection Responsibilities to Other Federal or State Agencies

(Comment 3) Two comments urged FDA to delegate farm inspection responsibilities to USDA's FSIS and Agricultural Marketing Service (AMS) or the State Departments of Agriculture, because these agencies are already involved in oversight of various aspects of egg production. Similarly, another comment stated that APHIS and FSIS are more qualified than FDA to address disease and pathogen risk reduction in live animal production operations.

(Response) FDA disagrees with the suggestion that we should delegate inspection responsibilities under this rule to USDA or the States. Although we coordinate our respective egg safety efforts with FSIS and AMS, each agency has distinct responsibilities and skills, all of which benefit consumers of shell eggs and egg products. These responsibilities and skills do not necessarily overlap as a practical matter (for example, AMS personnel are in certain shell egg packing plants, but not in the layer houses). Furthermore, the rule provides that any State or locality that is willing and able to assist FDA in enforcing the rule may do so in its own jurisdiction.

4. Induced Molting

(Comment 4) Several comments responded to the request in the proposed rule for comment and data concerning induced molting (69 FR 56824 at 56846 through 56847). We received a number of comments encouraging FDA to ban induced molting of laying birds. These comments stated that this practice stresses the immune function of chickens, resulting in the promotion of SE contamination in shell eggs and egg products; that it leads to plucking and consumption of feathers that may be contaminated with *Salmonella;* and that the plucking may itself also stress the immune system. The comments provided some references for these assertions. Another comment stated that USDA supports elimination of forced molting to reduce SE contamination and that the American Veterinary Medical Association also opposes the practice.

Other comments supported the absence in the proposed rule of provisions addressing molting. These comments stated that the research on which claims about post-molt SE shed are based have primarily been laboratory, rather than field research, involving large challenge doses of SE that would not be duplicated in the field and strains of chickens different from those common in commercial laying operations. The comments stated that there is only emerging research into how to use a variety of diets to control the natural process of molting in the egg production setting.

(Response) We addressed the issue of induced molting at length in the proposed rule (69 FR 56824 at 56846 through 56847). We discussed the limitations of studies cited to support the assertion that induced molting increases SE contamination of eggs and stated that we did not believe that we had adequate data upon which to rely for a final decision on the issue of the

relationship between induced molting and SE contamination of the environment and of eggs. Although the proposed rule specifically requested comment and data related to our discussion of induced molting, we did not receive any new data on the relationship between induced molting and SE contamination of the laying environment and of eggs. As a result, we do not have adequate evidence to support including a prohibition on induced molting in the final rule.

5. Indemnification

(Comment 5) One comment suggested that we research whether the Public Health Service Act (the PHS Act) would allow us to indemnify persons whose economic interests are adversely affected by this rule, for example, as a result of diversion of shell eggs to breaker facilities. The comment suggested that, should we conclude that we lack such legal authority, we should consider whether to request it from Congress. Another comment suggested that a Federal compensation package may be needed for smaller producers that lack pasteurization capability.

(Response) Unlike APHIS, FDA is not required or explicitly authorized by Federal statute to compensate persons whose economic interests are adversely affected by certain Agency actions.[1] Further, FDA notes that although some producers will face economic costs from the diversion of eggs to the table market, as discussed in section V of this document (Analysis of Economic Impacts), the economic benefit from illnesses averted is expected to greatly exceed the cost of this rule. The suggestion that FDA seek statutory authority to pay compensation to indemnify producers is outside the scope of this rule.

B. Comments on ''Shell Egg Producers Covered by the Requirements in This Part'' (Proposed and Final § 118.1)

Exemption of Producers With Small Flocks

(Comment 6) Several comments addressed our proposed exemption of shell egg producers with small flocks, defined as flocks of less than 3,000 laying hens at a particular farm. Most of these comments argued that these small flocks are less likely to have adequate SE prevention measures and that excluding them would be contrary to the public health goal of the rule. The comments suggested that smaller facilities are less likely to have adequate refrigeration capacity, effective rodent control, an effective biosecurity program, measures in place to limit laying hens' exposure to manure on building floors and exposure to the outdoors; that they may pose a greater risk that they will transport and hold eggs without proper refrigeration; and that they may be less likely to obtain replacement pullets or chicks from breeders who participate in the SE prevention programs. One comment similarly suggested that eggs from these smaller producers might be associated with a disproportionate share of sporadic illnesses and even some outbreaks. The comments did not provide data to support these concerns; one comment from one of the larger trade associations stated that it was not aware of research that would support any conclusion that smaller operations would be either more or less likely to have an SE problem than larger, commercial operations.

One comment proposed that FDA reduce the exemption to producers with less than 500 chickens or require all producers not selling directly to consumers to comply with the rule. This comment suggested that FDA may not be aware of outbreaks associated with eggs from these producers because the eggs are not likely to be shipped interstate.

One comment cited our $1.01 per hen ($0.05 per dozen) estimate of the cost to farms with between 3,000–19,999 layers as an illustration of the large financial burden that the rule imposes on these farms.

(Response) We do not believe that there is at this time sufficient evidence to warrant extending the rule's coverage to producers with fewer than 3,000 laying hens. As we explained in the proposed rule (69 FR 56824 at 56832), because producers with fewer than 3,000 layers do not contribute significantly to the table egg market, imposing any one or all of the restrictions on them will have little measurable impact on the incidence of SE. We have no information documenting that there is an elevated risk of sporadic illness or outbreaks associated with eggs sold directly from farmer to consumer or from a producer with fewer than 3,000 laying hens.

FDA disagrees with the statement that we may be unaware of outbreaks associated with eggs from small producers because these producers are less likely to ship eggs interstate. The outbreak data relied on by FDA is in general submitted by State Departments of Health to CDC. As noted earlier, cases of salmonellosis must be reported to local health departments, who in turn provide information to States and to CDC.

FDA recognizes that the cost per hen is higher for smaller farms. However, though not specifically broken out in the regulatory impact analysis, for farms with between 3,000 and 19,999 layers, the public health benefits of the rule exceed the costs by more than $90 million annually and costs do not exceed benefits for any of the individual provisions of the rule. There are a number of features of the rule itself and in our plans for implementation to facilitate smaller farms' compliance with the rule. For example, this final rule has a staggered compliance schedule, which provides smaller egg producers (those with between 3,000 and 49,999 layers) 3 years to comply with the final rule. FDA will continue to evaluate the impact of this rule on smaller farms and will consider taking appropriate steps to mitigate those impacts, where it is possible to do so without reducing safety. In addition, FDA intends to provide guidance on the recordkeeping and other provisions of the rule, including small entity compliance guidance. We plan to use guidance, to the extent feasible, as a vehicle to identify areas where compliance could be achieved via flexible approaches that would mitigate the financial impact while preserving the public health benefits of the rule. We plan to solicit public and industry input on this guidance.

Therefore, FDA has retained the exemption from all provisions of this final rule for farms with fewer than 3,000 layers.

C. Comments on ''Definitions'' (Proposed and Final § 118.3)

1. Poultry House

(Comment 7) One comment questioned the proposed definition of a poultry house, which requires that different sections of a single building separated by walls be considered as separate houses. The comment noted that the definition would not address the risk of airborne transmission of SE. The comment stated that ''there is considerable evidence that SE can be transmitted through dust and other airborne particles,'' citing three references in support. The comment noted that the proposed rule did not require that separate sections in a building have separate ventilation systems, but did require biosecurity

[1] Under the Animal Health Protection Act, USDA is required to compensate the owner for any animal, article, or means of conveyance that the Secretary of Agriculture requires to be destroyed (7 U.S.C. 8306(d)). Under the Plant Protection Act, USDA is authorized to pay compensation to any person for economic losses incurred as a result of action taken by the Secretary of Agriculture under a declaration of extraordinary emergency (7 U.S.C. 7715).

procedures to ensure that there is no introduction or transfer of SE from one section to another. The comment suggested that the definition of a poultry house should clarify that the biosecurity procedures should include transfer through airborne particles.

(Response) FDA recognizes that SE may be transmitted through dust and other airborne particles. However, FDA does not believe that separate ventilation for each section of a house should be mandated because there is great variation in design and placement of houses and ventilation systems, and separate ventilation may not be necessary in every circumstance. Depending on the layout of a farm and the type and number of houses, a producer should decide whether ventilation needs to be addressed as part of farm-specific biosecurity measures to prevent the introduction or transfer of SE from one section to another.

The proposed definition of ''poultry house'' stated ''For structures comprising more than one section containing poultry, each section is enclosed and separated from the other sections, *and each section has a biosecurity program in place to ensure that there is no introduction or transfer of SE from one section to another.*'' (Emphasis added.) The final phrase has been removed from this section and added as an introduction to § 118.4(b) (biosecurity) to make clear that you must ''take steps to ensure that there is no introduction or transfer of SE into or among poultry houses,'' and that ''[a]mong such biosecurity measures you must, at a minimum'' include a number of specific measures in the biosecurity plan. If the design of a farm and its poultry houses needs an additional measure of ventilation to prevent cross-contamination, then such a measure should be added to the biosecurity plan.

In addition, in the final rule we have revised the definition of ''poultry house'' to clarify that ''[f]or structures comprising more than one section containing poultry, each section that is separated from other sections is considered a separate house.''

2. Treatment

(Comment 8) Some comments stated that a survey of egg processors to determine their current pasteurization practices supports a 5-log reduction, although many processors achieve a substantially greater pathogen reduction. The comments stated that the survey indicated that 50 percent of survey respondents reported that they achieve a 5-log reduction, and the other 50 percent reported a 7-log or greater reduction. The comments stated that the current 5-log reduction requirement appears to provide an adequate margin of safety, because specified temperatures and holding times do not take into account the additional kill achieved in the product while it is heating up to, and cooling down from, the pasteurization temperature.

(Response) FDA agrees with the comments that a 5-log reduction in SE via pasteurization or an alternative approach or the processing of egg products to achieve an equivalent level of protection is appropriate to ensure the safety of shell eggs. Therefore, we have retained the definition for the term ''treatment'' (or ''treated'') in § 118.3 of the final rule as ''a technology or process that achieves at least a 5-log destruction of SE for shell eggs, or the processing of egg products in accordance with the Egg Products Inspection Act. We established this standard in 1997, in response to a USDA/AMS request to FDA on criteria for shell egg pasteurization. AMS then published this standard in its **Federal Register** notice on official identification of pasteurized shell eggs on September 24, 1997 (62 FR 49955).

Additionally, both FDA and FSIS are evaluating additional measures to improve egg safety, and FSIS intends to issue proposed rules in the near future for egg products plants and egg handlers, including egg handlers who operate in-shell pasteurization treatments. FDA and FSIS will continue to work closely together to ensure that our egg safety measures are consistent, coordinated, and complimentary.

D. Comments on ''Salmonella Enteritidis (SE) Prevention Measures'' (Proposed and Final § 118.4)

1. Chicks and Pullets (§ 118.4(a))

FDA reopened the comment period on May 10, 2005, to seek further comment and information on industry practices and programs that prevent SE-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into laying hen houses (70 FR 24490). We received approximately 20 submissions that provided additional information and data on the specific questions that FDA presented.

(Comment 9) Several comments stated that on-farm prevention practices must address each stage in the life of laying flocks, including the pullet-rearing stage. These comments stated that applying the FDA-mandated practices to layers only after they have been placed in layer hen houses may be too late to ensure protection against SE, as the layers' ovaries may already be contaminated with the pathogen. The comments urged FDA to make clear in the rule that all of the SE prevention practices apply to both pullet rearing houses and layer houses. The comments noted that this approach would be consistent with the practice of existing EQAPs SE prevention measures that are applicable specifically to pullets.

Many comments suggested that FDA add a new requirement that producers certify that pullets they procure have come from a facility that has an SE-monitoring program. The comments recommended that pullet houses undergo environmental tests for SE for each flock at approximately 10 weeks of age. The comments stated that, if the test is positive, the producer could still accept the pullets, but the producer should be required to test environmentally after placement. In addition, the comments suggested that FDA require that pullet houses should be cleaned and disinfected prior to placement of the next pullet flock. Finally, the comments suggested that FDA require testing for layers used to backfill (replacing dead or diseased layers with other layers) and older flocks that are moved to another facility.

(Response) We agree that SE prevention measures should be in place during the pullet phase of shell egg production and have modified the rule accordingly. We believe this will reduce the risk of placing infected birds into poultry houses. The final rule requires producers to procure pullets from sources where the environment has been tested and found environmentally negative prior to introduction into the laying flock. The environmental testing is required of pullets at 14 to 16 weeks of age and cleaning and disinfection of the pullet environment is required if the environmental test is positive. The cleaning and disinfection procedures include removing all manure, dry cleaning the positive pullet house to remove dust, feathers, and old feed, and following cleaning, disinfecting of the positive pullet house with spray, aerosol, fumigation, or another appropriate disinfection method. Additionally, if the environmental test is positive for SE, producers must begin egg testing within 2 weeks of the start of egg laying. The requirements also include procuring chicks from SE-monitored breeder flocks that meet standards set by NPIP for ''U.S. S. Enteritidis Clean'' status or equivalent standard.

FDA does not agree that a specific requirement is needed to test birds used to backfill and to test older flocks that are moved to another facility. Section 118.5(a) of the final rule requires

producers to perform environmental testing for SE in a poultry house when any group of laying hens constituting the flock within the poultry house is 40 to 45 weeks of age. Therefore, any layers used to backfill and older layers moved into a poultry house will be, or would have been, environmentally tested at 40 to 45 weeks of age, as are all other layers.

(Comment 10) Several comments supported the proposed requirement that all pullets and chicks be procured from a hatchery or breeding flock that participates in NPIP. These comments noted that NPIP participants have developed effective strategies that have reduced the prevalence of many poultry diseases including SE.

(Response) We have retained the requirement that pullets that are purchased be procured as chicks from SE-monitored breeder flocks that meet NPIP's standards for ''U.S. S. Enteritidis Clean'' status or an equivalent standard.

2. Biosecurity (§ 118.4(b))

(Comment 11) Some comments stated that FDA should revise its biosecurity requirements to allow egg producers greater flexibility. In addition, some comments challenged specific biosecurity measures as being insufficiently supported by data demonstrating their effectiveness in controlling or preventing SE contamination. Specifically, comments questioned the value of requiring personal protective equipment and sanitizing stations between houses on one farm, limiting visitors, controlling movement of workers from house to house, preventing employees from having poultry at home, and preventing stray poultry, wild birds, and other animals from entering the grounds. According to the comments, on a farm it is the presence of mice near chickens that maintains the SE infection and contributes to SE spread from building to building. One comment asserted that biosecurity efforts on the farm should be focused on ''rodents and other issues threatening to introduce or maintain SE.'' The comment does not explain what ''other issues'' the commenter is referring to. The comment also asserted that PEQAP does not have a biosecurity requirement.

(Response) FDA agrees with the comments that biosecurity measures could be more flexible in the final rule without jeopardizing the effectiveness of the SE prevention measures. Specifically, we believe egg producers may be able to devise and implement effective means other than protective clothing and sanitization stations to prevent cross-contamination between houses. For example, in some circumstances placing footbaths and farm-specific footwear at the entrance to a complex, maintaining house specific equipment, or using non-street clothing in the layer houses may be sufficient to prevent cross-contamination between houses. Therefore, we have removed from the biosecurity provisions the requirements for the use of protective clothing and sanitizing stations between houses. This change addresses the diverse poultry housing situations that exist throughout the country by allowing each producer to implement biosecurity practices and procedures appropriate for a particular farm and situation. We also agree that it is impractical to require egg producers to prevent stray animals from entering the grounds. Therefore, we have narrowed the provision for stray animals to apply only to the poultry houses.

However, FDA disagrees with the comments questioning the value of other specific biosecurity requirements. As discussed in the proposed rule (69 FR 56824 at 56835), limiting visitors on the farm and in poultry houses, maintaining practices that will protect against cross-contamination when persons move between poultry houses, and prohibiting employees from keeping birds at home are all vital biosecurity provisions that are commonly in use. According to the Layers 99 study (Ref. 29), 66 percent of farm sites already practice some form of biosecurity; that study found that poultry houses where visitors were not allowed were less likely to test positive for SE.

Biosecurity is a critical part of a farm's SE prevention measures. You must implement these biosecurity measures to prevent the introduction or transmission of SE into or between poultry houses. Furthermore, contrary to the comment, PEQAP requires all participants to maintain an acceptable biosecurity program (Ref. 30). As discussed in section I.G of this document, all current EQAPs require use of NPIP ''U.S. S. Enteritidis Clean'' chicks or equivalent, biosecurity, rodent control, cleaning and disinfection of poultry houses, and many programs require some environmental testing as well.

We will make further specific recommendations for biosecurity steps and options for achieving these steps, based on current science and best practices, in a guidance that we plan to issue subsequent to this final rule. We emphasize, however, that biosecurity is an important and integral part of any poultry farm's SE prevention program, and that the biosecurity requirements in the final rule are minimum standards; egg producers may incorporate additional biosecurity measures into their SE prevention plans if they believe such measures are warranted.

(Comment 12) One comment stated that if FDA insists on a biosecurity requirement, it should address the movement of pullets, spent hens (hens that have permanently ceased egg production), people, equipment, eggs, flats (a receptacle for storing or transporting eggs most often constructed of cardboard or plastic), and egg shells.

(Response) The comment was not specific as to how these matters should be addressed and did not provide any supporting data concerning the need for particular requirements. However, it was not our intention that the proposed rule's biosecurity provisions addressing the risk of cross-contamination from visitors or the movement of ''equipment'' be interpreted as an exclusive list of measures to take to prevent the introduction of SE into or among poultry houses. We have amended § 118.4(b) to make this clear, by adding general introductory language, moved from the proposed definition of ''poultry house,'' that producers must ''take steps to ensure that there is no introduction or transfer of SE into or among poultry houses.''

(Comment 13) One comment suggested that the proposed rule is premised on a mistaken belief by FDA that biosecurity alone can prevent the introduction and spread of SE.

(Response) As reflected in the rule, FDA understands that biosecurity is only one element of the measures that a producer must have to prevent SE. Producers must follow additional SE prevention measures, including pullet measures; rodent, fly and other pest control; cleaning and disinfection; and refrigeration.

(Comment 14) One comment questioned whether organic poultry producers would be able to comply with the requirement in the proposed rule (§ 118.4(b)(4)) that requires egg producers to ''prevent stray poultry, wild birds, and other animals from entering grounds and facilities.'' The comment stated that this requirement is in conflict with a requirement under the USDA National Organic Program (7 CFR part 205) that organic poultry producers must provide outside access for all livestock. The comment also stated that farms that are based on a pastured poultry system, which typically provides a substantial percentage of the birds' diet from pasture, would have difficulty complying with this requirement.

(Response) We agree that it would be difficult to prevent stray poultry and

other animals from entering the grounds of the farm, and we believe it is sufficient to keep stray animals out of the poultry house. Therefore, in the final rule, we have changed the requirement for stray animals so that it applies only to poultry houses rather than the entire grounds. Further, we have consulted with AMS, which administers the National Organic Program, and AMS has informed us that this requirement would not make it impossible for eggs to qualify as organic (Ref. 38).

3. Pest Control (§ 118.4(c))

(Comment 15) Some comments supported the rodent control program requirement in proposed § 118.4(c)(1), but questioned the role of flies in the spread of SE and recommended elimination of the pest monitoring under proposed § 118.4(c)(2). The comments further stated that if measured outside the poultry house, the fly count might reflect flies that are present from external locations, such as animal housing at adjacent properties.

(Response) FDA disagrees that the provision for monitoring flies in § 118.4(c)(2) should be removed or modified. In the proposed rule we described research by FDA and others showing that flies harbor SE within the poultry house environment (69 FR 56824 at 56835). According to the Layers 99 study, flies, like rodents, have access to feed troughs on nearly all farms. Further, the fly monitoring procedure can be performed inside the layer house, thus creating an accurate reflection of the presence of flies there.

For clarification, FDA has replaced the term ''pest'' in § 118.4(c)(2) in the final rule with ''flies'' because ''pest,'' which is defined to mean any objectionable animal including, but not limited to, rodents, flies, and larvae, is too broad in the context of this specific provision.

(Comment 16) One comment stated that PEQAP addresses rodent control, but does not address fly control. The comment recommended that fly control be included in the FDA regulation, but that the States individually and independently decide the number of flies allowed for maintaining compliance with the regulation. The comment suggested that under State or local requirements or when a farm has a problem, the spot cards be used to determine the numbers and, therefore, the appropriate control program.

(Response) FDA disagrees with the comment that the States should individually and independently decide the number of flies allowed for maintaining compliance with the regulation. This rule establishes minimum national standards based on measures that have been shown to prevent SE. The comment did not provide any rationale for addressing flies on a State-by-State basis. Further, the rule provides flexibility in how fly presence is determined, allowing not just spot cards, but also Scudder grills, sticky traps, or other appropriate monitoring methods. FDA intends to publish guidance on the requirement to monitor for flies and on the level of fly activity considered acceptable.

The literature suggests that 50 or fewer hits on a spot card or sticky trap per week or a count of less than 20 on a Scudder grill indicate satisfactory fly control ((Refs. 39 and 40).

4. Cleaning and Disinfection (§ 118.4(d))

(Comment 17) One comment suggested that mandatory cleaning and disinfection measures should not require removal of ''all visible manure'' in a hen house following a positive environmental test and depopulation, but should allow for flexibility with respect to manure removal. The comment stated that complete removal of all manure would destroy biological controls for flies (such as parasitic wasps). The comment also argued that this requirement is impractical, because many producers only remove manure from the houses during those times of year when they can immediately apply it to fields. Several comments stated that the requirement to remove all visible manure is impractical for large, complex poultry farming operations, because commercial in-line, multi-tiered cage layer houses with related accessories and equipment for watering, feeding, egg collection, manure deflection, storage, and removal might be impossible to bring into compliance. The complex machinery (some electrical) is very difficult to clean at best and is just not compatible with wet cleaning. It would also be difficult to accomplish this cleaning in very cold climates because of freezing, in that the layers were an important source of house heat until they were removed for replacement. The comment also noted it might be difficult to enforce a requirement such as ''removal of all visible manure.''

(Response) We disagree that flexibility should be allowed with respect to manure removal after a positive environmental test. First, even if it is true that complete removal of all manure would ''destroy biological controls for flies'' (presumably, by removing parasitic wasp larvae), the wasp population could be restored by the firm, if biological controls are an intended and effective component of the firm's fly control efforts. Data available to FDA indicate that there are non-biological methods of control available to producers (i.e., chemical and mechanical methods) and that these methods are used by most laying hen houses. Moreover, the available data indicate that the role of parasitic wasps in controlling flies is currently being debated in the scientific literature, with most of the work being done in cattle feedlots. Meyer *et al.* (1990) (Ref. 41) and Andress and Campbell (1994) (Ref. 42) found parasite treatments had no apparent affect on adult fly populations, while Weinzierl and Jones (1998) (Ref. 43) concluded that parasitism significantly reduced the fly population. In the one study we are aware of concerning the use of parasitic wasps to control flies in the context of poultry facilities, variable results were obtained (Kaufman *et al.,* 2001) (Ref. 44).

Furthermore, limited data suggest that total cleanout of manure is feasible even where parasitic wasps are used to control flies. A study by Hinton and Moon (2003) (Ref. 45) on the effect of a total cleanout on fly control in chicken houses compared the effect of a total cleanout of manure from chicken houses to two partial cleanout methods. Initially, the increase in flies was greatest in those houses with total cleanout, but subsequent differences between the three cleaning methods were small and the fly densities remained relatively stable for 3 months in all houses. Although this study did not specifically evaluate parasitic wasps, it supports a finding that total cleanout of poultry houses will not adversely affect fly control efforts (Ref. 45).

Second, the fact that manure cannot always be applied to fields does not mean that it should not be removed from poultry houses. Manure removed from a house can be composted, stored in a manure barn, or spread on a field depending on the time of year that it is removed.

Finally, we do not understand why manure removal at a large operation would be impractical. We acknowledge that a large operation has more manure to handle, but FDA has visited large operations that do clean out the manure, and we are unaware of any unique problems for such operations.

Because manure is a reservoir of SE that has been shed by infected laying hens, once a poultry house has had an SE-positive environmental or egg test, it is important that all visible manure be removed. Removing all visible manure before new laying hens are placed into a house will help to prevent the SE from

infecting the replacement flock via the manure and rodents.

Therefore, FDA concludes that, to prevent the spread or perpetuation of SE from one flock to another, a producer must remove all visible manure from a poultry house before new laying hens are added to the house when an environmental test was positive for SE at any point during the life of the flock that was housed in the poultry house prior to depopulation. The agency realizes that the floor in a concrete-floored house could appear light gray, but we do not expect to see any accumulation of manure in a house that has had the manure removed, and we do not anticipate practical difficulties in our ability to enforce this requirement. We plan to publish guidance on acceptable manure removal subsequent to this final rule.

(Comment 18) Several comments objected to the wet cleaning requirement in the proposed rule and suggested alternatives such as allowing flexibility so long as the cleaning and disinfection procedures are sufficient to eliminate SE. The comments stated that wet cleaning is impractical during the coldest months in some States; that it can encourage the growth of SE by creating an environment for growth of microorganisms in the poultry house; and that wet cleaning will harm some mechanical and electrical parts of equipment and cages. The comments argued that there is no scientific consensus in favor of wet cleaning.

(Response) We agree that wet cleaning may not be practical in all situations and have removed the requirement from the final rule. As discussed in the proposed rule (69 FR 56824 at 56836), it is important that, once a poultry house has had an SE-positive environmental or egg test, a producer make every effort to rid the environment of SE before new laying hens are placed into that house to prevent the SE problem from being perpetuated in the replacement flock. The final rule retains the requirement in this circumstance to dry clean the poultry house to remove dust, feathers, and old feed prior to the addition of new laying hens to the house and following cleaning, to disinfect the positive poultry house with spray, aerosol, fumigation, or another appropriate disinfection method.

5. Refrigeration (§ 118.4(e))

(Comment 19) Several comments raised concerns about the requirement in § 118.4(e) of the proposed rule that egg producers should refrigerate shell eggs if they are held longer than 36 hours. Some comments urged FDA to change the time at which refrigeration is required to 72 hours after production. The comments noted that 72 hours would accommodate shell egg production over weekends and smaller producers that have pickups less frequent than daily, while at the same time ensuring that eggs are not accumulated and held over long periods without refrigeration.

One comment argued that the requirement to refrigerate eggs within 36 hours could actually be counter-productive with respect to the safety of eggs destined for use in the table market. The comment reasoned that more checks and cracks will occur when previously refrigerated eggs are washed due to the greater change in temperature. The comment recommended that FDA not set a prescriptive time requirement for refrigeration of table eggs unless further research justifies the need, but that if a time limit for refrigeration must be set, it should be set at 72, not 36, hours.

(Response) We disagree that eggs should remain unrefrigerated for up to 72 hours after laying. Our proposed requirement that eggs be refrigerated if stored more than 36 hours was based on data indicating that, although fresh shell eggs provide an inhospitable environment for *Salmonella* to multiply, the chemical and physical barriers against bacterial movement and growth in shell eggs degrade as a result of the time and temperature of holding (69 FR 56824 at 56836 through 56887). As they degrade, shell eggs provide an increasingly more hospitable environment for the growth of SE. Studies have shown that SE, when inoculated into the albumen (whites) of whole shell eggs, multiplied to high numbers if the eggs were not properly refrigerated (Refs. 46, 47, and 48).

The 36-hour limit for unrefrigerated holding is supported by a model, contained in the 1998 joint SE risk assessment (Ref. 21), which was developed to examine the relationship among holding time, holding temperature, and yolk membrane breakdown as an indicator of SE risk. (The yolk membrane separates the nutrient-rich yolk and any SE bacteria that might be present in the albumen; breakdown or loss of the yolk membrane results in rapid growth of SE present in the albumen.) The model showed that, at 70 to 90 °F (i.e., temperatures that might be observed in unrefrigerated egg holding areas in farms or warehouses or in transport vehicles), there was much less breakdown of yolk membrane in eggs held no longer than 36 hours than in eggs held no longer than 72 hours. According to the model, eggs held at 70 °F will experience at least a 16-percent breakdown of yolk membrane after 36 hours and a 25-percent breakdown after 72 hours. Eggs held at 80 °F will suffer at least a 22-percent breakdown after 36 hours and a 39-percent breakdown in the yolk membrane at 72 hours. At 90 °F, there is at least a 33-percent breakdown after 36 hours and at least a 62-percent breakdown of the yolk membrane after 72 hours. In the 2005 FSIS risk assessment (Ref. 22), refrigeration was modeled again; this risk assessment found that limiting eggs to just 12 hours without refrigeration, the shortest timeframe between laying and refrigeration that was evaluated, provided the greatest public health benefit among the time frames studied.

Although, as we stated in the proposed rule, we believe that it is very important that eggs be placed into refrigerated storage as soon as possible after they are laid, we recognize that this may not be practical for all producers. It may take several hours or longer after the eggs are laid before they are collected or picked up for transport. According to the Layers 99 study (Ref. 28), almost half of the farm sites surveyed had egg pickups every 1 to 2 days. In light of all of these data, we are retaining in the final rule the requirement of 36 hours as the maximum amount of time eggs may be held unrefrigerated on the farm.

(Comment 20) Several comments questioned the proposed refrigeration temperature requirement of 45 °F. One comment stated that holding eggs at 45 °F would result in two problems related to egg quality and safety. First, the comment stated that ambient moisture would condense on the cold eggs and cause them to ''sweat'' before they are washed/sanitized, increasing the chance of surface contamination penetrating the eggs. Second, the comment stated that when cold eggs are moved into the egg washer, which uses hot water, checks or cracks can develop in the shell, lowering the quality of the egg and increasing the risk of future surface bacterial or fungal contamination getting into the interior of the eggs.

(Response) FDA does not agree that a 45 °F refrigeration requirement is too low. This requirement is consistent with FDA's final rule on refrigeration of shell eggs at retail (65 FR 76092), and like that requirement, the rule is based on research demonstrating that *Salmonellae* do not grow well or rapidly at temperatures less than or equal to 45 °F. FDA finds that the scientific evidence on the growth of SE in eggs shows that control of storage temperature of shell eggs can significantly reduce the rate of

multiplication of any SE present (Refs. 46, 47, and 48).

FDA agrees that there can be quality and safety problems such as thermal checks (hairline cracks in the shell) associated with refrigerating eggs immediately prior to processing into either table eggs or egg products. Therefore, FDA is modifying the rule to allow an equilibration step (a step during which the eggs reach room temperature) before eggs are processed. Specifically, under § 118.4(e) of the final rule, shell eggs that have been refrigerated may be held at room temperature for no more than 36 hours just prior to processing to temper them, which will reduce the risk of hairline cracks in the shell that could contribute to bacteria entering the egg during washing if the egg is too cold. We believe the benefits of refrigeration accompanied by equilibration outweigh any possible risk associated with sweating of the eggs.

(Comment 21) One comment stated that the rule is silent on the refrigeration of eggs that are segregated at the grading operation for processing at egg products plants. These are the eggs that do not meet grade requirements, are checked (that is, the shell is cracked, but the shell membrane is intact), or have dirt on the shell. The comment explained that the last two types of eggs pose a significant food safety risk if handled improperly and can be processed only in a USDA-inspected egg products plant. Additionally, the comment stated it may take several days to accumulate a quantity of checked and dirty eggs for shipment. Similarly, the comment stated that surplus eggs produced by hatchery flocks are accumulated and sent to egg products plants for processing and could present a hazard if not properly refrigerated. The comment noted that most shell egg packers and hatcheries currently refrigerate these eggs, but the comment urged FDA to amend the proposed rule to require that eggs segregated at grading operations and at hatcheries and intended for further processing also be subject to the refrigeration requirements proposed for on-farm storage.

Another comment noted that USDA only requires refrigeration at the packer's facility after packing for the consumer. The comment stated that nest run eggs (eggs that are packed as they come from the production facilities without having been washed, sized, and/or candled for quality) and restricted eggs, (eggs whose use is limited by FSIS under the Egg Products Inspection Act because they are, for example, checked or dirty) are not required to be refrigerated. This comment further stated that to maintain the maximum benefit of SE illness reduction from refrigeration, eggs should be refrigerated throughout the distribution chain.

(Response) We sought comment in the proposed rule on whether to require refrigerated transport of shell eggs not already required by regulation or within USDA's jurisdiction; for example, transport of shell eggs from a farm or a packer to a food manufacturing facility. We further stated that we would consider putting into place requirements similar to those we finalized for refrigerated storage of shell eggs at retail (i.e., transport of shell eggs at or below 45 °F ambient temperature).

FDA agrees with the comment that the refrigeration requirement in the proposed rule only addresses eggs held at the farm for more than 36 hours after time of lay. The proposed requirement does not address nest-run eggs, surplus hatching eggs sent to the table egg market, eggs shipped to egg products facilities and then sent to the table egg market, or any other eggs that are held or transported at locations other than at the producer's layer farm. Holding or transporting these eggs without refrigeration allows growth of any SE that may be present in the eggs. We also agree with the comment that, to maintain the maximum benefit of SE illness reduction from refrigeration, eggs should be refrigerated throughout the distribution chain. Therefore, to reduce this potential growth of harmful bacteria, we have modified § 118.4(e) in the final rule to require refrigeration during all storage and transportation beginning at 36 hours after time of lay.

Following are three examples of eggs requiring refrigeration under the final rule, which would not have required refrigeration previously: (1) Unwashed eggs more than 36 hours old from a farm with 3,000 or more layers that have left the producer's farm and are being transported to or are at a shell egg processing facility or are being held in a warehouse; (2) eggs from a farm with 3,000 or more layers that are more than 36 hours old and are being shipped from an egg products facility (USDA-inspected plant) to a shell egg processing facility; and (3) eggs from a hatchery that are more than 36 hours old, were never used for hatching, and are now being transported to a shell egg processing facility. For clarification, in the final rule we are defining ''egg products facility'' as ''a USDA-inspected facility where liquid, frozen, and/or dried egg products are produced,'' and ''shell egg processing facility'' as ''a facility that processes (e.g., washes, grades, packs) shell eggs for the table egg market.''

In addition, as discussed in response to comment 20, for those eggs to be processed as table eggs but which are not processed for the ultimate consumer within 36 hours from the time of lay and therefore are required to be held and transported under refrigeration, we are permitting an equilibration step.

E. Comments on ''Environmental Testing for Salmonella Enteritidis (SE)'' (Proposed and Final § 118.5)

(Comment 22) Several comments challenged the proposed requirement that egg producers conduct environmental testing when a flock has reached 40 to 45 weeks of age, and if the flock has molted, 20 weeks after the end of the molting process. The comments suggested that instead FDA follow the practice of some EQAPs, which require testing of the layer house environment at the end of the laying period, prior to depopulation. One comment stated that environmental samples should be obtained anytime within the time period of active production, or between the 40th and 60th week of production. In addition, the comment stated that if the environmental samples taken at this time are negative there is no need to conduct additional samples for those birds that have undergone an induced molt.

Another comment stated that the 1998 joint SE risk assessment (Ref. 21), as well as draft 2004 USDA risk assessment (Ref. 49) support a revision to the proposed testing time for post-molt layers from 20 weeks, as proposed, to a 4 to 6 week range post-molt. In support of this suggestion, the comment noted that the 2004 FSIS draft risk assessment finds the greatest risk of infected eggs immediately after molt, but at this time hens are laying few eggs. As a result, the comment estimated that if the increased risk used in the draft risk assessment is multiplied by expected lay post-molt, the greatest number of infected eggs from infected molted flocks will occur between 4 to 6 weeks post-molt.

(Response) We do not agree that the timing for environmental testing of unmolted flocks should be modified. As stated in the proposed rule, environmental testing for SE is an indicator of whether SE prevention measures are working effectively. Testing provides an opportunity for producers to evaluate the SE status of their poultry houses and to take appropriate action if their prevention measures are not preventing SE. Information from an EQAP with a testing protocol indicates that the

highest numbers of positive environmental samples are found when laying hens are 40 to 45 weeks of age (Ref. 50). Additionally, the Layers 99 study found that flocks less than 60 weeks of age (younger flocks) were five times more likely to test positive for SE than older flocks (Refs. 27 through 29). In the absence of any new data, we are retaining in the final rule the requirement that environmental testing for SE be conducted for the flock in each poultry house when each group of laying hens making up that flock is 40 to 45 weeks of age. An SE-positive environmental test at the 40 to 45 week time period notifies a producer that there is a problem with SE contamination. At this point, action can be taken to determine if there are SE-contaminated eggs and to keep SE-contaminated eggs out of the table egg market. Additionally, a positive environmental test during the 40 to 45 week period (just after peak lay) gives a producer sufficient notice to make arrangements for cleaning and disinfection of the contaminated poultry house at depopulation.

FDA does, however, agree that the post-molt environmental test should be moved from 20 weeks post-molt to 4 to 6 weeks post-molt. As the comment noted, the FSIS 2004 draft risk assessment (Ref. 49) (as well as the final version of the risk assessment, Ref. 22, published in 2005) described research by Ebel and Schlosser (Ref. 23) that indicated that ''[e]vidence from field studies suggests that molted flocks, in the first 20 weeks of post-molt production, will produce SE-contaminated eggs more frequently than non-molted flocks'' (Ref. 22 at page 29). As FSIS explained in the draft and final risk assessments, ''[t]he stress of molting is thought to result in an increased susceptibility of hens to SE infection'' (Id.). FSIS relied in its analysis on data contained in the ''*Salmonella* Enteritidis Pilot Project Progress Report'' (Ref. 51) and the study by Holt on immunological factors in laboratory hens (Ref. 52), which were referenced in the proposed rule. As we stated in our response to comment 4, the data underlying the FSIS risk assessment, which we reviewed in the proposed rule, do not support a prohibition on induced molting. However, these data do suggest that there may be some elevated risk that hens may become infected with SE in the post-molt period, before 20 weeks have passed. In light of these studies, we have decided that it would be prudent to conduct environmental SE testing earlier post-molt than was proposed. Therefore, to evaluate the status of a laying hen house post-molt to determine the effectiveness of SE prevention measures during the post-molt laying cycle, we have amended § 118.5(b) to require an environmental test at 4 to 6 weeks after the end of any molting process.

(Comment 23) Several comments suggested that FDA revise the proposed rule to make the environmental sampling plan flexible.

In support of this suggestion, some comments stated that because the rule would cover very diverse egg laying facilities in the United States (e.g., free-range farms and confinement operations using cages or nesting boxes), one single sampling plan would not be effective. One comment recommended a different sampling plan requirement for each operation type. The comment suggested that all confinement ''barns'' could be sampled under the same plan, and recommended that for such operations FDA require that a minimum of one manure drag sample be obtained from each bank of cages. The comment stated that more research is needed to determine the most appropriate sample sites for operations that are cage-free, pasture-raised, or free-range. Another comment noted that the sampling plan should also be flexible because of variations in operations within geographic areas and across geographic regions, for example, difference in manure collection/disposal systems.

(Response) FDA agrees that because the final rule covers very diverse egg laying facilities, the same sampling plan may not be practical for all operations and that the sampling plan requirement should be flexible to accommodate variations in housing styles. The proposed rule did not specify a particular plan; rather it provided at § 118.7(a) that ''[w]ithin each poultry house, you must sample the environment using a scientifically valid sampling procedure.'' In the final rule, to make more clear that the appropriateness of a sampling plan depends on the house being sampled, we have modified the language in § 118.7(a) to require ''a sampling plan appropriate to the poultry house layout.'' Specific sampling instructions have been incorporated into the environmental testing method, ''Environmental Sampling and Detection of *Salmonella* in Poultry Houses.''

(Comment 24) One comment questioned whether FDA could appropriately determine whether a producer is using a ''scientifically valid sampling procedure,'' as required in proposed § 118.7(a). The comment suggested that, for example, there might be no reason to believe that sampling every cage row is more effective than sampling 32 random sites in a laying house. Another comment stated that the only ways to generate drag samples that can be compared across the various types of poultry house are the two discussed in the proposal: Drag swabbing the aisles (the ''whole aisle'' method) and swabbing a certain number of feet of egg belt (the ''limited feet from 32 sites'' method) because eggs are collected by hand in only a few houses. Another comment stated that while the procedure for sampling manure pits in a high rise facility with caged layers is fairly straightforward, nonconfinement operations do not have a clear direction on what is the most appropriate sampling site. The comment asserted that it would be unreasonable to expect an operation with 10,000 layers to develop a scientifically valid sampling program when FDA cannot define what is scientifically valid.

(Response) In the proposal FDA described the ''whole aisle'' and ''limited feet from 32 sites'' swabbing methods and acknowledged differences in the types of poultry houses and the challenges involved in sampling all houses representatively and consistently. We asked for comments about the appropriateness of different methods of drag swabbing and received no comments that would support one method over the other. To specifically acknowledge differences between poultry houses, the rule now requires ''a sampling plan appropriate to the poultry house layout.'' FDA believes that there are sufficient data for producers to develop sampling plans for all poultry environments. Over the past ten years, FDA has performed environmental sampling in a variety of poultry houses, which have contained from 3,500 to 250,000 birds and have varied from high rise to shallow pit to sunken water pit houses. The results of this sampling indicate that the manure area and eggbelts are the two best areas to sample (Ref. 53). FDA has incorporated specific sampling instructions into the environmental testing method, ''Environmental Sampling and Detection of *Salmonella* in Poultry Houses.''

(Comment 25) One comment stated that because it is common for producers in Hawaii to have multi-age flocks in one poultry house, it would be difficult to perform SE testing for specific flocks that reach the age at which testing is required. The comment further stated that if there is an environmental positive test result for a typical farm in Hawaii (5 to 10 acres), there would be no space to store the eggs to wait for egg

test results. The comment argued that a positive environmental test result could mean depopulation of the entire farm and, even if the egg tests are negative, it could still mean the end of the farm.

(Response) The comment reflects a misunderstanding of the rule. Section 118.5 requires environmental testing of the entire poultry house when any group of laying hens in that house is 40 to 45 weeks of age. If multi-age flocks are housed in the same poultry house, egg producers must perform environmental testing on the entire house whenever any group of laying hens in that house reaches 40 to 45 weeks of age. Furthermore, upon finding an environmental sample positive for SE, there is no requirement to store or otherwise hold the eggs. The eggs from a flock in a house that has tested environmentally positive for SE may continue to be marketed as table eggs until the producer is notified that an egg test is determined positive for SE. At that point, the producer must divert those eggs to treatment.

(Comment 26) One comment argued that a testing regulatory scheme would not be effective in preventing illnesses from SE. This comment stated that environmental and egg testing only indicates the status of the house at the time of the test.

(Response) Environmental and egg testing alone do not prevent SE, but instead serve as an indicator and verification step that the SE prevention plan is working properly. Further, a positive egg test can prevent contaminated eggs from reaching consumers and thereby protect the public health.

Diversion (§§ 118.5 and 118.6)

(Comment 27) We received many comments on our proposed requirement that eggs from a SE-positive layer house environment must be diverted to pasteurization, unless testing of four pools of 1,000 eggs each yields SE-negative results. One comment supported the diversion requirement as a reasonable way to keep higher-risk eggs out of the table egg market, but stated that the requirement could pose an economic risk to shell egg producers that do not have their own egg pasteurization capabilities. Other comments similarly noted that this requirement could have an economic impact on egg producers that lack ready access to egg pasteurization facilities, because they will have to sell their eggs to ''breakers'' who already have an adequate supply of eggs (through ownership of laying houses or pre-existing contacts with such houses). As a result of this arrangement, egg producers will have to take whatever price they can get from the breakers and the price will inevitably be much lower than the price they would have gotten if the eggs had not come from an SE-positive layer house. Some comments expressed concern that egg product buyers might not want to purchase product known to have come from eggs diverted because of SE, further reducing the breaker's incentive to buy the diverted eggs.

Thus, these comments expressed concern that this diversion would result in a cost to the industry much greater than that projected by FDA in the proposal. One comment stated that, even if they were willing to buy the diverted eggs, breakers might offer a price too low to make it economically feasible to retain the flock. That same comment noted that diversion to the pet food supply chain would not be an option because SE-positive eggs would have to be run through the processing plant, and stated that destruction may be the only alternative in most cases.

(Response) FDA recognizes that diversion of eggs may be expensive or impracticable. We do not agree that we have underestimated these costs. Further, these costs are outweighed by the public health benefit realized by diverting contaminated eggs.

In addition, FDA believes there may be some confusion about the diversion requirement. Under the rule, diversion is required under the following three scenarios: (1) When the environment tests positive for SE, and the producer chooses not to test eggs from that house to determine whether the eggs are also positive; (2) when the eggs in a house test positive for SE; and (3) by order of an FDA, State, or local representative after a finding that shell eggs have been produced or held in violation of this regulation.

(Comment 28) One comment requested that FDA include hard cooking as an acceptable method of diversion.

(Response) If diversion is required, you do not necessarily have to send the eggs to a breaker. You may instead divert them to an alternative process that achieves at least a 5-log reduction in SE, using, for example, in-shell pasteurization of shell eggs or hard cooking of shell eggs.

In the proposed rule, FDA defined treatment as ''a technology or process that achieves at least a 5-log destruction of SE for shell eggs, or the processing of egg products in accordance with the Egg Products Inspection Act.'' We have retained this definition in the final rule. Thus, as long as the hard-cooking process achieves at least a 5-log destruction of SE, it is an acceptable method of diversion.

(Comment 29) One comment stated that Hawaii has no egg breaking facilities, and that the costs of shipping diverted eggs to breaking facilities in California or elsewhere in the continental United States would be prohibitive. The comment also noted that in the past some breaking facilities on the West coast have refused to accept eggs from Hawaii. The comment requested that the rule be made more flexible to address the situation facing Hawaii and other States with inadequate or no egg diversion capacity.

(Response) FDA recognizes that there is regional variation in the cost of diversion for eggs. For a full discussion of this variation, see section V.F of this document. We understand that there are currently no breaking facilities in Hawaii and that it may not be economically feasible to ship diverted eggs to the continental United States or Canada. For egg producers in Hawaii, and for others also unable to avail themselves of breaker facilities, the cost of diversion per egg is the lost value of a table egg. In the proposed rule, we estimated that the price to a producer for one dozen diverted eggs in Hawaii is $0.53, or $0.044 per egg. We recognize that this cost is more than double the cost of diversion for egg producers in other regions; however, per our usual approach for public health regulations promulgated under the FFDCA and the PHS Act, we are establishing minimum national standards that will equally apply to all States. We acknowledge that diversion for egg producers in situations such as those in Hawaii may be particularly financially challenging. As discussed above, we will use guidance as appropriate to mitigate the impacts associated with implementation of the rule.

F. Comments on ''Egg Testing for Salmonella Enteritidis (SE)'' (Proposed and Final § 118.6)

(Comment 30) One comment agreed with the sampling protocol established in § 118.6(c) for egg testing for SE, but stated that 24 hours is not a practical timeline to begin egg testing after a positive environment is found. The comment suggested that § 118.6(c) require egg producers to immediately notify the appropriate state agency of the positive environmental findings and that egg sampling commence within 2 weeks after the environmental test results are received. Another comment suggested that FDA revise the time period allowed between receiving a positive environmental sample and conducting the required egg testing from

24 to 72 hours to allow for weekends or holidays when laboratory facilities would most likely not be available to complete the tests. Several comments further argued that the 24-hour requirement for initiating egg testing is impossible, as even collecting the eggs within 24 hours might be difficult at times. In addition, the comments argued that to arrange testing for 1,000 eggs requires scheduling of several items, including people, labs, and media, and cannot be done in 24 hours.

(Response) For the reasons identified in the comments, FDA agrees that 24 hours may not be practical to begin egg testing. Therefore, we have modified § 118.5(a)(2)(ii) and (b)(2)(ii) in the final rule. Rather than setting a time when egg testing must begin, the rule establishes a deadline for conducting and completing such testing and receiving the results. The final rule requires that the results of egg testing for the first 1000 eggs must be obtained within 10 calendar days of receiving notification of the positive environmental test. This time period allows for the farm to obtain a laboratory to do the work and collect the eggs and for the laboratory to perform and complete the tests.

(Comment 31) Two comments stated that the egg sampling procedure should be witnessed by a regulatory agency, such as a State Department of Agriculture.

(Response) FDA disagrees. Other FDA regulations, such as Hazard Analysis and Critical Control Point (HACCP) Procedures for the Safe and Sanitary Processing and Importing of Juice (21 CFR part 120) and Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products (21 CFR parts 123 and 1240), do not require sampling and other testing to be overseen by FDA or State officials to be effective. The egg sampling requirement is expected to be routine and a regular component of the on-farm plan to prevent SE.

Furthermore, to assist FDA in ensuring compliance, the final rule requires that each facility establish and maintain records of plan activities, including egg sampling. Such records will assist FDA in determining whether sampling was performed appropriately.

G. Comments on ''Sampling Methodology for Salmonella Enteritidis (SE)'' (Proposed and Final § 118.7)

(Comment 32) One comment stated that FDA should distinguish between a sampling plan used to verify or monitor an on-farm program and a sampling plan used for an SE outbreak trace back. The comment also asked for clarification of the scientific justification for the requirement in § 118.7 that egg producers pull a 1,000 egg sample, regardless of the size of the operation. The comment questioned whether sampling for monitoring purposes needs to be as extensive as that undertaken for outbreak trace back situations.

Another comment noted that due to potential breakage, a sample size of 1,050 eggs would eliminate the problem of having to use cracked or broken eggs (i.e., the laboratory can select 1,000 eggs from this 1,050 egg pool).

(Response) The rule requires egg testing after receipt of notification of a positive environmental test (unless the eggs are treated). Sampling after a positive environmental test is intended to effectively detect SE-positive eggs from a flock.

The rule requires that egg producers collect and deliver for testing a minimum of 1,000 intact eggs representative of a day's production four times at 2-week intervals, resulting in a total test of 4,000 eggs over an 8-week period. This sampling scheme is based on data from the SE risk assessment indicating that an SE-contaminated flock may be producing SE-contaminated eggs with a prevalence of 1 in 1,400 (Ref. 54). The sampling scheme would result in a 95 percent probability of accurately detecting an SE-positive egg from a flock producing contaminated eggs with the prevalence calculated in the risk assessment (Ref. 54).

We agree with the potential for breakage raised in the comment concerning the sample size for egg testing and have modified § 118.7(b) in the final rule so that the requirement is to ''collect and deliver for testing a minimum of 1,000 *intact* eggs representative of a day's production'' (Emphasis added).

With regard to the comment regarding making a distinction between a sampling plan for monitoring SE on the farm and for an SE outbreak trace back, FDA notes that this final rule does not address SE outbreak trace backs and is solely designed for the prevention of SE in shell eggs during production, storage and transportation. SE outbreak trace back is beyond the scope of this regulation and will not be addressed here.

H. Comments on ''Testing Methodology for Salmonella Enteritidis (SE)'' (Proposed and Final § 118.8)

(Comment 33) One comment recommended that FDA modify its required environmental testing method to conform to the methods currently being used by the industry, states and laboratories. One such method is that used by the NPIP. The comment stated that the proposed environmental testing method requires the use of an extra selective agar, bismuth sulfate (BS) agar, which has not been proven to be effective in isolating SE from environmental samples. The comment argued that BS agar is the agar of choice for isolating S. Typhi from clinical samples, but that it is not effective for environmental samples of SE. The comment suggested that the isolation with BS agar is an unnecessary step that should be eliminated from the method.

(Response) The method we proposed for environmental testing is set forth in ''Detection of *Salmonella* in Environmental Samples from Poultry Houses,'' which was proposed for inclusion in FDA's Bacteriological Analytical Manual (BAM), or an equivalent method with respect to accuracy, precision, and sensitivity in detecting SE. The environmental testing method FDA proposed was very similar to the NPIP environmental testing method. For example, it included the same pre-enrichment and enrichment broth. It was different only in that it specified what specific plating agars should be used, and it required the use of three, not two, plating agars. The selective plating agars identified in the proposed rule method were brilliant green with novobiocin (BGN), xylose-lysine tergitol 4 (XLT4), and BS. BGN and XLT4 are two of the selective plating agars that have been used by some laboratories using the NPIP method.

With respect to the use of BS, FDA has performed additional plating with layer house environmental SE colonies on BS agar and has reconsidered the method for conducting environmental testing. As a result of this review FDA has eliminated the use of BS for environmental testing in the final rule and has changed the method to reflect the elimination of the BS agar. The method specified in the final rule, ''Environmental Sampling and Detection of Salmonella in Poultry Houses,'' requires only two agars, BGN and XLT4.

The comment did not challenge the specification that BGN and XLT4 be the plating agars used, and we have not changed this specific requirement in the final rule. As in the proposed rule, if other methods are at least equivalent to the specified method in accuracy, precision and sensitivity in detecting SE, they may be used instead of the method specified.

(Comment 34) With respect specifically to environmental testing, a

comment noted that the test does not allow for pooling of samples, which the comment stated would reduce the number of samples the laboratory would have to run with no loss in sensitivity of the test. The comment stated that pooling would reduce costs by 75 percent.

(Response) Although there are data showing that pooling of food samples, under specified conditions, does not compromise method sensitivity, we are not aware of any data, and the comment did not provide any such data, to support pooling for environmental sampling. Until such data become available, it would be imprudent of FDA to specify a test that includes compositing of environmental swabs.

(Comment 35) One comment raised concerns about the proposed egg testing method. The comment stated that the method proposed by FDA differs from the method used by APHIS, as well as other methods used by industry, states and laboratories. In addition to the concern that the method that we proposed is not the same as that used by APHIS, the comment identified two other specific concerns with the proposed egg testing method. First, the comment stated that the proposed egg testing method requires the use of BS, an isolation media that is the media of choice for isolating *Salmonella* Typhi from clinical samples. Second, the comment stated that only two selective agar plates should be inoculated (BGN and XLT4) instead of the five proposed in the method for egg testing.

(Response) Neither the description of the method discussed in the preamble of the proposed rule nor the reference to the method contained in the codified portion of the proposed rule are correct for the egg testing methodology. The method referred to in the codified portion of the proposed rule was actually a comparison study involving varying media and pre-enrichment. The method for testing eggs adopted in the final rule is the method in the BAM, chapter 5, ''*Salmonella.*''

Addressing the comments in turn, we disagree that we should adopt the APHIS egg testing method. Like the BAM method, the APHIS method first involves the disinfection of eggs and then the cracking, pooling and mixing of eggs. The two methods diverge at the third step, which is incubation: In the BAM method the pools are incubated at room temperature for 96 hours, while in the APHIS method the pools are incubated for only 72 hours.

The two methods also are different in subsequent steps. In the BAM method, there is a pre-enrichment step in which a portion of the egg pool is enriched with trypticase soy broth supplemented with ferrous sulfate and incubated for 24 hours, after which the pre-enriched sample is placed into 2 selective enrichment broths (tetrathionate and Rappaport-Vassiliades), and subsequent inoculation onto three selective media: BS, xylose lysine desoxycholate (XLD), and Hektoen enteric (HE). In the APHIS method, there is no pre-enrichment step. Instead, egg samples from the incubated eggs are inoculated onto 2 selective agars (brilliant green and XLD). In both methods colonies that grow on the agar plates are sampled to characterize the organism as *Salmonella* by the reaction on two agar slants.

FDA believes that, for the purposes of this final rule, its method is preferable to the APHIS ''Egg Sampling Method'' (58 FR 41048, August 2, 1993). First, the addition of ferrous sulfate at the pre-enrichment step in FDA's method provides iron, which is needed by *Salmonella* for growth and which may not be present in sufficient quantity in the egg; thus, this step may increase the likelihood of detection. Second, the two selective enrichment media (tetrathionate and Rappaport-Vassiliades) used in FDA's method contain agents that are selective (inhibitory) against the non-*Salmonella* organisms. The inhibition of non-*Salmonella* organisms enhances the test by reducing competition and possible overgrowth from other organisms. Third, the use of three, rather than two, selective plating agars maximizes the possibility of detecting as many SE strains as possible. We note that the APHIS egg sampling method was developed and has been in use since 1993. While it has been and remains a valid sampling method, the FDA method is more sensitive and can better detect the presence of *Salmonella* in food, and our adoption of this newer and more sensitive test will better support the public health goals of this rule. In summary, FDA believes that the specific method prescribed for egg testing in this final rule is tailored to the goals of the rule.

With respect to the two more specific comments, FDA does not agree with the recommendation to eliminate BS in the method for egg testing, for the reasons explained in the previous paragraphs. Nor do we agree that the other two selective agar plates should be BGN and XLT4, rather than HE and XLD. In a comparison study of selective plating agars using selected high moisture foods (Ref. 55), the newer selective plating agars performed comparably with the BAM recommended agars (BS, HE, and XLD) but offered no advantage. The BAM is a collection of procedures preferred by analysts in FDA laboratories for the detection in food and cosmetic products of pathogens and microbial toxins. With some limited exceptions, these methods have been used and peer reviewed by FDA scientists as well as by scientists outside FDA. A new agar such as that proposed in the comments would be added to the BAM only after research indicated superior performance in the context of a variety of foods, and where the agar has been validated by collaborative studies. Therefore, the final rule does not deviate from the proposal in recommending the use of the BAM-recommended plating agars. However, we note that another test that is equivalent to the specified test in accuracy, precision and sensitivity for detecting SE may be used.

(Comment 36) One comment recommended that FDA allow for improvements in the methodology for *Salmonella* testing to be easily and quickly adopted by the industry upon validation of the new method, and that FDA work with other Federal agencies with approved testing methods, such as APHIS and FSIS, to facilitate approval of methods and to reduce the need for one facility to use several different methods for *Salmonella* testing. The comment stated that APHIS, FSIS, and scientific organizations all have approved methods for detecting *Salmonella* and SE. The comment further stated that methods need to provide consistent results, yet be flexible enough to allow the industry to adapt quickly when improvements are made. For example, rapid testing methods are available and approved by some Federal agencies (e.g., FSIS). The comment argued the current proposed rule would not allow a producer to use a rapid method for testing of environmental or egg samples. The comment recommended that FDA conduct a literature review and, if necessary, additional research to determine what methods are appropriate to detect SE in the environment and egg samples, with the goal of identifying methods that are appropriate for the purpose of the testing and less costly (in both time and money) to the industry.

(Response) In the final rule, FDA is allowing for other methods to be used for both environmental and egg testing, provided they are equivalent to the methods we specify in accuracy, precision, and sensitivity in detecting SE.

I. Comments on ''Administration of the Salmonella Enteritidis (SE) Prevention Measures'' (Proposed and Final § 118.9)

(Comment 37) Several comments suggested that FDA modify the requirement in proposed § 118.9 that one qualified individual at each farm have training equivalent to a standardized curriculum recognized by FDA or be otherwise qualified through job experience to administer the SE prevention measures. The comments proposed instead that FDA require training of a qualified individual responsible for each farm, even if that person is not an onsite employee. These comments noted that many producers employ one individual to oversee multiple farm locations, and that this person generally has more experience and training than the onsite employees and can provide better oversight on developing and implementing SE prevention measures.

(Response) We agree and are amending the language in § 118.9 in the final rule to allow for one or more supervisory personnel, who do not have to be onsite employees, to be responsible for ensuring compliance with each farm's SE prevention measures.

(Comment 38) One comment expressed concern about the burden small producers may experience in complying with the proposed requirement that at least one individual at each farm must successfully complete standardized FDA-curriculum or equivalent training of up to 2 to 3 days on SE prevention measures for egg production. The comment requested that FDA consider developing a training program that could be implemented without requiring travel from the egg operation. Further, the comment requested that FDA not impose deadlines for such training that could be difficult for such small producers to meet.

(Response) FDA plans to work with trade associations, State regulatory officials, and academia/extension officials to develop and offer training opportunities at venues that should satisfy the needs of small, medium, and large size facilities. Further, in the final rule, FDA has reduced the burden of the training requirement by allowing one or more supervisory personnel to serve as the trained administrator for all of the firm's facilities rather than requiring a dedicated, trained individual at each facility. FDA believes this will substantially reduce the burden for small producers to comply. Finally, FDA notes that the rule provides that equivalent job experience can be substituted for training.

J. Comments on ''Recordkeeping Requirements for the Salmonella Enteritidis (SE) Prevention Measures'' (Proposed and Final § 118.10)

(Comment 39) In the proposed rule, FDA proposed certain recordkeeping requirements and solicited comments on whether additional recordkeeping measures should be required for a comprehensive SE prevention plan, and whether a written SE prevention plan should be required. Several comments supported the proposed recordkeeping requirements but did not comment on expanding them; one comment stated that there is no need for FDA to expand its recordkeeping requirements beyond those proposed. In addition, several comments supported expanding the proposed recordkeeping requirements to include a written SE prevention plan and records for compliance with SE prevention measures. Several comments noted that such records have been very useful in conducting inspections of facilities to determine compliance with the egg quality assurance program requirements and for identifying problems in the producer's SE prevention plan when a test is positive. Another comment stated that records documenting compliance with all aspects of the SE prevention plan will be essential for a producer to determine if their plan is effective and in making adjustments to improve their plan. One comment opposed the requirement of a written SE prevention plan, stating that while a written plan would undoubtedly be an important management tool, and indeed many operations have such a plan, it is not necessary for FDA to mandate such a document. The comment stated FDA should not place undue emphasis on paperwork, as opposed to actual results. The comment suggested that FDA work with interested parties to develop a model SE prevention plan that could be provided to egg producers for their use.

(Response) FDA agrees with the comments that the final rule should require a written SE prevention plan as well as records to document the effective implementation of that plan. This written SE prevention plan will set forth a producer's plan to implement the regulation's prevention, testing, and diversion measures. A written plan is necessary for producers to ensure that they have effectively and consistently implemented SE prevention measures. Further, a written plan greatly facilitates FDA inspection. SE prevention measures may be quite different among farms, given different facility design and size, and yet be equally effective in preventing SE contamination. Knowledge of the specific prevention measures taken on a farm, as discussed in an SE prevention plan, will assist FDA to assess compliance with the prevention measures.

In addition, reviewing records of implementation of a facility's specific SE prevention measures is the best mechanism for FDA to use to determine whether preventive measures have been implemented over a period of time. These required documents include records of implementation and compliance with all SE prevention measures. Such documents, for example, would include documents that pullets were SE monitored or raised under SE monitored conditions, records of SE environmental and egg testing, and records of activities required by the rule, such as treatment or diversion of eggs, as well as records indicating review of the plan and any changes or modifications made to the plan. Keeping careful written records will help producers ensure that they have effectively and consistently implemented SE prevention measures and will also assist FDA in determining whether the plan is being followed and in identifying problems in the producer's plan when a test is positive. If changes or modifications need to be made, recording such changes or modifications will help ensure such changes are implemented.

Therefore, under § 118.10, FDA is requiring that egg producers covered by all of the requirements in the rule (§ 118.1(a)(1)) maintain the following records documenting their SE prevention measures: (1) A written SE prevention plan; (2) documentation that pullets were ''SE-monitored'' or were raised under ''SE-monitored'' conditions, including environmental testing records for pullets; (3) records documenting compliance with the SE prevention measures; and (4) records of review and of modifications of the SE prevention plan and corrective actions taken. FDA intends to issue guidance regarding the recordkeeping requirement.

(Comment 40) Two comments stated that FDA should require purchasers of diverted eggs (e.g., egg breaking facilities, shell pasteurization facilities, hard-cooked operations, or other facilities where the eggs could be treated) to maintain records indicating that the diverted eggs have been treated. These comments, submitted by an agricultural department and poultry and livestock commission of two major shell egg producing states, argued that without records there would be no

ability to ensure the purchaser would treat the eggs and not simply divert them back to the table egg market.

(Response) FDA agrees with the comments' concern that purchasers of diverted eggs might resell them for the table egg market without treating them and that buyers might not know that the eggs must receive a treatment. To address this concern, FDA has modified this final rule by adding § 118.6(f), which requires that when shell egg producers divert eggs, the pallet, case, or other shipping container must be labeled and all documents accompanying the shipment must contain the following statement: ''Federal law requires that these eggs must be treated to achieve at least a 5-log destruction of *Salmonella* Enteritidis or processed as egg products in accordance with the Egg Products Inspection Act, 21 CFR 118.6(f).'' The statement must be legible and conspicuous. FDA believes this additional requirement will help reduce the likelihood that these eggs will end up on the market without having been treated. We note that USDA–FSIS, not FDA, regulates egg-breaking facilities under the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*).

The costs and benefits of this provision are addressed in section V of this document, Regulatory Impact Analysis.

(Comment 41) One comment questioned the proposed rule to the extent it did not require an SE prevention plan until a producer has a positive environmental test. The comment stated that this delay increases the risk of producing SE-positive eggs that are distributed into the table egg market prior to the test and increases the difficulty of the producer reducing or eliminating SE from the environment and the flock.

(Response) The assertion in the comment that the proposed rule did not require an SE prevention plan until a producer has a positive environmental test is incorrect. Neither the proposed nor final rules make having an SE prevention plan contingent upon a positive environmental test.

(Comment 42) One comment commended FDA's statement that ''we intend to consider records that come into our possession under this rule as generally meeting the definition of a trade secret or commercial confidential materials'' (69 FR 56824 at 56841). However, the comment requested that FDA identify in the final rule what information will be considered confidential commercial information (CCI) or a trade secret, and under what legal authority FDA will defend this designation against any legal challenges.

(Response) FDA's regulations in 21 CFR part 20 govern the disclosure of information under the Freedom of Information Act (FOIA), including the disclosure of CCI and trade section information. The agency's general policies, procedures, and practices relating to the protection of confidential information received from third parties apply to information received under this rule. It is not necessary that FDA designate information upfront as CCI or trade secret because these determinations can be made before releasing any information. If FDA denies a request under FOIA, it will rely on the provisions in that statute which permit the agency to withhold information.

(Comment 43) One comment questioned FDA's assertion that section 361 of the PHS Act (42 U.S.C. 264) gives it legal authority to inspect records. The comment argued that FDA's reliance upon section 361 of the PHS Act is misplaced and cannot be used to impose records inspection on food establishments where, according to the comment, such inspection is not allowed under section 704(a) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 374(a)).

(Response) In the final rule, FDA relies on sections 402(a)(4) and 701(a) of the FFDCA (21 U.S.C. 342(a)(4) and 371(a)) and sections 311, 361, and 368 of the PHS Act (42 U.S.C. 243, 264, and 271) to require access to certain records. FDA does not rely on section 704(a) of the FFDCA for authority to access records in this rule. Furthermore, the PHS Act provides authority for records access that is independent of the FFDCA. Specifically, section 361 of the PHS Act authorizes the Secretary of Health and Human Services (the Secretary) to make and enforce such regulations as ''are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States * * * or from one State * * * into any other State.'' The basis for the recordkeeping requirements in the final rule is further explained in section IV of this document, Legal Authority.

(Comment 44) One comment encouraged FDA to incorporate an automated recordkeeping requirement into the proposed rule. The comment stated that an automated system would enhance and support the recordkeeping requirements outlined in the proposed rule. The comment argued that such a system could provide farm-specific data, and an efficient, cost-effective way to research compliance. The comment stated that an automated system would greatly reduce the recordkeeping burden placed upon egg producers as well as the time, frequency, and cost associated with FDA inspections.

(Response) FDA believes that the least burdensome way of implementing the recordkeeping requirements is to specify the information that must be contained in the records, but not the format in which the records are kept. Automated technology may not be available or within the means of all producers covered by the rule. We note that egg producers may choose to use automated recordkeeping as long as they maintain all of the required records.

K. Comments on Registration Requirements for Shell Egg Producers (Final § 118.11)

(Comment 45) In the proposed rule (69 FR 56841 at 56841 through 56842), FDA solicited comments about whether we should require that shell egg producers register with FDA. Several comments supported requiring registrations by egg producers covered by the SE prevention measures. These comments stated that registration of all producers covered by any of the SE prevention measures would be the most efficient method of obtaining the information needed to conduct annual inspections and allocate resources.

Further, several comments stated that such a requirement should be consistent with the program developed under the agency's bioterrorism regulations. The comments further stated that by identifying each farm's location and size, a registration requirement would enable more efficient inspection, as well as better management and oversight of a shell egg recall.

One comment stated that, to create a level playing field across the United States, registering all producers is necessary and that FDA may be able to cooperate with USDA/APHIS, which is presently developing a premises identification program for all animal premises in the United States.

(Response) FDA agrees with the comments and is requiring that egg producers who must comply with all of the SE prevention measures in this rule, and also those producers who must comply only with the refrigeration requirements in this rule, register with FDA and provide information on the name of each farm, its location, layer capacity, and the number of houses. Persons who transport or hold shell eggs for shell egg processing or egg products facilities but who are not egg producers are not required to register with FDA, although they are subject to the refrigeration requirements in § 118.4.

FDA intends to conduct inspections of egg farms to ensure that shell eggs are being produced under controls that will prevent SE contamination and reduce the likelihood that SE-contaminated eggs will cause foodborne illness. We will use the producer registration information to create a database used to efficiently conduct inspections and allocate inspection resources. Covered egg producers must register within 30 days of becoming an egg producer or, if already an egg producer, by the applicable effective date of the rule. Additionally, registered egg producers are required to notify FDA within 120 days of ceasing egg production (excluding seasonal egg producers or those who temporarily cease operation due to labor disputes, fire, natural disasters, or other temporary conditions).

Producers can register online via the Internet, by completing a paper form and mailing or faxing it to FDA, or by sending a CD–ROM containing the relevant registration information to FDA. If ceasing egg production, producers can notify FDA either online via the Internet or by completing a paper form and mailing or faxing it to FDA.

(Comment 46) One comment objected to requiring producers who pack eggs to register, stating that every producer with packing facilities is registered with the FDA under the registration rule and should not be required to register a second time. The comment agreed that producers that do not pack eggs, but sell eggs that will ultimately go into the table egg market, should be registered so that FDA can ensure these firms are following the on-farm production and testing requirements of the SE rule.

(Response) Farms are not required to register under FDA's Registration of Food Facilities regulation (21 CFR 1.226(b)). If a farm also has a packing or processing facility, then only the packing or processing facility is required to register under the registration rule if those packing and processing activities do not qualify under the farm exemption (see ''farm'' definition for activities that are covered in the farm exclusion under 21 CFR 1.227(b)(3)). Because the packing/processing facility registration information may not fully identify the farm location, FDA is requiring that information in this regulation. If the information that would be provided by an egg producer during registration has already been provided under the registration regulation, the producer may submit its registration number rather than registering again.

(Comment 47) One comment objected to the proposed registration requirement as an unnecessary burden and an unreasonable invasion of privacy. The comment argued that FDA only should check for compliance. The comment further argued that ''unexpected visits are not appropriate as a respect for other people and the reality is that no one can hide what you want to see in 24 hours.'' The comment further argued that registration will result in a loss of privacy for the producer and is unnecessary for the success of the program.

(Response) FDA disagrees with this comment. As stated above, registration will aid in the identification of egg producers for inspection and compliance purposes. We will use the producer registration information to create a database that we will use to efficiently conduct inspections and allocate inspection resources. With regard to ''unexpected visits,'' section 704 of the FFDCA (21 U.S.C. 374) authorizes FDA inspections without advance notice and FDA's practice of making such inspections precedes this rule and is independent of whether registration is required.

(Comment 48) One comment expressed concern that information submitted to register facilities would be subject to the Federal Freedom of Information Act (5 U.S.C. 552), and that public release of this information could result in a decrease of security at the producer sites. The comment stated that FDA has other means at its disposal to learn the site information needed to administer this program and still respect the need for security at the producer sites.

(Response) FDA recognizes that this information may be subject to disclosure under FOIA, unless there is statutory authority there or elsewhere that protects it. However, we disagree that the risk of such disclosure outweighs the public health benefits of collecting this information. As stated previously, registration will facilitate FDA's identification of egg producers for inspection and compliance purposes. We will use the producer registration information to create a database that we will use to efficiently conduct inspections and allocate inspection resources.

L. Comments on ''Enforcement and Compliance'' (Proposed and Final § 118.12)

There were no comments on this section.

M. Comments on Request for Comments as to Whether FDA Should Mandate Special Requirements for Food Establishments That Specifically Serve Highly Susceptible Populations

(Comment 49) We received a number of responses to our request in the proposed rule for comments on whether the current FDA Food Code system (under which states may adopt and implement provisions of the FDA Food Code) is adequate to protect highly susceptible populations from salmonellosis, or whether instead we should establish mandatory Federal standards for food establishments that serve eggs to highly susceptible populations, such as the elderly. Several of these comments supported the Federal codification of the egg-related Food Code provisions for food establishments specifically serving highly susceptible populations, and one comment opposed codification.

One comment supporting codification stated that egg producers do not have full control or responsibility for egg safety, and that food establishments and consumers must share in the responsibility for egg safety. The comment opposed to setting Federal standards stated that the egg safety goal cannot be achieved through mandatory Federal requirements at the food establishment level. The comment recommended continuing mandatory on-farm efforts while continuing educational efforts at retail and consumer levels.

(Response) FDA agrees that food establishments that specifically serve highly susceptible populations can play an important role in egg safety As we discussed in section I.H., a majority of states and territories have adopted into their own retail food codes the relevant egg-associated provisions of the FDA Food Code (sections 3–202.11(C), 3–202.13, 3–202.14(A), and 3–801.11(B)(1) and (B)(2), (C)(2), (E), and (F)(1) and (F)(2) of FDA's 2005 Food Code (see discussion under section I.H of this document regarding the changes made from the 2001 Food Code)). In addition, other state, local, Federal, or voluntary standards applicable to these facilities may have similar egg safety provisions, although we were not able to identify or quantify all such standards. We agree with the comment that encouraged us to continue education efforts at the retail and consumer levels. We also agree that codification of the FDA Food Code provisions is not a necessary exercise of our authority. Instead, we have determined that we will continue to encourage states to adopt the relevant provisions of the FDA Food Code.

(Comment 50) One comment suggested that we make mandatory those parts of the Food Code related to the pooling of eggs in all institutions, including but not limited to those serving specifically at-risk populations in section 3–8 of the Food Code. The comment stated that many of the large outbreaks have been related to commercial or government institutions that misuse eggs, especially when they break and pool large numbers of eggs. The comment stated that even if the eggs are delivered SE-free, the hand breaking and pooling of eggs can result in a contaminated pool due to inadequate hand washing, unclean utensils, temperature abuse during the breaking process and cross-contamination from other raw foods. The comment also stated that the FDA Food Code should be modified to incorporate a requirement that pasteurized egg products be substituted for shell eggs if the eggs are to be pooled, as a model for States to follow.

(Response) FDA has determined that the relevant egg safety provisions of the Food Code should not be mandatory, for the reasons discussed in the preceding response, including those provisions related to the pooling of eggs.

The comment concerning modification of the FDA Food Code is beyond the scope of this rule.

IV. Legal Authority

As outlined in section II.B of this document, after considering comments received in response to the proposal, FDA made changes in the final rule, including the addition of some requirements. The proposed rule contained an explanation of its legal basis under authorities in sections 311, 361, and 368 of the PHS Act (42 U.S.C. 243, 264, and 271) and sections 402(a)(4) and 701(a) of the FFDCA (21 U.S.C. 342(a)(4) and 371(a)). The PHS Act authorizes the Secretary to make and enforce such regulations as ''are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States * * * or from one State * * * into any other State'' (section 361(a) of the PHS Act). This authority has been delegated to the Commissioner of Food and Drugs. Under section 402(a)(4) of the FFDCA, a food is adulterated if it is prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth or rendered injurious to health. Under section 701(a) of the FFDCA, FDA is authorized to issue regulations for the efficient enforcement of the FFDCA. These authorities, as well as others specified in the following paragraphs, support the new requirements in the final rule.

Section 118.4(e) requires that persons who transport or hold shell eggs for shell egg processing or egg products facilities must comply with refrigeration requirements. It is well documented that shell eggs may contain *Salmonella,* including transovarian transmitted SE, which can result in serious, life-threatening illness. Temperature abuse of shell eggs, such as by failing to refrigerate eggs as required by the rule, can lead to the multiplication of SE in shell eggs, and thus, increase the likelihood of illness if the eggs are not thoroughly cooked. The refrigeration requirement in § 118.4(e) prohibits food from being held under insanitary conditions and allows for the efficient enforcement of the FFDCA (21 U.S.C. 342(a)(4) and 371(a)). Further, this requirement is necessary to prevent the spread of communicable disease from one state into another state. (42 U.S.C. 264).

Section 118.10 requires that egg producers have written SE prevention plans and maintain records documenting compliance, as well as records of review and modification to the plan and any corrective actions taken. Through records maintenance and review, an egg producer can, over time, develop a comprehensive picture of its prevention measures and identify shortcomings or potential shortcomings. A written plan and records documenting implementation of that plan are necessary for producers to ensure that they have effectively and consistently implemented the plan. For example, without records documenting environmental sampling procedures, a producer cannot ensure that the environment was sampled using a plan appropriate to the poultry house layout.

Similarly, records maintenance and access provide FDA with the opportunity to oversee, in a comprehensive way, the implementation of the producer's SE prevention plan, thereby preventing SE contamination of eggs. SE prevention measures may be quite different among farms, given different facility design and size, and yet be equally effective in preventing SE contamination. Knowledge of the specific prevention measures taken on a farm, as specified in an SE prevention plan, will assist FDA to assess compliance with the prevention measures. In addition, reviewing records is the best mechanism for FDA to use to determine whether preventive measures have been implemented over a period of time. Because the preventive measures are essential to the production of safe eggs as a matter of design, the statutory scheme is benefited by agency access to records that demonstrate that these measures are being systematically applied.

By requiring records, we will be able to ensure that producers follow the SE prevention measures so that eggs are prepared, packed and held under sanitary conditions (21 U.S.C. 342(a)(4) and 371(a)) and in a manner designed to prevent the spread of communicable disease via SE-contaminated eggs (42 U.S.C. 264).

Section 118.11 requires registration by egg producers who must comply with either all of the SE prevention measures or only with the refrigeration requirements. It is essential that we know, via registration, certain information about egg producers, such as whether a producer has 3,000 or more laying hens at a particular farm, so that we can identify and inspect those farms subject to the rule. Inspection is necessary to ensure that shell eggs are being produced in compliance with SE prevention measures, thereby reducing the likelihood of foodborne illness. Therefore, the registration requirement is necessary to prevent the spread of communicable disease from one state into another state. (42 U.S.C. 264).

Section 118.6(f) requires that for diverted eggs, the pallet, case, or other shipping container must be labeled and all documents accompanying the shipment must contain the specified statement to indicate that the eggs must be treated to destroy SE. This requirement is supported by sections 201(n), 403(a)(1), and 701(a) of the FFDCA (21 U.S.C. 321(n), 343(a)(1), and 371(a)) and sections 311, 361, and 361 of the PHS Act. Under section 403(a)(1) of the FFDCA, a food is misbranded if its labeling is false or misleading in any particular. Section 201(n) of the FFDCA provides that in determining whether labeling is misleading, the agency shall take into account not only representations made about the product, but also the extent to which the labeling fails to reveal facts that are material in light of such representations made or suggested in the labeling or material with respect to consequences that may result from use of the product under conditions of use prescribed in the labeling or under customary or usual conditions of use. FDA previously has relied on these authorities when it required label statements on shell eggs not processed to destroy all viable *Salmonella* (65 FR 76092, December 5, 2000).

The rule requires eggs to be diverted in certain circumstances, including after a positive egg test, to ensure that SE will

be destroyed before the eggs are consumed. Without treatment, these eggs would present the greatest risk of causing SE illnesses. As discussed in section V of this document, the eggs that must be diverted to a treatment are worth less than eggs that may be used for the table egg market. This creates an economic incentive to send the eggs to the table egg market. Further, without labeling, a purchaser might not know that particular eggs are subject to the diversion requirement. Therefore, the agency concludes that information that the eggs must be treated to destroy SE is material information that must be provided on the shipping container and accompanying documentation and that the requirement is necessary to prevent the spread of communicable disease from one state into another state. (42 U.S.C. 264).

As explained in the proposal, activities that are intrastate in character, such as the production and final sale of shell eggs to an institution for ultimate consumption by a consumer within one State, are subject to regulation under section 361 of the PHS Act (*State of Louisiana* v. *Mathews,* 427 F. Supp. 174, 176 (E.D.La. 1977)). The proposed rule explained FDA's reasoning for tentatively determining that the SE prevention measures in this rule must apply to producers of shell eggs who sell their eggs intrastate, other than directly to consumers. For the reasons discussed therein, we are making that determination final.

V. Analysis of Economic Impacts—Final Regulatory Impact Analysis

A. Introduction

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is an ''economically significant'' regulatory action as defined by Section 3(f)(1) of the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Using the Small Business Administration (SBA) definitions of small for chicken and egg producers, FDA estimates that more than 99 percent of all egg farms are small. Though more than 45,000 farms with less than 3,000 layers are exempt from all provisions of the rule, the agency certifies that the rule will have a significant economic impact on a substantial number of small entities. This is discussed further in section VI of this document.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before finalizing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $130 million, using the most current (2007) Implicit Price Deflator for the Gross Domestic Product. FDA expects this final rule to result in 1-year expenditures that would meet or exceed this amount. This is discussed further in section VII of this document.

B. Need for Regulation

Private markets operating within the framework of the legal system promote the health and safety of consumers. Limitations of both the marketplace and the legal system, however, can result in inadequate control of some health and safety hazards, and reduce societal welfare.

In a perfectly competitive market in which consumers and producers both have sufficient information, the optimal level of production of eggs will be provided at an optimal level of safety. In the egg market, however, consumers and producers do not have sufficient information on the SE status of particular eggs. In the case of SE-contaminated eggs, although farmers and producers do have an incentive to put safety programs into place, the lack of awareness and information about the risk suggests that an inefficiently high demand exists for eggs that are produced without using adequate measures to prevent SE.[2] Because the demand for specific eggs is not sufficiently affected by safety considerations, the farmer's incentive to invest in safety measures is diminished. Consequently, the market does not provide the incentives necessary for optimal egg safety.

With sufficient information for consumers and producers, a legal system that awards compensation for harm done due to SE-contaminated eggs has the potential to remedy market imperfections by providing producers with incentives to provide the level of safety that is best for society. The legal system does not ensure the optimum level of shell egg safety because consumers who become ill due to SE contamination often do not know the reason for, or source of, their illness. Even in cases where consumers are aware that their illness was contracted from eggs, imperfect information makes it difficult to determine who is ultimately responsible for their illness, since the particular source of the SE contamination of the eggs is not known in many circumstances.

In sum, the imperfect information about the risk associated with SE from particular shell eggs means that neither the legal system nor the marketplace may be able to provide adequate economic incentives for the production of eggs sufficiently free of SE contamination. The Government may therefore be able to improve social welfare through targeted regulation. In what follows, we will look at the costs and benefits of the provisions in the rule and comments addressing the benefits and costs of options presented in the proposed rule. We will also look at the costs and benefits of other measures to control SE that we considered, but did not include in this final rule.

C. Comments on the Preliminary Regulatory Impact Analysis in the Proposed Rule and Responses

(Comment 51) One comment agreed that FDA should exempt small producers generally from the final rule, but suggested that the proposed testing and diversion requirements should apply to all egg producers, regardless of size. The comment argued that testing of the environment and shell eggs provides verification that on-farm sanitation programs are effective in controlling SE and allows for preventive measures including diversion if a positive test occurs, which could prevent illnesses and outbreaks. The comment suggested that imposing testing and diversion requirements on small producers would limit the burden on these small businesses without reducing the public health benefit from the final regulation.

(Response) Some benefits would be derived by requiring farms with less than 3,000 layers to divert potentially positive eggs upon both a positive environmental and a positive egg test.

[2] For example, although many consumers may be generally aware of the association between shell eggs and SE, they may not know that a few common methods of preparing eggs for consumption will not eliminate SE in a contaminated egg.

However, the cost per case averted on farms with less than 3,000 layers, producing less than 1 percent of the shell eggs on the market (accounting for 300 to 1,000 SE-related illnesses per year and less than 1 death per year), is approximately $205,000 per case averted, which would not be a cost-effective public health intervention on over 45,000 very small egg farms.

(Comment 52) One comment noted that, over the last several years, numerous shell egg production facilities in the United States were built to produce eggs only for processing into egg products; these facilities may divert eggs for sale as table eggs when market conditions or seasonal production patterns warrant. The comment stated that this diversion is done when demand for egg products is weak and the producer can avoid or minimize potential economic loss by moving temporary surpluses to the table egg market. The comment stated that, although under the proposed rule producers whose entire production will be processed into egg products need comply only with the refrigeration requirements for on-farm storage, these producers who may divert their eggs to the table egg market must comply with all of the egg production requirements when any part of their production is not processed into egg products or does not receive a treatment that achieves at least a 5-log destruction of SE. The comment stated that, while many firms that produce shell eggs for use primarily in the manufacture of egg products now have extensive on-farm programs to ensure the safety of eggs and egg products, some of these producers will need to impose additional food safety measures at the production site in order to be able to continue to occasionally divert eggs to the table egg market. The comment questions whether the agency considered these expenditures in determining total costs of the proposed rule on the egg industry.

(Response) Those farms that produce only a portion of their eggs for sale on the table egg market have been covered within the scope of this rule and their costs are included in the costs and the benefits analysis of the final rule.

(Comment 53) One comment states that the requirement that eggs be refrigerated at a temperature of no greater than 45 °F within 36 hours of laying is not realistic. The comment recommended instead that the rule require that eggs held at the farm be refrigerated at a temperature no greater than 55 degrees, provided the eggs are not to be stored on the farm for more than 4 days. The comment states that eggs are generally held in on-farm coolers for a relatively short period of time; that there is evidence that any low level of SE within a naturally infected egg will not undergo significant multiplication until the albumen begins to degrade; and that, even at room temperature, significant growth may take several weeks. The comment stated that the cost involved in remodeling and operating on-farm coolers to maintain a 45-degree ambient temperature, rather than a 55-degree ambient temperature, would not show a reasonable cost/benefit ratio.

(Response) Not all farms will need to remodel their on farm coolers to maintain a 45-degree ambient temperature. However, many will, and the costs associated with that remodeling are significant. In the analysis detailed in section V.F of this document, FDA estimates annualized costs for farms that build cooling facilities from scratch, remodel existing cooling facilities, use extra power to reduce temperature, use refrigerated shipping, and use refrigerated preproduction storage, to be $20.1 million using a 7 percent discount rate and $16.4 million using a 3 percent discount rate. Using the 2005 FSIS risk assessment (Ref. 22), FDA estimated that the refrigeration at 45 degrees within 36 hours of lay through the preproduction stage, in the absence of the other provisions in the final rule, would reduce the number of annual SE related illnesses by nearly 45,000. With all provisions in the final rule fully implemented, refrigeration would reduce the number of SE related illnesses by nearly 29,000. Including all costs of egg-related SE illnesses (i.e., both mild cases and the less frequent though more severe ones including hospitalization, chronic arthritis, or even death), FDA estimated the average cost of an SE illness to be $17,900. This provision, when implemented with the rest of the final rule, is estimated to provide nearly $520 million in benefits annually and nearly $500 million in annual net benefits.

(Comment 54) One comment stated that, for environmental testing, consideration should be given to the sampling of a given proportion of available sites as opposed to a given number of samples regardless of the size of the flock or the number of houses. The comment stated that a farm may have a single age group in more than one house.

(Response) This comment reflects a misunderstanding of the proposal. Sampling is performed on a per house basis. Section 118.7(a) requires that an environmental test must be done for each poultry house in accordance with § 118.5(a) and (b). Within each poultry house, you must sample the environment using a sampling plan appropriate to the poultry house layout. We agree that sites/houses are the appropriate sampling location. Costs and benefits of environmental sampling are calculated on a per house basis.

(Comment 55) Several comments stated that breaker eggs will sell for a lower price than table eggs, that diversion costs will vary by region, and that breaker eggs from SE-positive flocks will sell for even less than normal breaker eggs. One comment stated that the cost estimated for normal breaker eggs is underestimated in the analysis of the proposed rule. Data were provided to support the comment. One comment stated that processors are likely to refuse eggs from SE-positive flocks.

(Response) We agree with the comments and recognize differences exist regionally in the price received for eggs, in the price of breaker eggs, and in the price of eggs from SE-positive flocks. All of these costs, including regional differences in diversion costs, and the adverse effects of bad publicity, are discussed in the analysis. The additional data the comment provides are considered in the final rule. The expected cost of a diverted egg has increased in the new analysis to $0.23 per dozen eggs (drawn from a uniform range of $0.13 to $0.33 per dozen eggs) from the proposed rule's estimate of $0.17 per dozen (drawn from a uniform range of $0.13 to $0.21 per dozen). The analysis and new results are detailed in table 22 and section V.F of this document.

FDA does not agree with the comment that processors will refuse eggs from positive flocks. FDA is aware of at least one processor that will purchase eggs from SE-positive flocks, and FDA believes others will as well because the pasteurization process for breaker eggs is designed to achieve at least a 5-log reduction in any SE that may be in eggs. However, because of the restrictions placed on eggs from SE-positive flocks, these eggs are intrinsically less valuable than normal shell eggs. This decrease in value, and cost burden likely to be transferred from egg processor to producer through a discount on eggs purchased from SE-positive flocks, is considered a cost of this rulemaking and is accounted for in the analysis and detailed in section V.F of this document.

(Comment 56) One comment stated that, to replace diverted eggs for a farm's existing markets, other eggs would need to be purchased, probably at an inflated price.

(Response) Although FDA recognizes this effect is possible in the rulemaking, it is a within-industry transfer of burden and is not counted as a cost in the analysis (the costs net out between producers).

(Comment 57) One comment questioned the presumed number of houses on the ''larger than 3,000 hens'' farms, although the comment recognized that the number was estimated using the National Animal Health Monitoring System (NAHMS) study.

(Response) The number of houses was estimated using the best data available, which the comment correctly identified as the NAHMS study.

(Comment 58) One comment stated that all cost calculations are broken down by house capacities. Results are applied to each size category with no acknowledgement that within each category, considerable variation still exists.

(Response) FDA agrees. There will be considerable variation of costs within groups. Costs in most cases will be smaller than average for the smaller than average farms within a size category and larger than average for larger than average farms. For rodent and other pest control, within group variation from the mean estimation is due to uncertainty about the extent to which current farm practices are adequate to meet the rule's requirements and costs of inputs, and due to variation in the number of houses. The variation is driven by the number of houses on a farm, so larger farms within a given size category will incur higher costs. The same is true for the biosecurity and cleaning and disinfecting provisions. Within group variation for the refrigeration provision is driven primarily by the variance in egg production and compliance. Farms that produce more eggs will require the construction of larger and more costly egg rooms than average. For testing and diversion, the within group variation is driven by the number of houses and egg production. Farms with more houses will have higher environmental testing costs, and farms with higher egg production per house will have a higher cost of diversion.

(Comment 59) Several comments stated that the cost of testing eggs is underestimated in the proposed rule analysis. One comment noted that, although in the proposal FDA estimated lab costs at $30, the pilot project lab cost relied on in developing that estimate were for direct plating from the egg pool onto two plates, not for the testing proposed of one pre-enrichment followed by two enrichments followed by five plates for each enrichment broth and then inoculation onto two differential media.

One comment stated that there would be start up costs for new labs entering the market due to increased demand for testing as a result of the rule.

(Response) FDA agrees that the costs estimated in the proposed rule analysis refer to the costs of the testing regime outlined in the pilot project, a less intensive regime than the one required in the proposed and final rules. These cost estimates have been corrected in the analysis of the final rule. A detailed description of the analysis is located in section V.F of this document.

We do not include start up costs for labs that enter the market or increase capacity due to increased testing demand as a result of the rule. The lab fees are set up by these firms to cover both the initial set up costs and the costs of each test. Counting these costs in addition to lab fees charged to egg producers would be double counting.

D. Economic Analysis of Potential Mitigations: Overview

We considered many possible SE prevention measures. Because of the large number of provisions considered (and the large number in the rule) we begin our analysis in this section with an overview of our methods of estimating the benefits and costs of the various measures to control SE in shell eggs. In section V.F of this document, we summarize the benefits and costs of the rule and regulatory options. In section V.G of this document, we present the detailed analysis of SE prevention measures we considered (including both those included and not included in the final rule).

1. Measuring Benefits

a. *Modeling benefits.* The primary benefit of the provisions in this rule (and the other possible measures) would be an expected decrease in the incidence of SE-related illnesses. The benefits will be calculated using the following model:

*Benefits = base line risk × % risk reduced (C1, C2, C3, * * *) × value of risk reduced*

Where:

- Benefits = annual health benefits realized due to this rule.
- Base line risk = the base line level of risk facing consumers today, expressed as the number of SE cases attributable to shell eggs consumption
- Risk reduced (C1, C2, C3, * * *) = the % of risk reduced from the baseline due to changes in production (C1, C2, C3, * * *)
- Value of risk reduced = the social cost of one representative case of salmonellosis. This cost includes medical costs, the value of lost production, and the loss of welfare the individual experiences due to pain and suffering and lost leisure time.

We write the risk reduced component of the benefits equation in a general functional form rather than an additive form because combinations of the rule's components (C1, C2, C3, * * *) will usually not result in linear, proportional reductions of risk. Instead, we assume that some components are partial substitutes for one another while others complement each other.[3] The total risk reduction will not be the sum of the individual components; the effectiveness of the rule could be less than or greater than the sum of its parts.

b. *Base line risk from SE in eggs.* We estimated the reduction in SE illnesses by applying the percentage prevention to the base line number of illnesses. We estimated the base line levels of egg contamination and the number of human illnesses that result from such contamination.

The Centers for Disease Control and Prevention (CDC) passive surveillance system recorded 6,740 illnesses due to SE in 2006. Using the CDC multiplier (used to estimate total cases based on ratio of total to reported cases) derived by Voetsch, et al. (Ref. 5) of 38 (with a 90 percent confidence interval of 23 to 61), we estimated the number of illnesses due to SE to have been 256,120 in 2006 (ranging between 155,020 and 411,140).[4] Because SE is not unique to eggs, not all of the 256,120 illnesses due to SE in 2006 can be attributed to domestic shell eggs. CDC estimates that 16 percent of the cases reported were acquired outside of the United States. Consequently, the base line level of domestic SE cases is 215,140 (ranging between 130,220 and 345,360). Between 1985 and 2002, a total of 53 percent of all SE illnesses identified through CDC outbreak surveillance are attributable to eggs. Where a vehicle of transmission was identified, 81 percent of outbreaks and 79 percent of illnesses identified through outbreaks were attributed to eggs (Ref. 17). The midpoint between the lower bound (53 percent) and upper

[3] An example of substitute components would be rodent poisons and traps. By themselves rodent poisons and traps may reduce the problem of SE contamination by X percent and Y percent, respectively. However, when used together the effect on SE contamination will be somewhat less than X percent + Y percent (though still higher than each component alone). When prevention measures are complements, the total prevention from using the two measures that reduce risk by A percent and B percent separately is greater than A percent + B percent.

[4] All data for the calculations in this paragraph and the following paragraph are from Meade (Ref. 6) and CDC (Refs. 8, 11, 15, and 56).

bound (79 percent) estimates is 66 percent, which we assume to be the mean percent of domestic SE illnesses attributable to eggs. Using these figures we calculate a lower bound estimate of 69,020 (53 percent × 130,220) and an upper bound estimate of 218,260 (79 percent × 345,360) cases due to SE in eggs. The CDC method generates a mean point estimate of 141,990 (66 percent × 215,140) cases for 2006.[5] Table 1 of this document illustrates how we arrived at our base line.

TABLE 1—BASE LINE EGG-RELATED *Salmonella Enteritidis* (SE) CASES

	Low estimate	Mean	High estimate
2006 Passive Surveillance Cases	6,740		
Multiplier	23	38	61
Estimated SE Cases in 2006	155,020	256,120	411,140
Cases from Outside the United States	−16%		
	130,220	215,140	345,360
Percent of SE cases from eggs	53%	66%	79%
Egg Related SE cases in 2006	69,020	141,990	272,830

c. *Measuring the health benefits from preventing salmonellosis.*

i. *The economic impact of illness from SE in eggs.* In measuring the economic impact of illness due to the consumption of SE-contaminated eggs, it is important that we include all of the effects of SE on human health. These effects include both monetary and nonmonetary losses and are both acute and chronic in nature.

ii. *The consequences of SE illness.* We outline the consequences of SE illnesses in table 2 of this document. Table 2 includes the medical outcomes of SE illness, the duration of conditions acquired due to SE illness, and the probability of occurrence for each condition with a given level of severity.[6]

The acute illness that accompanies SE generally causes gastrointestinal symptoms, which might be mild. However, SE infections can be severe and result in death, especially for the elderly, immunocompromised, and children (Ref. 58). Finally, a small percentage of all SE infections result in chronic reactive arthritis (Ref. 4).

TABLE 2—CONSEQUENCES OF SE INFECTION

Condition and severity	Outcome	Duration (days per year)	Percent of cases
Gastrointestinal Illness:			
Mild	No physician visit	1 to 3	90.7
Moderate	Physician visit	2 to 12	8.1
Severe	Hospitalized	11 to 21	1.2
Arthritis:			
Short-term	Waxing and waning, eventually resolved	1 to 121	1.3
Long-term	Chronic arthritis	365	2.4
Death	Death		0.04

We classify the gastrointestinal illness caused by SE illness as mild, moderate, or severe. A mild case of SE is defined as a case that causes gastrointestinal symptoms, but is not severe enough to warrant visiting the doctor. An individual with a mild case of SE illness will be ill for 1 to 3 days. A moderate case of SE illness lasts for 2 to 12 days and is characterized as a case severe enough to necessitate a trip to the doctor or other health care professional. A severe case of SE illness results in hospitalization and typically lasts from 11 to 21 days.

We do not have direct estimates of the distribution of outcomes of SE illnesses separate from the outcomes of illnesses for all nontyphoidal *Salmonella.* In the absence of better information we assume that all *Salmonella* serovars will result in similar distributions of illness severity. We therefore use information that applies either to all 1,400,000 estimated annual cases of salmonellosis or to the 1,340,000 estimated annual foodborne cases of salmonellosis. Using general results for all diarrheal illnesses, CDC has estimated that 113,000 of the 1,400,000 *Salmonella* illnesses in 1997 could have resulted in physician office visits, a rate of 8.1 percent (113,000 ÷ 1,400,000) (Ref. 15). CDC also has estimated that foodborne *Salmonella* cases lead to about 15,600 hospitalizations per year, which is about 1.2 percent (15,600 ÷ 1,340,000) of annual foodborne cases (Ref. 6). Based on this we can calculate that the remaining 90.7 percent of gastrointestinal illness cases occur without a visit to the doctor; that is, they are mild.

SE may also result in reactive arthritis. This illness can manifest itself either as a relatively short-term bout of joint pain or as a chronic condition.

[5] In the proposed rule, we adjusted the estimated number of cases downward to account for the projected effects of the refrigeration and labeling rule. After that rule took effect in 2001, the estimated number of SE illnesses in the United States in 2002 decreased by nearly 9 percent. However, since then the rate has remained relatively steady, implying that at least the short term effects of the refrigeration and labeling rule have been realized. We therefore do not adjust for the effects of the refrigeration and labeling rule in this final rule.

[6] We use recent data from CDC to estimate the relative prevalence of illnesses of different severities (Ref. 57). The expected duration of illness for each category of severity is taken from Zorn and Klontz (Ref. 4).

Studies of outbreaks imply that short-term reactive arthritis may last from 1 day to a total of 121 days. Chronic reactive arthritis can last from the time of onset until death. Overall, we estimate that 1 to 10 percent of SE infections lead to some form of reactive arthritis. We expect two-thirds of these to be long-term and one-third to be short-term (Ref. 4).

The most severe potential result of SE infection is death. CDC estimated in 1999 that 553 deaths occur annually due to foodborne *Salmonella* (Ref. 6). The estimate suggests that about 0.04 percent (553 ÷ 1,340,000) of foodborne cases of *Salmonella* result in death.[7]

iii. *Quality adjusted life years (QALYs).* The benefits from this regulation will be presented in both monetary and nonmonetary terms. In section V.G of this document, the benefits will be expressed in illnesses and deaths averted by each regulatory provision under consideration. In the summary of benefits due to the regulation, we present both a cost effectiveness framework (cost per illness averted and cost per QALY saved) and a monetary benefits estimation.

One approach to estimating health benefits involves the use of QALYs. QALYs can be used to measure the loss of well-being that an individual suffers due to a disease or condition. QALYs do not include the value of health expenditures caused by the condition in question; we estimate health expenditures separately.[8] QALYs range from 0 to 1 where 0 is equivalent to death and 1 is equivalent to perfect health for 1 year.

A number of methods have been constructed to measure QALYs. One class of methods uses surveys to ask doctors and the general population to use a QALY scale to estimate how much someone else who is afflicted with a given symptom or condition will suffer. This direct survey approach has been used widely, partly because surveys of QALY values for a large variety of symptoms and functional limitations have been published (Ref. 4). An alternative method used by Cutler and Richardson uses regression analysis to estimate the effect of particular conditions on overall health status (Ref. 59). In our analysis, we use both methods where appropriate.[9]

In table 3 of this document, we present estimates of the number of quality adjusted life days (QALDs) lost due to SE. Total QALDs lost are derived by dividing the estimated number of QALYs lost by 365. Then, to calculate the disutility per day, or 1 QALD, we multiply by the average duration of the illness. Like QALYs, QALDs range from 0 to 1 where 0 is equivalent to death and 1 is equivalent to perfect health for 1 day. We report the loss in QALDs because most of the illnesses associated with SE last days rather than years. The QALD values listed for mild, moderate, and severe cases of SE infection were estimated by Zorn and Klontz using data from Kaplan, Anderson, and Ganiats (Ref. 4). This approach calculated that the acute effects of food poisoning (vomiting, diarrhea, and general gastrointestinal illness) lead to a loss of QALDs greater than 0.5 for each day of illness. Furthermore, these lost QALDs persist for 2 to 16 days. Thus, the total loss of QALDs from gastrointestinal illness is calculated to be 1 to 10.

TABLE 3—LOST QUALITY ADJUSTED LIFE DAYS DUE TO SE

Severity	Disutility per day (QALDs lost)				Total QALDs lost per illness
	Functional	Symptom	Total	Average days Ill	
Illness:					
Mild	0.44	0.08	0.053	2	1
Moderate	0.44	0.08	0.053	7	4
Severe	0.53	0.09	0.062	16	10
Reactive Arthritis:					
Short-term			0.22	25	5
Long-term			0.14	18,250	2,613

For reactive arthritis, we used the regression approach of Cutler and Richardson (Ref. 59). The regression approach yields estimates of losses per day of 0.22 for short-term reactive arthritis and 0.14 for long-term reactive arthritis. We estimate that short-term reactive arthritis results in a loss of 5.4 to 10.8 QALDs while long-term reactive arthritis results in a loss of 2,613 to 5,223 QALDs.

We do not present the estimated QALYs saved for each provision considered in this analysis. Instead, we present benefits by provision in an ''illnesses averted'' metric for each option and provision. This practice allows us to calculate cost per illness averted by each provision. In the summary we present the result of alternate valuation methods that do and do not rely on QALY estimates. Because a large portion of the loss due to chronic reactive arthritis is due to pain and suffering not associated with direct medical expenditures, it is difficult to capture the full economic loss due to SE related reactive arthritis without using QALYs or some other measure of morbidity effects. Benefit estimates not relying on QALY estimates will necessarily be significantly lower than estimates with QALYs. The results of all methods of valuation are presented in section V.F of this document.

iv. *Valuation of SE illnesses.* Table 4 of this document illustrates how we calculate the dollar value of a typical case of SE. The first column of table 4 lists the type of ailment. The second and third columns of table 4 are taken from tables 2 and 3 of this document. The health loss per case is calculated by multiplying the value of a QALD by the

[7] CDC updated the estimate of the overall burden of salmonellosis in 2004. The rates of death for both salmonellosis and SE were estimated to be 0.03 percent, a decrease of one one-hundredth of a percent from the 1999 estimate. The rate of death may vary slightly from year to year. A decrease in the rate of death from SE by 0.01 percent would decrease the baseline mean estimated number of deaths related to consumption of eggs containing SE from 44 to 32. Mean estimated annual benefits would decrease by roughly $35 million.

[8] Although some QALY estimates include the value of medical expenditures, particularly QALY estimates derived from survey data, the QALY estimates used in this study do not.

[9] The Cutler and Richardson approach has several advantages over the Kaplan, Anderson, and Ganiats approach. However, it is not clear that this approach is appropriate for valuing acute illnesses. Therefore the Kaplan, Anderson, and Ganiats approach is used for acute illnesses and the Cutler and Richardson approach is used for chronic conditions. See Scharff and Jessup for a discussion of the pros and cons of each approach (Ref. 60).

actual number of QALDs lost, and then discounting where appropriate (only values of chronic cases of reactive arthritis are affected by the discount rate). The values in this column will vary depending upon the particular estimates of the value of a statistical life (VSL), the value of a QALY, and the discount rate. The fifth column of table 4 shows the annual medical costs of each condition that is caused by SE infection (long term reactive arthritis is the only condition where the afflicted will incur medical costs for more than a single year). The sixth column of table 4 shows the weighted dollar loss per outcome caused by SE. The probability that a case of SE infection results in a given outcome (column 2) is multiplied by the sum of the average health and medical costs per case. The weighted dollar values in column 6 are summed to calculate the total expected loss associated with a typical case of SE. We present the range of estimates of dollar losses per case in table 5 of this document.

TABLE 4—VALUING OF A TYPICAL CASE OF SE[1, 2]

Type and severity	Case breakdown (percent)	Total QALDs lost per illness	Health loss per case	Medical costs per case	Weighted dollar loss per case
Illness:					
Mild	90.7	1.05	$864	$0	$780
Moderate	8.1	3.68	3,025	92	250
Severe	1.2	9.99	8,208	9,257	210
Arthritis:					
Short-Term	1.26	5.41	4,442	139	60
Long-Term	2.40	2,613.12	592,411	9,536	14,460
Death	0.04	18,250.00	5,000,000		2,140
Total expected loss per case					17,900

[1] The value of a typical case will actually vary widely depending on the values used for the VSL, QALY, and the discount rate. The figures presented here are based on VSL = $5 million, QALY = $300,000, and a discount rate of 7%.

[2] "Health Loss per Case" and "Weighted Dollar Loss per Case" for "Death" are calculated using a VSL = $5 million. If we use the QALD calculation, assuming the average decedent loses 50 years of life, the Health Loss per Case is $4.14 million and the Weighted Dollar Loss per Case is $1,773.

Cost of illness estimates usually include the medical costs associated with SE. For example, Buzby et al. produced a summary of medical and other costs for U.S. salmonellosis cases (Ref. 58).[10] The figures they estimated include the lost productivity of workers due to salmonellosis. Because we account for lost productivity separately, we must net out these costs.

For mild SE illnesses, we assume that most persons will not obtain medical services. The cost estimated for this category chiefly reflects lost productivity (Ref. 58).

For medical costs for those who contract moderate illnesses, we use figures from Williams (Ref. 61) updated with medical cost indices. In 1996, the average total cost of treatment for a non-urgent medical problem, including physician's fees and medication, was $62. We adjust these numbers to account for the increased cost of medical care since 1996. The consumer price index (CPI) for medical services rose from 228.2 in 1996 to 323.8 in 2005 (Ref. 62).

The data for the medical cost of a severe case of SE was obtained from the Health Cost and Utilization Project's Nationwide Inpatient Sample (Ref. 63) and updated to 2005 constant dollars using the CPI. Medical costs due to reactive arthritis are based on Zorn and Klontz (Ref. 4). Zorn and Klontz estimated that short-term reactive arthritis medical costs were approximately $100 per case in 1998. We adjust these numbers to account for the increased cost of medical care since 1998. We estimate that long-term reactive arthritis costs had a present value of $5,370 in 1992.[11] We use the CPI for medical care in general to update this cost to current dollars. Between 1992 and 2005, the CPI for medical services rose from 190.1 to 323.8.

FDA uses a range to estimate the value of an additional year of life to reflect the uncertainty in the literature. As a low estimate, FDA uses $100,000 per QALY. Cutler and Richardson (Ref. 59) use a similar estimate, and Garber and Phelps (Ref. 64) conclude that estimates of the value of a life year are about twice the level of income, though they present a broad range to reflect uncertainty associated with risk aversion and discount rates. Updating Garber and Phelps' estimates suggests that $100,000 per life year is a reasonable estimate, given that median family income in 2002 was about $51,000 (Ref. 65). Moreover, this estimate is close to the estimate used in FDA's economic analysis of the regulations implementing the Nutrition Labeling and Education Act of 1990. To reflect other underlying literature, and following suggestions from other Federal agencies, we begin with an estimate of the VSL of $6.5 million. This estimate is consistent with the survey by Aldy and Viscusi (Ref. 66) on the premium for risk observed in labor markets. Annualizing this value over 35 years at 3 percent and at 7 percent discount rates implies estimates of a value of an additional year of life of about $300,000 and $500,000. Therefore, calculations for estimated benefits will reflect three estimates of the value of a statistical life year (VSLY): $100,000, $300,000 and $500,000, for both of the methods of estimating gains in life years. Total benefits differ from mortality-related benefits by including the value of reduced morbidity and health care costs. Furthermore, FDA uses values of a statistical life of $5 million and $6.5 million. This range of VSL estimates is consistent with a reasonable interpretation of studies of willingness to pay to reduce mortality risks (Refs. 66 and 67). FDA uses the lower value to reflect the fact that many of the estimates of willingness to pay to reduce mortality risk from papers not surveyed by Aldy and Viscusi are relatively low.

[10] As with the CDC data, we assume that the characteristics of SE-related illnesses are similar to those of *Salmonella* in general.

[11] This is based on the fact that in 1992 there were $64.8 billion in costs due to arthritis, 24 percent of these costs were medical costs, and there were 40 million arthritis sufferers. This yields $389 per arthritis sufferer in direct medical costs. Discounted at 7 percent, the present value of medical expenditures for 50 years with reactive arthritis is $5,370.

In table 5 of this document the value of a typical case of SE under different assumptions is shown.

TABLE 5—VALUE OF A TYPICAL CASE OF SALMONELLA ENTERITIDIS UNDER DIFFERENT ECONOMIC ASSUMPTIONS[1, 2, 3]

	Discount rate = 3 percent		Discount rate = 7 percent	
	VSL = $5 million	VSL = $6.5 million	VSL = $5 million	VSL = $6.5 million
VSLY = $100 thousand	$11,900	.....	$7,600	.....
VSLY = $300 thousand	30,400	31,000	17,900	18,500
VSLY = $500 thousand	.....	49,500	.....	28,800

[1] VSL means value of a statistical life.
[2] VSLY means value of a statistical life year.
[3] Values are only reported for most likely combinations. A VSLY of $100,000 is not consistent with a VSL of $6.5 million, and likewise, a VSLY of $500,000 is not consistent with a VSL of $5 million.

The expected value of a typical case of SE varies greatly depending on the estimates used. The lowest expected value for a case of SE, $7,600, occurs when we use a VSL of $5 million, QALY of $100,000, and a discount rate of 7 percent. The highest expected value for a case of SE, $49,500, occurs when we use a VSL of $6.5 million, a QALY of $500,000, and a discount rate of 3 percent. For purpose of this analysis, we have chosen to use $17,900 per case as a central estimate. This value corresponds to where the VSL is $5.0 million, a QALY is valued at $300,000, and the discount rate is 7 percent.

d. *Other benefits.* Pathogens other than SE have been associated with eggs. In particular, *Campylobacter* (Ref. 68) and non-SE *Salmonella* (Ref. 20) have been found on the shells of eggs. The presence of pathogens on the eggshell may be harmful to humans if one of two scenarios occurs. First, under certain conditions, pathogens may migrate through the shell of the egg to infect the egg's contents (Ref. 69). Second, eggshell contamination could result in the contamination of egg contents if eggs are broken in such a way that the shell of the egg comes into contact with the contents of the egg (Ref. 69).[12] Pathogen migration is unlikely given current USDA standards and industry practices.[13] Regarding egg breaking, current USDA washing and sanitizing standards are designed to reduce pathogens on the exterior of the egg. Consequently, we do not expect benefits from the reduction of illnesses due to pathogens other than SE to be large.

2. Measuring Costs

We measure costs based on the best available information from government, industry, and academic sources. Furthermore, we assume that total costs are typically the sum of the costs of individual provisions. What this assumption means is that, unlike benefits, the cost of one provision is generally independent of the cost of other provisions. Where economies of scope[14] with respect to SE mitigation exist, we adjust the costs downward to account for the economies.[15]

3. Coverage of the Analysis

Two major sectors are affected by this rule: Farms that produce eggs for the retail markets and farms that raise pullets that become layers. We estimate costs and benefits of changing practices in each of these sectors separately.

We estimate costs and benefits of potential prevention measures for all farms that produce eggs for distribution in retail markets. Because the rule exempts very small farms (< 3,000 layers) from all provisions, wherever the data permit, we calculate costs and benefits separately for both very small farms and for larger farms (≥ 3,000 layers). The separation of costs and benefits by size of farm allows us to measure the regulatory relief provided by the exemption for very small farms.[16] Farmers who sell all of their eggs directly to consumers are exempt from all provisions. Sales of eggs directly to consumers include sales of a farmer's own eggs to neighbors, at farmers markets, and at roadside stands. Farmers that sell their eggs to another person for distribution or resale are not assumed to be exempt from the listed provisions. We do not anticipate any control measures for farms that sell all of their eggs directly to consumers, so we exclude them from the analysis.

We estimate that approximately 3,300 farm sites with roughly 7,400 poultry houses will be covered by some or all parts of the rule. These figures are calculated as follows:

- We use the National Agricultural Statistics Service (NASS) 2002 Census of Agriculture to determine the number of farm sites with layers on hand. NASS estimated that there are 98,315 farms with layers over 20 weeks old in their inventory (Ref. 71).
- Next, we adjust for the fact that a large portion of farms with fewer than 3,000 layers either sell their eggs directly to consumers or do not sell their eggs at all. We estimate that, of the approximately 94,300 farms with fewer than 3,000 layers,[17] over 48,600 of these farms sell their eggs, but not directly to consumers.[18]
- NASS data suggested that 83 percent of layers are table egg layers

[12] The use of centrifuges would cause this to occur.

[13] Most modern egg washing machines are spray-washers (63 FR 27502 at 27505, May 19, 1998). Migration of SE through the eggshell is more commonly associated with immersion washing (Ref. 70).

[14] Economies of scope occur when more than one activity can be more efficiently performed at the same time, rather than one at a time.

[15] Where economies of scope with regard to SE mitigation occur, we observe that the incremental cost of one provision decreases with the implementation of another provision. For example, if rodent control decreases the chance of SE detection through environmental testing, we would expect the amount (and the cost) of follow-up egg testing to decline.

[16] A detailed breakdown of the estimated impact of each provision were they required for farms with less than 3,000 birds can be found in section VII of this document.

[17] The NASS Census of Agriculture uses farms with 3,200 birds as its cutoff point for categorization. FDA uses 3,000 birds as its cutoff point for small versus large farms, because this is the measure that is used in other egg and poultry regulations. To adjust the NASS data, FDA assumes that all flocks are uniformly distributed across the 400 to 3,200 bird category. Using this assumption, 7.1 percent (200 ÷ 2,800) of these farms fall in the over 3,000 bird category while the remaining 92.9 percent fall in the small farm category.

[18] Based on assumptions that industry experts (Refs. 72, 73, and 74) validated as plausible, we have calculated that approximately 2,860 farms sell eggs via retail channels other than farmers markets, roadside stands, and neighborhood sales. Many of the remaining 91,400 very small farms sell their eggs to consumers indirectly at roadside stands or farmers markets (Ref. 71). In the absence of better information, we assume that half of those remaining 91,400 very small farms sell eggs indirectly to consumers.

(Ref. 75). For those farms with more than 3,000 layers, we adjust the estimated number of farms affected by the NASS estimate. The resulting estimated number of farm sites is illustrated in the first column of table 6 of this document.

• The estimated number of houses per farm site is broken down by size category in table 6 of this document. We use data from the 1999 Table Egg Layer Management in the U.S. Survey (Refs. 27 and 28) to estimate the number of houses per farm site for those farms with more than 3,000 layers.[19] For those farms with fewer than 3,000 layers, we assume that there is only one house per farm site.

• We calculate the total number of poultry houses that will be affected by this rule by multiplying the adjusted number of farm sites by the expected number of houses per farm site.

As Table 6 of this document demonstrates, the majority of the houses are on farm sites with fewer than 3,000 layers.

TABLE 6—FARMS POTENTIALLY COVERED BY THE RULE

Farm size (number of layers)	Adjusted number of farm sites	Number of houses per site	Total number of houses	Total number of eggs produced (in millions)
3,000 to 19,999	1,746	1.4	2,445	5,607
20,000 to 49,999	925	1.4	1,295	6,886
50,000 to 99,999	248	2.4	595	4,662
100,000 or more	409	7.4	3,024	54,958
Total potential coverage	3,328	2.2	7,359	72,113

We also estimate the costs and benefits of prevention measures on farms that raise pullets. Comments to the proposed rule stated that there are roughly one third as many pullets as there are layers at any given time. Further, there are roughly one third as many pullet houses as there are layer houses. FDA therefore estimates that 2,453 pullet houses (7,359 layer houses/3) will be covered under this provision.[20] Some of the pullet houses are located onsite at layer farms and others are located on pullet growing facilities.

E. Summary of Costs and Benefits of Regulatory Options and the Rule

In this section we summarize the costs and benefits of the rule and the regulatory options. In section V.F of this document, we provide a detailed analysis of the costs and benefits of all of the SE prevention measures we considered, both those in and those not in the final rule.

We considered a number of regulatory options that may be used to prevent the problem of SE in eggs, including no new regulatory action, classification of SE-positive eggs as restricted or SE-positive, HACCP, the final rule, more extensive on-farm prevention measures, less extensive on-farm prevention measures, and the inclusion of mandatory food establishment prevention measures.

1. No New Regulatory Action

One possible alternative to the rule is to rely on current Federal, State, and industry efforts to control SE in shell eggs. These efforts include relying on an FDA final rule for labeling and refrigerating shell eggs, FDA educational programs, and the growth of membership in State and industry quality assurance programs. We believe these methods of control, while valuable, are unable to fully address the problem of SE contamination of shell eggs.

FDA issued a related rule designed to help prevent the growth of SE in eggs by requiring refrigeration of shell eggs at retail and by requiring shell egg labeling (65 FR 76092, December 5, 2000). As part of that rule, we set refrigeration temperatures to reduce the potential growth of SE inside shell eggs at the retail level, and, to inform consumers, required safe handling instructions on all cases and cartons of shell eggs. Nevertheless, labeling and refrigeration standards do not prevent or limit the growth of SE while eggs are in production.

FDA also is pursuing a program designed to inform consumers about microbial hazards in egg preparation. The nationally distributed ''Fight BAC!'' program targets children in schools and television audiences with a more general food safety message that likely results in better egg handling practices. This program, although useful, does not prevent the initial contamination of eggs with SE.

Several of the large egg-producing States and industry groups have encouraged producers of eggs to follow on-farm practices aimed at preventing SE in their flocks. One of the first States to implement a structured quality assurance program was Pennsylvania. Though voluntary, the implementation of the PEQAP has been accompanied by a significant decrease in SE-related illnesses in those areas where eggs from Pennsylvania are marketed. Industry groups also have drawn up quality assurance plans as guidelines for their members to follow. The voluntary programs have achieved some success in reducing SE contamination in eggs, and the more comprehensive plans contain many preventive measures similar to those in this rule (Ref. 76). These voluntary programs have now been in operation for many years and are well-known throughout the industry. Although the State and industry programs are potentially effective, many producers choose not to participate. As data from CDC show, SE illnesses continue to be associated with shell eggs even in those areas where voluntary programs are in place (Ref. 56). Option 1, relying on current Federal, State, and industry efforts to control SE in shell eggs, will be used as a baseline for the rest of the analysis.

[19] Data from the Layers study are used throughout this document. We acquired the data either directly from the NAHMS Web site or through direct correspondence with Lindsey Garber, Centers for Epidemiology and Animal Health, Veterinary Services, APHIS, USDA.

[20] Comments received on the number of pullet houses came primarily from large farm representatives. Farms with less than 3,000 layers are not covered by this provision, so the pullet houses from which they procure their layers will either not be covered (if they sell only to farms with less than 3,000 layers) or will be covered by virtue of selling to larger farms. Therefore, FDA uses the number of houses located on farms with 3,000 layers or more to calculate the number of pullet houses affected by the provision.

2. HACCP

We could, in theory, require that a HACCP system be implemented on layer farms. Although the general sanitation and hazard control measures in the rule are similar to aspects of existing HACCP programs in other areas, the agency has decided not to mandate HACCP on layer farms. To be effective, a HACCP system must be based on a foundation of prerequisite programs that provide basic environmental and operating conditions. Thus, to be technically and scientifically feasible for egg production, a HACCP system would require adoption of basic measures such as those required in this final rule, as well as several additional measures. Even if FDA were to provide less detail as to its expectations for compliance in the regulation and to require a HACCP plan rather than an SE prevention plan, these measures would certainly be required for producers to effectively prevent SE contamination of eggs.

Furthermore, we are not aware of any precedent for use of a HACCP approach on egg farms, either voluntarily developed by individual businesses or required by states, and we note that FDA did not receive any comment suggesting that it attempt to apply a HACCP approach to egg farms.

FDA considers that the level of scientific and technical knowledge needed to identify the range of possible hazards reasonably likely to occur and the critical control points needed for eliminating those hazards from shell eggs may not always be readily available on layer farms. Moreover, we believe that the HACCP plans that most layer farms would develop, if required to do so, would contain many if not all of the measures in this rule. We believe the targeted SE-prevention measures required by this final rule are as effective as any conceivable HACCP system, and avoid imposing on each layer farm the burden of developing scientific and technical knowledge required to develop an individualized HACCP system.

3. The Final Rule

The rule includes the following requirements for farms with 3,000 or more layers that do not have all of their eggs treated or do not sell all of their eggs directly to consumers: Rodent and other pest control, biosecurity, cleaning and disinfecting, use of SE-monitored chicks and pullets, testing and diversion, refrigeration during holding and transport, registration, and records with respect to compliance with each provision. Farms where all eggs are treated need only comply with the refrigeration requirements.

The benefits from the SE prevention measures in the rule would take time to be fully realized, but the costs would be more immediately incurred. Table 7 of this document shows the initial costs and benefits and the eventual costs and benefits following implementation of the rule.[21] Following are the detailed calculations underlying table 7, in section V.F. of this document.

TABLE 7—FINAL RULE ANNUAL COSTS AND BENEFITS

	Total costs (in millions)	Illnesses averted	Cost per illness averted	Total benefits (in millions)
Initially (first four years):[1]				
Discount Rate = 3%	$83	68,790	$1,200	$1,231
Discount Rate = 7%	88	68,790	1,300	1,231
Eventually (after four years):[1]				
Discount Rate = 3%	76	79,170	1,000	1,417
Discount Rate = 7%	81	79,170	1,000	1,417

[1] As explained in the detailed analysis in section V.F., some of the provisions, particularly rodent and pest control, will take up to 4 years to become fully effective. The effectiveness of the provisions affects the prevalence rate and thus affects both benefits and costs of each provision. Therefore, the costs and benefits are presented over two time frames: "initially" assuming an average effectiveness over the first 4 years, and "eventually" assuming full effectiveness after 4 years.

4. More Extensive On-Farm SE Prevention Measures

FDA could issue a rule that is broader in scope and has more extensive provisions including: (1) Does not exempt farms with fewer than 3,000 layers from any provisions and (2) includes more on-farm provisions than those in the rule. Additional on-farm provisions include requiring the use of SE-negative feed and vaccinating flocks against SE.

Such extensive controls would lead to total eventual costs of $274.0 million per year and eventual expected number of illnesses averted of 80,777, per year. This approach increases costs by more than $175 million, while only increasing the number of illnesses averted by 556 cases (valued at a total of $10.0 million). These more extensive controls would result in a marginal cost-effectiveness of more than $315,000 per additional illness averted and a decrease in net benefits of over $100 million. The main reason for the small increase in benefits relative to costs is that much of the increase in costs comes from adding farms with fewer than 3,000 layers. The large number of such farms (over 45,000) means that requiring them to comply with all provisions of the rule would greatly increase costs. These farms, however, account for less than 1 percent of egg production. Requiring them to comply with all of the SE prevention measures would have a small effect on the volume of shell eggs that could be contaminated with SE. In addition, including these very small farms likely would result in the cessation of egg production at a large number of these farms. For these reasons, FDA has decided not to pursue this option.

5. Less Extensive On-Farm SE Prevention Measures

We could also require fewer controls than are in the rule. Several provisions could be combined to provide a less extensive set of controls than in the rule. Many of the prevention measures could be put forth as stand-alone regulations. We have not presented each of these prevention measures as a separate option, but the reader can see the individual effects of the various on-farm prevention measures in table 28 of this document. As documented in table 28, the various individual measures would, by themselves, generate lower

[21] The discount rate is used here to annualize the costs of refrigeration equipment, plan designs, and training. For simplicity, subsequent summary tables will only include figures reflecting the discount rate of 7 percent. Those interested in the total cost number reflecting a 3-percent discount rate should subtract roughly $5 million from the calculations performed with a 7-percent discount rate. The exact difference is shown in section F of this document.

net benefits than the integrated program outlined in the rule.

6. Include Mandatory Provisions Applicable to Food Service Establishment Serving Highly Susceptible Populations

We could require certain safe egg handling and preparation practices for food establishments that serve highly susceptible populations as part of custodial care, health care, assisted living, or nutritional or socialization services. These provisions would affect nearly 40,000 such establishments. In place with the other provisions of the final rule, the provisions pertaining to food service establishments serving a highly susceptible population would prevent 1,052 illnesses annually at a cost of $16,700 per illness and $1.2 million in annual net benefits (Ref. 77).

As we discussed in section I.G., a majority of states and territories have adopted into their own retail food codes the relevant egg-associated provisions of the FDA Food Code. With most states adopting as mandatory the relevant sections of the FDA Food Code (or similar safety standards), FDA believes it would be an unnecessary exercise of authority to codify the FDA Food Code. We will continue education efforts at the retail and consumer levels. Further, we will continue to encourage states to adopt the relevant provisions of the FDA Food Code.

F. Benefits and Costs of Potential SE Prevention Measures: Detailed Analysis

In this section, we describe the SE prevention measures that we considered, including provisions that were not included as requirements or that were only required for certain producers in the rule.

For the costs and benefits of the provisions of the rule, we examine a number of on-farm measures including the following:

- Rodent and other pest control,
- Biosecurity measures,
- Cleaning and disinfecting of layer houses between flocks,
- Refrigeration of eggs,
- Layer house environmental testing,
- Follow-up egg testing,
- The diversion of SE-positive eggs,
- The use of SE monitored chicks or pullets, and
- Other provisions, including the use of SE negative feed, and vaccinating flocks against SE.

For each of these on-farm measures we estimate the costs of the following administrative measures: Registration, training, plan design, and recordkeeping.

1. On-Farm SE Prevention Measures

a. *Interdependence of on-farm measures.* Rodent and other pest control, biosecurity, and cleaning and disinfecting all have a role in eliminating SE in the poultry house. Although the actions taken under each heading may be distinct, the effects of each action are related. For example, a biosecurity plan may include provisions to limit standing water and high grass in areas adjacent to the poultry house. Although categorized as biosecurity measures, these practices also help control both rodents and pests. Similarly, cleaning and disinfecting remove not only SE, but also rodents and pests.

This interdependence means that the total efficacy of on-farm controls cannot be determined by adding the effects of each provision (as determined by studies that focus on each provision separately). The measurement difficulty arises for two reasons. First, when two practices substitute or complement one another, the efficacy of the first practice is affected by the introduction of a second. Throughout the analysis, results for benefits calculations are presented for each provision standing alone as well as in the presence of all other provisions. Therefore, a provision that occurs later in the production chain than a provision that has already reduced the prevalence of SE will have less of an impact on total illnesses averted than if that provision stood alone. The hierarchy of provisions (first in production chain to last) is as follows:

(1) Chicks and pullets procurement.

(2) Testing, cleaning, disinfection of chicks and pullets.

(3) Rodent control, biosecurity, cleaning and disinfection in layer houses.

(4) Testing and diversion in layers.

(5) Refrigeration.

Second, a simple comparison of farms that use one given practice with farms that do not use that practice is insufficient in measuring the effectiveness of that individual practice. The use of one good practice tends to be positively correlated with the use of other good practices, and therefore a simple comparison between farms will overstate the effectiveness of any one practice. For example, those houses that use the best rodent control practices are also likely to be using other SE controls as well, so a measure of rodent control effectiveness is likely to pick up the effects of good biosecurity, pest control, and cleaning and disinfecting practices. On the other hand, a simple farm to farm comparison of practices that are correlated with lower prevalence of SE may understate the effectiveness of the practice. For example, a group of farms may have practices in place because they are part of a voluntary SE prevention plan, which may have been put in place in areas because they had higher than average prevalence of SE. In this case the practices would appear to be correlated with higher than average prevalence.

b. *Organization of economic analysis of potential provisions.* FDA has considered a number of on-farm, administrative, and institutional SE prevention measures. The provisions that we considered are examined below. We have included some, but not all, of these provisions in the rule.

Marginal costs and benefits are calculated for farms with less than 3,000 layers, although these farms are exempt from the final rule. These results are presented in section VI of this document, where relief for small businesses is discussed.

The costs and benefits of the provisions of the final rule as written are summarized in table 34 in section V.G of this document.

c. *Control of rodents and other pests, biosecurity, and cleaning and disinfection.*—i. *Rodent and other pest control provisions.* One requirement of this final rule is that each layer house be under a pest control program. Such a program could include the use of traps or poisons to reduce rodents and other pests. Each farm must have a written control plan for rodents and other pests, and pest control records must be kept to verify that the program is accomplishing its goals.

ii. *Current industry practices—rodent and other pest control.* Most farms currently address rodent and pest control problems to some extent. However, if SE-positive eggs are required to be diverted, there will be a financial incentive to find ways to prevent SE in poultry houses. As a result, the effectiveness of rodent and pest control in eliminating SE in the poultry house will lead many farms to institute rodent and pest control programs that are more stringent than those currently in place in order to achieve a higher level of rodent and other pest control.

Currently, 99.2 percent of all commercial farms with more than 30,000 layers use some form of rodent control, but not all methods of rodent control are compatible with the goal of eliminating SE in poultry houses.[22] In

[22] Only operations with 30,000 or more layers are included in the Layers study (Refs. 27 and 28).

particular, we believe that biological predators, such as cats, should not be used as a method of rodent control because cats can be vectors for SE contamination.

Table 8 of this document illustrates, by farm size, the number of programs that would satisfy the rodent control provisions in the rule. Farms that do not use rodent controls as specified in this provision (e.g., many farms primarily use cats as a rodent control measure) are counted as having unacceptable rodent control programs. Based on data from the Layers study (Refs. 27 and 28), we estimate that the number of farms with unacceptable rodent control programs will range from 1.8 percent for farms with over 100,000 layers to 21.0 percent for farms with 20,000 to 49,999 layers.[23] Furthermore, we believe that the potential costs of diversion of SE-positive eggs will encourage farmers currently using a level of rodent control that would satisfy the provision to increase their rodent control efforts. Without better information about the number of farms that would increase rodent control efforts, we assume the true number will lie between 0 percent and 100 percent of those currently using an acceptable level of rodent control.

TABLE 8—RODENT CONTROL

Farm size (number of layers)	Unacceptable rodent control (in %)	Number of farms with unacceptable rodent control	Number of farms increasing effort
3,000 to 19,999	19	328	709
20,000 to 49,999	21	194	365
50,000 to 99,999	4	9	119
100,000 or more	2	7	201
All farms with 3,000 layers or more		539	1,394

We assume that between 25 percent and 75 percent of very small farms (those with fewer than 3,000 layers) are using an acceptable level of rodent control.

Pests, other than rodents, commonly found in poultry houses include flies, mites, beetles, and ants (Ref. 78). However, we chiefly are interested in the presence of flies and fly control because they have been implicated in the transmission of *Salmonella* (Ref. 79).[24]

The survey used to develop the Layers study asked questions about on-farm fly control practices (Refs. 27 and 28). Using these data, we estimate that over 90 percent of those farms with over 3,000 layers use some form of fly control. Some of these methods, however, are not permitted by the final rule. In particular, the rule does not allow the use of biological predators, such as wild birds, for fly control because these predators may themselves be vectors for SE transmission (Ref. 79).

TABLE 9—FLY CONTROL

Farm size (number of layers)	Unacceptable fly control (in %)	Number of farms with unacceptable fly control	Number of farms increasing effort
3,000 to 19,999	27	470	638
20,000 to 49,999	18	162	382
50,000 to 99,999	12	29	109
100,000 or more	22	89	160
All farms		750	1,289
All farms with 3,000 or more layers		750	1,289

Table 9 of this document shows the number of farms with unacceptable (not sufficient to satisfy the rule) fly control programs. Farms that do use fly control or that use biological predators, such as birds, as their primary method of fly control, are not using acceptable methods. We estimate that a total of 750 farms with 3,000 or more layers are using unacceptable methods of fly control.

The actual number of farms that are using unacceptable methods of fly control is likely to be higher than the estimates in table 9 of this document would suggest. The fact that a particular method is used does not automatically guarantee that it is used at its optimal level. As with rodent control, even farmers in compliance with the provision would be likely to increase their use of fly controls. In order to estimate the costs, we assume that the number of farms using acceptable fly control methods but will increase their fly control efforts is uniformly distributed between 0 and 100 percent. Consequently, at the mean estimate of 50 percent, an additional 1,289 farms will increase their fly control efforts.

iii. *Costs of rodent and other pest control.*[25] We estimate the cost of rodent

[23] Our primary source for on-farm practices related to SE prevention measures is the Layers study (Refs. 27 and 28). As the only major current survey of the industry, this study has provided us with data that has allowed us to characterize the industry. The study, however, does not fully represent the industry. A total of 526 farm sites responded to the first part of the survey and 252 responded to the second part of the survey. Furthermore, only operations with more than 30,000 layers were included in the survey. Consequently, we approximate the practices of smaller farms based on a limited amount of information. Nonetheless, the Layers study has added greatly to our understanding of the industry and its practices.

[24] Beetles have also been shown to be a reservoir for SE (Refs. 80 and 81). Beetle populations can be controlled primarily by the removal of all visible manure upon a house cleaning, the costs and benefits of which are discussed later in this document. Other costs of control, as well as benefits, are assumed to be accounted for in the analysis of fly control.

[25] All cost estimates in this section are from data supplied to the FDA through a contract with Research Triangle Institute. Derivations of estimates are described more fully in a memorandum to the

and other pest control to farms in table 10 of this document. We assume that a farm with an adequate control program for rodents and other pests will be using a combination of control measures.

Included in the cost of rodent control are the costs of setting up and maintaining bait stations and of rodent indexing. The annual cost of rodent control ranges from $680 for the average farm with between 3,000 and 20,000 layers to $5,860 for the typical farm with over 100,000 layers. The costs of limiting rodent access to feed and patching holes in the walls of poultry houses are not included in our estimates.

Pest control measures include the cost of sprays, baits, fly monitoring, and manure pit fans. We expect the annual cost of pest control to range from $4,600 for farms with between 3,000 and 20,000 layers to $77,660 for farms with more than 100,000 layers.

TABLE 10—COST OF RODENT AND OTHER PEST CONTROL

[In thousands]

Farm size (number of layers)	Rodent control		Pest control		Total
	Unacceptable controls	Increased effort	Unacceptable controls	Increased effort	
3,000 to 19,999	$222	$240	$2,160	$1,467	$4,089
20,000 to 49,999	157	148	1,355	1,597	3,256
50,000 to 99,999	12	76	460	859	1,408
100,000 or more	43	588	6,887	6,212	13,730
All farms with 3,000 or more layers	434	1,052	10,861	10,136	22,483

The total cost of rodent and other pest control shown in table 10 of this document, is found by multiplying the cost per farm by the number of farms affected. Some farms are already using acceptable rodent and other pest control methods, but they will increase their rodent and other pest control efforts in order to reduce the subsequent expected costs of testing and diversion. We estimate that their cost of rodent and other pest control enhancements will be approximately half of the cost of farms with unacceptable controls. This provision results in costs of $22.5 million for the effected farms.

iv. *Benefits of rodent control.* Rodent control appears to be effective in controlling SE. As a critical vector, rodents may spread SE throughout a given poultry house and between houses. Rodents spread the disease through their droppings, which often are consumed by layers. In this section of the document, we merge field data with estimates of the current level of rodent infestation on farms to assess the benefits from increased rodent control.

We used the Layers study (Refs. 27 and 28) to determine the magnitude of the rodent problem on farms. The first four rows of table 11 of this document show the percentages of farms in four size categories with four severities of mouse or rat infestation.[26] Table 11 shows that larger farms are generally more likely to experience moderate or severe rodent problems. The greater prevalence in the larger houses means that, while only 17 percent of houses have moderate or severe rodent problems, 33 percent of all layers are currently in houses with moderate or severe problems.[27]

TABLE 11—SEVERITY OF RODENT PROBLEM

	Severity in %				Number of houses in category
	Severe	Moderate	Slight	None	
Farm Size (Number of Layers):					
< 20,000	0	14.8	81.7	3.5	48,145
20,000 to 49,999	9.1	13.2	70.1	7.6	1,295
50,000 to 99,999	1.2	28.4	52.3	18.1	595
100,000 or more	1.5	32.1	60.1	6.3	3,024
Percent of houses affected	0.5	16.9	78.7	3.8	
Percent of layers affected	2.9	31.4	60.2	5.5	
Risk ratio	4.2	3.1	2.1	1	Total
Percent of layers in houses with positive environments	19.2	14.3	9.5	4.6	11
Maximum expected SE reduction from increased rodent control [1]	38.1	34	25.8	0	27.3

[1] These values are calculated using the following equations:
Severe: [(19.2 − 4.6) ÷ 2] ÷ 19.2 = 38.1%.
Moderate: [(14.3 − 4.6) ÷ 2] ÷ 14.3 = 34.0%
Slight: [(9.5 − 4.6) ÷ 2] ÷ 9.5 = 25.8%.
None: [(4.6 − 4.6) ÷ 2] ÷ 4.6 = 0.0%.

record (Ref. 82). Where applicable, costs are changed to year 2005 constant dollars using the Gross Domestic Product (GDP) deflator.

[26] Severity level is self-assessed by respondents to the survey.

[27] To determine the percent of houses affected, the percent of farms with a given rodent problem was weighted using the number of houses in each size category. The number of birds affected was determined by weighting the percent of farms with a given rodent problem in each size category by the number of birds in each size category.

Henzler (Ref. 83) examined the link between rodents and SE, and found that environmental tests of manure in houses with large rodent populations were 4.2 times more likely to be positive for SE than similar tests in houses with small rodent populations.[28] We assume that the risk ratio for SE can be linearly extrapolated between 1 for those farms with no rodent problem and 4.2 for those farms with a severe rodent control problem. This extrapolation is presented in table 11 of this document along with the estimated level of rodent infestation for farms of different sizes.

The third section of the Layers study (Ref. 29)[29] supports the Henzler study. The Layers study finds that farms with a rodent index of at least 20 mice have an SE prevalence rate of 10.1 percent, while farms with a rodent index of less than 20 mice have a prevalence of SE of only 2.0 percent.[30] This difference is statistically significant.

Using data from the Henzler study, we estimate the base level of environmental SE prevalence for houses without rodent problems to be 4.6 percent when the overall prevalence of SE-positive houses is 11 percent. We calculated the base as:

$$\text{Base} = \text{Overall} \div [(\text{prevention}_{SEV} \times \text{Birds}_{SEV}) + (\text{prevention}_{MOD} \times \text{Birds}_{MOD}) + (\text{prevention}_{SLT} \times \text{Birds}_{SLT}) + (\text{prevention}_{NON} \times \text{Birds}_{NON})];$$

Where:

- ''Base'' is the base level of prevalence for a rodent free house,
- ''Overall'' is the total prevalence for all houses,
- ''prevention'' is the risk ratio for each level of rodent infestation, and
- ''Birds'' is the percentage of layers in houses with a given rodent problem.

The subscripts SEV, MOD, SLT, and NON refer to the cases of severe, moderate, slight, and no rodent problems, respectively.

The percentage of layers in houses with environments positive for SE is found by multiplying the SE risk ratio times the base level of risk. Houses with severe rodent control problems are 4.2 times more likely to be positive for SE than houses with no problems (19.2 percent versus 4.6 percent).

In the last row of table 11 of this document, we estimate the expected reduction in SE due to increased rodent control. If rodent control were wholly effective, we would assume that it would result in a drop in SE from current levels to 4.6 percent, the level associated with no rodent problem. For a severe rodent infestation, rodent control would therefore result in a 76.2 percent decline in SE, but such a large decline is not likely for most farms. Severe rodent infestations are probably caused by more than just the failure to have a rodent control program. House design (open walls, dirt floors, and other features), unfavorable location (near other rodent-infested entities, climate, and so on), and lack of knowledge regarding proper rodent control techniques are additional factors likely to diminish the effectiveness of rodent control. Consequently, we assume that the effectiveness of rodent control for a particular farm will be uniformly distributed between no reduction and reduction to an SE risk of 4.6 percent. Overall, this leads to an estimated average 27.3 percent reduction in SE, as shown in table 11.

Based on information from the egg industry, we believe that rodent control may take up to 4 years to be fully effective. During the 4-year transition period, we assume that the effectiveness of rodent control will average 13.7 percent, half of the eventual effectiveness.

We use the baseline number of SE cases due to eggs and the value of a typical case of salmonellosis to estimate the value of rodent and other pest control benefits. On the affected farms, rodent and other pest control results in expected annual benefits of 19,433 illnesses averted initially to 38,954 illnesses averted eventually.

The narrow definition of rodent control is limited to direct methods of catching, killing, and blocking rodents from entering a poultry house. Measures such as pest control, biosecurity, and cleaning and disinfecting also affect rodent control. Cleaning and disinfecting a house, when done properly, removes rodents and their nests from an infested house. Similarly, biosecurity makes rodent penetration of a house more difficult. As a result, the benefits estimated for rodent control are partly due to the adoption of other measures that may be required. We therefore believe that the expected effect of rodent control by itself (assuming no other control measures) would be smaller than our estimates suggest.

v. *Benefits of other pest control.* Pests other than rodents also have been shown to be vectors in the spread of SE. In particular, Davies and Wray showed that the ingestion of SE-contaminated maggots by a chicken protects *Salmonella* from the stomach acids of the chicken and aids in the establishment of SE in the chicken's gut (Ref. 84).[31] Beetles and wild birds have also been implicated in the transmission of SE (Ref. 79). Wild birds currently have access to layer feed troughs on 23.5 percent, and flies have access to layer feed troughs on 91.3 percent, of farms (Refs. 27 and 28).

Despite the high prevalence of pests other than rodents on farms, most farms attempt to limit their presence. For example, approximately 82 percent of farms currently use fly control methods other than the use of biological predators (Refs. 27 and 28).[32]

The third section of the Layers study (Ref. 29) illustrates the effect of other pest control. On those farms in which pests have access to feed storage sites, the prevalence of SE is estimated to be higher than on farms where pests do not have access to feed in storage. Because the practices and effects of other pest control are highly correlated with rodent control we do not estimate the benefits separately.

vi. *Other benefits of rodent and other pest control.* The rodent control provisions are expected to decrease the rodent population in poultry houses. Because rodents consume large amounts of feed, this reduction will benefit producers by lowering their feed costs.

The Cooperative Extension Service of Oklahoma State University estimated that each rat in a poultry house consumed $2.18 worth of feed annually (Ref. 86) in 1987. This amount is equivalent to $3.75 in the year 2005 constant dollars.[33] Because mice eat 5 to 10 percent as much as rats (Ref. 78), the expected annual loss of feed for each mouse in a house is estimated to cost $0.19 to $0.38.

We estimate that an infested house may have over 1,000 mice (Ref. 83). This infestation will cost a farmer approximately $285 for that house (1,000 × $.285). A house infested with rats may have as many as 700 rats (Ref.

[28] A total of 84 flocks were examined in Pennsylvania (Ref. 83).

[29] The third part of the Layers study (Ref. 29) provides estimates for the prevalence of SE on 200 farm sites with different management practices. For many of the variables analyzed, however, the sample size was too small for statistically significant differences to be measured.

[30] The standardized rodent index is calculated as (number of rodents trapped) × (7 ÷ number of days) × (12 ÷ number of functional traps). The index standardizes the number of rodents trapped to the equivalent of having 12 traps function for 7 days (Ref. 29).

[31] *See* also Olsen (2000) (Ref. 85).

[32] Use of biological predators is not seen as an effective pest control technique because the predators may themselves become a vector for SE transmission.

[33] Nominal 1987 dollars are converted to 2005 constant dollars by multiplying the amount as estimated in 1987 by the ratio of the GDP deflator in 2005 to the GDP deflator in 1987 ($2.18 × 113.386/65.958).

87). In this case, the infestation costs the farmer $2,625 (700 × $3.75).

TABLE 12—FEED SAVINGS FROM RODENT CONTROL

Problem	Rodents in a house	Feed savings per house	% of houses [1]	Houses in classifiction [2]	Cost to houses in classification
Mice:					
Severe	1,000	$285	2.4	105	$30,000
Moderate	500	143	25.5	1,118	159,800
Slight	250	71	62.4	2,735	194,200
None	0	0	9.7	425	0
Rats:					
Severe	700	2,625	1.6	70	184,100
Moderate	350	1,313	6.9	302	397,100
Slight	175	656	43.7	1,915	1,256,500
None	0	0	47.8	2,095	0
Total cost of rodents					2,221,700
Expected savings from control (assumes 50% reduction)					1,110,850

[1] The percentages are from the Layers study (Refs. 27 and 28).
[2] Because rodent populations are estimated for large houses only (over 54,000 layers), we estimate the number of houses to be the number of large house equivalents. This implies that two 27,000-bird houses are counted as one house in this analysis.

The total feed savings from rodent control are illustrated in table 12 of this document. If rodent control leads to just half of all rodents being eliminated, the savings in lost feed from rodent control are estimated to be more than $1.1 million annually.

vii. *Biosecurity provisions.* We have examined the effects of several biosecurity provisions. These include the following effects: (1) Limiting visitor access; (2) avoiding the movement of contaminated equipment between poultry houses; (3) ensuring that employees are hygienic; (4) keeping stray poultry, birds, and other animals from entering poultry houses; and (5) prohibiting employees from keeping birds at home.

The first biosecurity measure we examine is the limitation of visitors' access on poultry farms. Limiting a visitor's access may include prohibiting a visitor from entering a house on one farm if that person has already entered a house on another farm. Also, visitors may be banned from entering poultry houses altogether.

Contaminated equipment can also spread SE on a farm. One way to mitigate this problem is to ensure that equipment that is used in multiple houses (such as forklifts and manure removing equipment) is kept clean.

The hygiene of persons moving between houses affects the likelihood of cross-contamination. To protect against cross-contamination, farms may require that employees and visitors use footbaths, change their clothing, or use protective clothing when on the farm. Farms also may choose to require that their employees work on only one farm site on a given day. Although it is impossible to predict what measures each farm will take to guarantee the hygiene of persons moving between houses, for the purposes of calculating the costs of this provision, discussed in detail in the following paragraphs, we assume that farms will use footbaths and have visitors wear protective clothing.

Stray poultry, wild birds, cats, and other animals must also be prevented from entering the farm's poultry houses. This may be done by keeping grass and weeds cut, minimizing the existence of standing pools of water near poultry houses, repairing holes on poultry houses, and keeping doors closed on poultry houses.

Finally, biosecurity precludes employees of the farm from keeping any birds as domestic animals at home.

viii. *Current industry practices; biosecurity.* Most farms already practice some form of biosecurity.[34] Roughly 68.1 percent of farms do not allow nonbusiness visitors and 22.1 percent do not allow business visitors into poultry houses. Of those that do allow visitors to enter, 65.6 percent have biosecurity rules for nonbusiness visitors and 69.5 percent have biosecurity rules for business visitors.

Farms use different methods to keep employee, contract crew, and visitor hygiene at an acceptable level. The Layers study estimates that 24.5 to 24.6 percent use footbaths, 3.9 to 4.8 percent require showers to be taken, and 17.6 to 32.0 percent require persons to change clothes or wear coveralls.

Many farms use biosecurity measures aimed at keeping stray poultry, birds, and other animals away from the poultry houses. While data on the number of farms that trim grass and discourage standing pools of water are not available, the Layers study did estimate that fencing is currently used at 26.7 percent of farms.

Finally, 75.7 percent of farms do not allow employees to keep their own layers at home.

ix. *Costs of biosecurity.* It is difficult to quantify many of the costs of biosecurity. This is especially true because the biosecurity measures may be implemented in different ways, allowing each farm to adapt the measures to their operation, as appropriate. However, a few of the costs can be quantified.

First, the cost of restricting visitors can be estimated as the cost of monitoring and providing protective clothing to visitors who are allowed on the farm. The cost of monitoring visitors includes the cost of posting signs asking visitors to check in, the cost of having visitors sign in, and the cost of accompanying visitors around the farm. One estimate of protective clothing found costs of $102.75 for a box of 25 disposable coveralls and $112.97 for a box of 200 plastic shoe covers (Ref. 88). Because farms will choose to implement this part of biosecurity in different ways, it is impossible to determine what the actual cost will be.

The cost of cleaning contaminated equipment is uncertain because we do not know how individual farmers will

[34] All data in this section are from the Layers study (Refs. 27 and 28).

choose to do this. We assume that the amount of equipment that needs to be kept clean increases linearly with the number of houses on a farm. In particular, we assume that a farm with two houses requires 1 hour of cleaning per week, a farm with three houses requires 2 hours, and so on. Using data from the Layers study, we find that the average farm will devote 69 labor hours annually to cleaning equipment. At a labor rate of $9.56 per hour (Ref. 89), plus 50 percent to include overhead costs, the total expected labor cost of this provision is $990 per farm, or $3.3 million for all affected farms.

The cost of chlorine footbaths also can be estimated. We calculate the cost of a footbath as the sum of the cost of the plastic vessel, the cost of bleach, and the cost of the labor needed to fill footbaths. We estimate the total cost per house to be $360 per year.[35] Because only 24.6 percent of houses currently use footbaths, the total annual cost of footbaths is estimated to be (100 − 24.6 percent) × 7,359 houses × $360 per house = $2.0 million.

Finally, the cost of preventing stray poultry, wild birds, cats and other animals from entering poultry houses already is accounted for under rodent and other pest control costs. The estimated cost for a complete rodent and other pest control program includes all biosecurity measures that contribute to rodent and other pest control.

The total measured costs of biosecurity provisions are $5.3 million for affected farms.

x. *Benefits of biosecurity.* The importance of biosecurity in the reduction of disease transmission is well established.[36] For example, the Layers study (Ref. 29) estimates that farms allowing nonbusiness visitors onsite are five times more likely to test positive for SE than farms that ban such visitors. Farms allowing nonbusiness visitors have a prevalence of SE of 17.0 percent while farms that do not only have an SE prevalence of 3.6 percent. We include the benefits from biosecurity with those of rodent control, because the practices and effects are highly correlated and cannot be estimated separately.

xi. *Cleaning and disinfecting provisions.* Specific cleaning and disinfecting provisions include the removal of all visible manure, and a dry clean and disinfection of the house.

xii. *Current industry practices; cleaning and disinfecting.* To a large extent the layer industry already performs adequate cleaning and disinfecting procedures. For larger houses, the Layers study (Refs. 27 and 28) estimates that, every year or two, manure is removed from 100 percent of houses, 80.5 percent of houses are dry cleaned annually, 53.6 percent of houses are wet cleaned annually, and 65.1 percent of houses are disinfected. The prevalence of these practices on affected farms is illustrated in table 13 of this document.

TABLE 13—CURRENT CLEANING AND DISINFECTING PRACTICES

	Manure removal (%)	Dry clean (%)	Wet clean (%)	Disinfect (%)
Between each flock (cleaned annually)	96.6	79.4	30.6	44.5
After two or more flocks (cleaned occasionally)	3.4	1.1	23	20.6
Never	0	19.5	46.4	34.9

xiii. *Costs of cleaning and disinfecting.* The cost of cleaning and disinfecting houses is illustrated in table 14 of this document. For each component of cleaning and disinfecting, we estimate the annual cost as the number of houses that this provision will affect each year times the cost per house. We calculate the number of houses affected as the product of the percent of houses not using a practice (100 minus the percent using the practice in table 14 of this document), the probability of a positive flock, and the number of affected houses (7,359, calculated from data in table 6 of this document).

TABLE 14—COST OF CLEANING AND DISINFECTING HOUSES ON AFFECTED FARMS

	Houses using practice (%)	Probability of a positive environmental test (%)	Number of houses affected	Cost per house	Cost to industry
Dry clean	79.8	8.4	125	$1,200	$130,300
Disinfect	51.4	8.4	300	600	152,300
Total cost					282,600

The percentages of houses engaged in the different cleaning and disinfecting practices (the first column of numbers in table 14 of this document) is based on the first two rows of table 13 of this document. In table 14 we calculate the percent as follows:

CA + (CO × PC), where

CA is the percent of farms that are cleaned and disinfected annually, (see table 13 of this document)

CO is the percent of farms that are cleaned and disinfected occasionally, (see table 13), and

PC is the probability that a farm that is cleaned occasionally would have been cleaned in a year that it had a positive environmental test. We assume that PC is distributed uniformly between 0 and 0.667, with a mean value of 0.333.

The per-house cost for each component is taken from Morales and McDowell (Ref. 91) and is converted to year 2005 constant dollars using the GDP deflator. We assume that the true

[35] This estimate is based on the following assumptions: (1) The plastic vessel costs $5 and is replaced annually; (2) bleach costs $1 a gallon; a gallon is used per footbath, and it is changed once a week; (3) there are two footbaths per house; (4) labor costs $9.56 an hour (Ref. 89) plus 50 percent to include overhead; and (5) changing the bleach-water mixture takes 10 minutes. The estimate in the text is calculated as 2 × [($5 × 1) + ($1 × 52) + ($14.34 × 0.167 × 52)] = $360 per year.

[36] A number of State extension services have written extensively about the importance of biosecurity (Refs. 79, 80, and 90).

cost of each component is distributed uniformly between the low and the high estimates given.

xiv. *Benefits of Cleaning and Disinfecting.* Cleaning and disinfecting is another tool that may decrease or eliminate SE in an infected house. Schlosser et al. estimate that cleaning and disinfecting a house reduces by 50 percent the probability that a previously infected house will test positive (Ref. 92). Because they do not address cross-contamination, the 50 percent reduction is likely to be an overestimate of the actual efficacy of cleaning and disinfecting. Furthermore, the same study estimates that 28 percent of negative houses tested positive after cleaning and disinfecting.

The Layers study (Ref. 29) finds that farms that are cleaned and disinfected are less likely to be contaminated with SE. No surveyed farms that performed washes of houses between flocks were found to be positive. By contrast, houses that neither wash nor fumigate between flocks had SE prevalence rates of 12.2 percent. These results suggest that cleaning and disinfecting a layer house is negatively correlated with SE prevalence. However, because the practices and effects of cleaning and disinfecting are highly correlated with rodent control we do not estimate the benefits separately.

xv. *Total and net benefits of rodent and other pest control programs, biosecurity, and cleaning and disinfecting.* The total annual cost for all three provisions is $28.1 million.

As discussed in detail under rodent control, the benefits of these provisions are highly correlated. The data attributing a correlation between any one practice and a decrease in SE prevalence is probably overstating the effect because, for instance, farms with a good biosecurity system tend to have good rodent and other pest control programs. In order to avoid the double counting of benefits, we use only the benefits estimated for rodent control as a proxy for the benefits of all three provisions implemented correctly. Therefore all three provisions implemented together are estimated to reduce the number of SE related illnesses every year by nearly 39,000 for total estimated annual benefits of more than $697.3 million. The provisions would cost about $690 per illness averted and have net benefits of about $675.9 million.

If we account for estimated reductions in SE prevalence due to the chick and pullet provisions (an estimated decrease of 0.23 percent, discussed in detail in section V.F.1.i), occurring earlier in the production cycle, these three provisions would prevent about 90 less illnesses than they would standing alone ((1–0.0023) × 39,000 illnesses). Costs would only decrease slightly, as cleaning and disinfecting costs are the only ones that are a function of SE prevalence. In place with the other provisions of the final rule, these three provisions will cost about $700 per illness averted and have net benefits of about $674.3 million.

d. *Refrigeration.*—i. *Refrigeration provisions.* This rule requires that shell eggs being held or transported must be refrigerated at or below 45 °F ambient temperature beginning 36 hours after time of lay.

ii. *Current industry practices; refrigeration.* Because eggs packed on the farm do not have to be transported to a packing plant, we assume that eggs on these farms are packed for sale within 36 hours of lay. Accordingly, we assume that this provision would impose additional costs only on those farms that do not pack their eggs for the ultimate consumer, are currently storing their eggs for longer than 36 hours, and currently do not refrigerate their eggs at an ambient temperature at or below 45 °F, either on-farm, during shipment, or during holding before shell egg processing or entering egg products facilities. We use data from the Layers study (Refs. 27 and 28), shown in table 15 of this document, to determine the percentage of farms affected by the on-farm storage temperature requirements.

TABLE 15—FARMS AFFECTED BY ON-FARM EGG STORAGE TEMPERATURE REQUIREMENTS

Farm size (number of layers)	Packed off-farm (%)	Stored longer than 36 hours (%)	Temp > 45 °F (%)	Percent of farms affected	Number of farms affected
3,000 to 19,999	98.3	98.2	78.1	75.4	1,317
20,000 to 49,999	96.3	100	75.8	73.0	675
50,000 to 99,999	83.1	83.4	92.1	63.8	158
100,000 or more	65.6	75	72.6	35.7	146
Total	81.2	87.3	81.2	57.6	2,296

The first three columns of table 15 of this document are taken directly from data collected for the Layers study. The percentage of farms affected (fourth column) is the product of multiplying the first three columns. The number of farms affected (final column) is estimated by multiplying the percent of farms affected by this provision by the total number of farms covered by the provision.

Due to current rules on refrigeration, most farms currently ship eggs from the farm in refrigerated freight at 45 °F, even though they are not required to do so until the eggs have been packaged or further processed.[37] Farms with more than 10,000 layers are likely to be currently in compliance with this provision. Some smaller farms, those with 10,000 layers or less, which account for roughly 5 percent of current egg production, may be out of compliance. It is unlikely that even the smallest farms that are currently refrigerating eggs onsite would ship eggs on unrefrigerated trucks. As a high estimate of the costs of this provision, FDA assumes that producers with 10,000 layers or less, who are currently not in compliance with the on-farm refrigeration part of this provision (all farms with less than 3,000 layers and 75.4 percent of farms with between 3,000 and 20,000 layers)[38] are not in compliance with the refrigerated shipping requirement.

There are 514 producers, packers, and grading stations that will be affected by this provision (Ref. 93). While the majority of eggs in the United States are processed within 2 to 3 days, some cases arise where eggs are held longer. Seasonal fluctuations in demand or within industry egg trading, at times causes eggs to be held for more than 36

[37] Current industry practices and the costs of egg transportation are based on information gained from telephone conversations between FDA, an egg processor, and a shipper.

[38] *See* table 16 of this document.

hours between lay and processing[39] (Ref. 94).

There is currently no regulation requiring a specific temperature for preprocessed eggs. Eggs are typically held between 55 and 60 °F (Ref. 94). FDA believes most producers will have to decrease the holding temperature for their eggs.

iii. *Cost of on-farm refrigeration.*[40] The refrigeration provision will cause producers to choose to perform one of the following tasks: (1) Turn down the thermostats in their coolers, (2) install new refrigeration, or (3) renegotiate their shipping contracts to require more frequent pickup of unpacked eggs. In addition, producers that do not currently ship in refrigerated freight will need to do so. Furthermore, producers, packers, and egg grading stations will have to refrigerate eggs at no more than 45 °F if they hold the eggs for more than 36 hours prior to processing.

In table 15 of this document, we estimate that almost 2,300 farms do not meet the on-farm standards set by the refrigeration provision. Of these farms, some are currently using refrigeration, albeit at higher temperatures than the provision would permit. Others do not have any refrigeration installed on their farms. We assume that those farms that report storing their eggs between 45 and 60 °F already have refrigeration installed. For these farms, the cost of complying with the refrigeration provision is the cost of increasing electricity usage to further cool their eggs. For farms that store their eggs at a temperature greater than or equal to 60 °F, we assume that no refrigeration is currently installed. The cost to these farms includes the cost of installing an insulated egg room with refrigeration units.

In table 16 of this document, we use data from the Layers study to determine how many farms will have to install refrigeration and how many will only have to reduce the temperatures in their egg rooms. The majority of smaller farms lack refrigeration facilities, while larger farms are more likely to use refrigeration at an inadequate level.

The cost of this provision to farms that are using refrigeration at an inadequate level is assumed to be the cost of increased energy usage.[41] If temperatures in egg rooms on these farms are uniformly distributed between 45 and 60 °F, the average reduction in temperature is 7.5 °F. If the electricity rate is $0.057 per kilowatt-hour (Ref. 96), farms will spend between about $130 for farms with between 3,000 and 20,000 layers to a little over $1,400 for farms with more than 100,000 layers. These estimates are based on the assumption that refrigeration must be run 18 hours a day to achieve the 45 °F mark, while it must be run 15 hours a day to achieve the 60 °F mark. We estimate that the average farm with 20,000 to 50,000 layers would need to run one 5-horsepower refrigeration unit and one 1-horsepower unit to sufficiently cool its egg room. A 5-horsepower unit uses 4.83 kilowatt hours per hour of operation, while a 1-horsepower unit only uses 1.73 kilowatt hours. Therefore, the cost of cooling to 60 °F is about $168 per month, or about $2,020 per year.[42] The cost of cooling to 45 °F is about $202 per month, or about $2,420 per year.[43] The resulting cost of decreasing the ambient temperature in the egg cooler by 15 °F is approximately $400. Using a linear relationship between refrigeration and cost gives us an estimate of approximately $200 for a 7.5 °F reduction.[44]

TABLE 16—ANNUAL COST OF ON-FARM REFRIGERATING AFFECTED FARMS

Farm size (number of layers)	No refrigeration			Inadequate refrigeration		Total cost (in thousands)	
	Number	Cost per farm (7% discount rate)	Cost per farm (3% discount rate)	Number	Cost per farm	(7% discount rate)	(3% discount rate)
3,000 to 19,999	720	$6,979	$5,074	597	$128	$5,102	$3,730
20,000 to 49,999	201	13,793	9,779	474	203	2,868	2,062
50,000 to 99,999	65	26,359	18,500	93	352	1,746	1,235
100,000 or more	32	112,681	78,595	114	1,413	3,767	2,676

The fixed cost of new refrigeration includes the cost of constructing an egg room, insulating that room, and installing refrigeration units. Storage rooms and their insulation are assumed to last 30 years. Refrigeration units last from 10 to 20 years. Using these values, along with a 7 percent discount rate, we estimate that the annualized cost of installing new refrigeration would be about $1,300 for a farm with 20,000 to 50,000 layers.

The cost of constructing an egg room equals the number of square feet required times the construction cost per square foot. The number of square feet required is estimated as the number of square feet required per 1,000 dozen eggs (294 square feet) times the number of eggs produced in a 24-hour period (1,700 dozen eggs) times the number of days the eggs are expected to be stored (about 4 days). The average cost of construction per square foot has been estimated to be between $50 and $75. Therefore, for the average farm with 20,000 to 50,000 layers the cost of construction is $125,000. The amortized cost over 30 years at 7 percent is approximately $10,050.

The cost of insulating an egg room equals the number of square feet to be covered times the insulation cost per square foot. Insulation costs $13.38 for a 32 square foot sheet. For a farm with 20,000 to 50,000 layers requiring 3,670

[39] Within industry egg trading refers to trading between firms to meet unexpected demand or get rid of excess supply.

[40] All cost estimates regarding on farm storage are from data supplied to FDA through a contract with the Research Triangle Institute. Derivation of estimates is more fully described in a memorandum to the record (Ref. 95).

[41] We recognize that some of these farms may require additional refrigeration units to achieve the 45 °F threshold. However, because we do not currently have information that allows us to estimate how many farms fall into this category, we assume that the only cost facing farms that use an inadequate level of refrigeration will be the cost of increased energy usage. As such, actual refrigeration costs will be higher than estimated. As most farms currently using refrigeration will simply have to increase their energy usage, we believe the difference between actual costs and costs estimated using energy usage as a proxy is small. Furthermore the underestimate will be at least somewhat offset by the use of newer, more efficient equipment, and overestimates in other parts of this calculation (*see* footnote 44 of this document).

[42] (4.83 + 1.73) kilowatt hours used per hour × 15 hours of operation × $0.057 per kilowatt hour used × 30 days.

[43] (4.83 + 1.73) kilowatt hours used per hour × 18 hours of operation per day × $0.057 per kilowatt hour × 30 days.

[44] In actuality, the relationship between refrigeration and cost is increasing at an increasing rate, so that our use of a linear relationship somewhat overstates the cost of lowering refrigeration temperatures.

square feet of insulation, the expected cost of insulation is therefore $1,540. The annualized cost of insulation (amortized over 30 years at 7 percent) is $125.

The fixed cost of refrigeration for an egg room is the cost of buying and installing refrigeration units. We assume that installation costs are approximately 5 percent of the purchase price of the unit. For a farm with 20,000 to 50,000 layers, the cost of refrigeration is the purchase price for needed refrigeration units ($10,300) plus the cost of installation ($10,300 × 5 percent) for a total of $10,816. Amortizing this cost over 15 years at 7 percent yields an annual cost of $1,190.

The total annualized cost of installing a refrigerated egg room on a farm with 20,000 to 50,000 layers is estimated to be approximately $11,350. Including the cost of energy increases the total cost to $13,800.

For all types of refrigeration, there also will be a cost associated with the use of electricity to run the cooling units. Given that electricity costs $0.057 per kilowatt-hour, we estimate that farms not currently using refrigeration will spend an additional $1,500 to $17,000 annually for power.[45] Farms that currently use refrigeration, but at higher temperatures than 45 °F, will spend an additional $130 to $1,400 annually for power.[46]

The cost of this provision to a farm without any refrigeration in place is estimated to range from about $7,000 for farms with between 3,000 and 20,000 layers to over $112,600 for farms with more than 100,000 layers. The cost of this provision to a farm with adequate refrigeration is simply the cost of the additional energy, ranging from about $130 for farms with between 3,000 and 20,000 layers to over $1,400 for farms with more than 100,000 layers.

iv. *Cost of refrigerated shipping.* The average cost of refrigerated shipment at 45 °F is $0.12 per dozen eggs. Unrefrigerated shipments cost 20 percent less than refrigerated shipments. Therefore, the difference in cost between refrigerated and unrefrigerated shipments is $0.024 per dozen eggs. Since farms with 10,000 layers or less produce roughly 1.5 percent of the eggs sold annually (93 million dozen eggs), the additional cost of refrigerated shipping on these farms is $1.7 million (93 million dozen eggs × $0.024 × 0.754 not in compliance).

v. *Cost of preprocessing storage.* The cost of this provision to facilities holding eggs at above 45 °F for shell egg processing or before entering egg products facilities is assumed to be the cost of increased energy usage. If temperatures in egg rooms at these facilities are uniformly distributed between 55 and 60 °F, the average reduction in temperature is 7.5 °F. If the electricity rate is $0.057 per kilowatt-hour, facilities holding 100 dozen eggs at a time will spend $35 annually while facilities holding 1,000 dozen eggs at a time will spend nearly $20,000 annually. Using calculations similar to those described previously for on-farm holding, it is estimated that the average annual cost of additional refrigeration is about $9,700 per facility. The total annual cost for the 514 facilities holding eggs at above 45 °F is expected to be $5 million.

vi. *Total cost of refrigeration provisions.* The total cost of the refrigeration provision, using a 7 percent discount rate, is approximately $20.2 million.[47] Using a 3 percent discount rate, the cost is approximately $16.4 million. However, some farms will choose to increase the frequency of egg pickups instead of installing additional refrigeration to remain in compliance with the provision. If more frequent egg pickups are a lower cost alternative to refrigeration installation, the previously mentioned figures may overstate the actual cost of increased refrigeration.

vii. *Benefits of refrigeration.* The probability that an individual will become ill from an SE-contaminated egg depends, among other things, on the number of bacteria within the infected egg. Refrigeration of eggs at 45 °F significantly slows the reproduction of the SE bacteria (Ref. 22). This provision would require that eggs that are stored for more than 36 hours after laying be refrigerated at 45 °F through the preproduction stage. We use the USDA SE risk assessment model (Ref. 22), a model designed, in part, to estimate the effects of refrigeration on the number of SE illnesses. The FSIS risk assessment estimates that if all eggs on farms affected by the final rule are refrigerated at 45 °F within 36 hours of lay to the time they were processed, we would see a 31 percent decline in annual SE illnesses. This translates to nearly 45,000 illnesses avoided annually, or about $800.6 million in annual benefits. Standing alone, the refrigeration provisions would cost about $450 per illness avoided and provide $780.4 million in net benefits.

If we account for estimated reductions in SE prevalence due to the provisions pertaining to chicks and pullets, rodent and pest control, biosecurity, cleaning and disinfecting, and testing and diversion (a 35 percent reduction in prevalence when all provisions are in place and fully effective), all occurring earlier in the production cycle, the refrigeration provisions would provide a 20 percent decline in SE illness, preventing about 29,000 illnesses annually ((1–0.35) × 45,000 illnesses). Costs of refrigeration are not a function of SE prevalence and remain constant. In place with the other provisions of the final rule, the cost per illness averted on farms with more than 3,000 layers is estimated to be roughly $700.[48] The annual net benefit of the provision is $496.9 million.

e. *Routine environmental testing.* Environmental testing does not serve directly as an SE prevention measure. Testing serves primarily as an indicator of the effectiveness of the SE prevention measures.

i. *Environmental testing provision.* This provision would require every farm to routinely test the environment of their layers for SE. For flocks that do not undergo a molt, this requirement would be limited to a test for SE in the environment when each group of layers in the flock is 40 to 45 weeks of age. For those flocks that do undergo a molt, testing would be required when each group of layers is 40 to 45 weeks of age and 4 to 6 weeks after molting for each group is completed.[49]

Environmental sampling would be accomplished by a method such as swabbing manure piles in the poultry

[45] As noted previously, for a farm with 20,000 to 50,000 layers the annualized cost of cooling an egg room to 45 °F is (4.83 + 1.73) kilowatt hours used per hour × 18 hours of operation per day × $0.057 per kilowatt hour × 30 days ≈ $202 per month, or about $2,420 per year. Using similar calculations, average annual energy costs for refrigeration on farms that previously did not use refrigeration are estimated to be $1,540 on farms with 3,000 to 19,999 layers, $4,230 on farms with 50,000 to 99,999 layers, and $16,950 on farms with 100,000 layers or more.

[46] Using a calculation similar to the one illustrated in the discussion of the costs of inadequate refrigeration for farms with 20,000 to 50,000 layers, average annual energy costs for farms with inadequate refrigeration are estimated to be $130 on farms with 3,000 to 19,999 layers, $350 on farms with 50,000 to 99,999 layers, and $1,400 on farms with $100,000 layers or more.

[47] For ease of explanation, the total new burden of the refrigeration requirement is assumed to be carried by the farmers. In reality, this burden, although equal in total, might be spread among the farmer, shipper, producer, retailer, and consumer.

[48] This estimate assumes a 7-percent discount rate.

[49] In the proposed rule, molted flocks were to undergo environmental testing at 20 weeks post molt. Changing the time from 20 weeks to 4 to 6 weeks post molt increases the costs to farms that test environmentally positive, egg positive, and continue to test egg positive. For these farms, earlier testing means more eggs diverted over the life of the flock and more egg tests. However, the benefit of diverting more potentially positive eggs is greater than the additional costs.

house and then culturing those swabs using a primary enrichment testing method. We consider variants of sampling protocols that are currently in use. The California Quality Assurance program currently requires a sampling plan that relies on randomly swabbing 30-foot sections of the poultry house (Ref. 97). To obtain a 95 percent probability of finding a house that is 10 percent infected, we estimate that 32 samples would have to be taken. Many other State quality assurance plans, including Pennsylvania's, require the span of each row of the layer house to be swabbed with one swab, regardless of row length (Ref. 92).

ii. *Current industry molting practices.* Molted flocks face additional testing under this provision. Overall, 62 percent of all large flocks are molted once and 12 percent are molted twice before depopulation (Refs. 27 and 28). Industry molting practices, however, vary by region and by farm size.

Farms in the Central and Great Lakes regions are least likely to molt their flocks while farms in the Southeast and West are most likely to use molting as a practice. *See* table 17 of this document.

TABLE 17—REGIONAL MOLTING PRACTICES [1]

Region	Times molted		
	0	1	2
Great Lakes	30%	65%	5%
Southeast	7%	80%	13%
Central	49%	51%	0%
West	18%	50%	32%

[1] Layers study data provided by APHIS.

Molting practices also vary by farm size. As table 18 of this document illustrates, smaller farms are less likely to molt their layers than are larger farms. While almost 85 percent of all farms with 50,000 or more layers molt their layers, only 28 percent of farms with fewer than 20,000 layers molt their flocks. This disparity plays a significant role in the determination of the expected cost of testing and diversion.

TABLE 18—MOLTING PRACTICES BY FARM SIZE [1]

Farm size (number of layers)	Times molted		
	0	1	2
Fewer than 20,000	72%	28%	0%
20,000 to 49,999	35%	54%	11%
50,000 to 99,999	14%	68%	18%
100,000 or more	16%	72%	12%

[1] Layers Study data provided by APHIS.

iii. *Current environmental testing practices.* According to the Layers study, approximately 52 percent of all farms with more than 30,000 layers currently conduct some routine environmental tests for SE (Refs. 27 and 28). The vast majority of these producers are also members of formal quality assurance programs.

iv. *Environmental testing costs.* The cost of routine environmental testing depends on how many samples are tested, the labor cost of collecting the samples, the cost of shipping the samples to a laboratory, and the laboratory cost per sample tested.

We estimate that it will take approximately 15 minutes to collect and pack each sample. Because the wage for a typical livestock and poultry worker is approximately $9.56 per hour (Ref. 89), after adding 50 percent to reflect overhead costs, we assume that the cost of labor is $3.59 per sample collected.[50]

The cost of shipping samples will vary by the weight of the shipment. We assume that a swab, with its packing material, weighs approximately 1 pound. To calculate the cost of shipping, we estimate the average number of swabs sent per shipment and use rate tables (Ref. 98) to determine the cost of shipment.

We estimate the laboratory cost of testing for SE that has been collected from the environment to be approximately $36.00 per sample (Ref. 99).

The average cost of routine testing for SE in a given house is determined by multiplying the number of tests required for that house by the expected cost per test. For any plan that is used, the per house cost of testing is estimated to be

$$\text{Cost} = \text{SWABS} \times (\text{LABOR} + \text{MAIL} + \text{LAB})$$

Where:

SWABS is the number of required swabs,
LABOR is the cost of labor per test,
MAIL is the cost of shipping samples to a lab, and
LAB is the laboratory costs of testing for SE.

To determine the testing cost of the row-based plan, we multiply the cost per test by the estimated number of rows that will have to be swabbed. We assume that all farms that are currently conducting routine testing (52 percent) (Refs. 27 and 28) are using a row-based plan.

The number of rows that will have to be swabbed in larger houses is estimated in table 19 of this document. Information for the first three columns is drawn from the Layers study (Refs. 27 and 28). We estimate the number of houses affected by the provision (the fourth column) by multiplying the number of large houses (7,315) by the percent of houses affected by the provision (48 percent), and then multiplying the product by the percent of houses in the given category. We estimate the number of rows that will have to be swabbed because of the provision as the number of rows per house times the number of houses affected by the provision. We estimate

[50] $(15 \div 60) \times \$14.34$.

that a total of 21,325 rows would have to be swabbed due to this provision.

TABLE 19—NUMBER OF ROWS TO BE SWABBED

[Houses with 3,000 or more layers]

Number of rows or batteries of cages	Average number of rows [1]	Percent of houses	Number of houses affected	Number of rows affected
1	1.0	1.9	67	67
2 to 3	2.5	12.5	442	1,105
4 to 5	4.5	50.8	1,794	8,073
6 or more	10.0	34.2	1,208	12,080
Total	6.1		3,511	21,325

[1] The average number of rows per house is estimated as the midpoint of the range estimated by Layers study. For the ''6 or more'' category we assume that these houses have an average of 10 rows each.

Because each row has two sides, each of which we assume will have to be swabbed, the total number of swabs required is estimated to be approximately 42,650. On average, 12.2 swabs will be used for each house with more than 3,000 layers. The total cost of testing the average large house is $532 (12.2 swabs × ($3.59 labor + $3.98 shipping + $36.00 lab culture)) when two swabs are used per row.[51]

The random swabbing plan requires that 32 samples be taken per house. Although 52 percent of houses conduct some routine environmental testing, far fewer are likely to follow the random swabbing plan. In the absence of better information, we assume that between 0 and 52 percent (uniformly distributed) of large houses that are currently testing use random swabbing plans. The cost per swab under the random swabbing sampling plan is about $42 ($3.59 labor + $2.42 shipping[52] + $36.00 lab culture). The total cost of one round of testing under the random swabbing plan is calculated to be $1,344 per house, regardless of size (32 swabs per house × $42 cost per swab).

f. *Follow-up egg testing.*—i. *Egg testing provisions.* Follow-up egg testing would occur if an environmental test is positive for SE. If egg testing is triggered, the following protocol must be followed. First, the farmer must submit 1,000 eggs to a lab both initially and subsequently every 2 weeks for a total of 4,000 eggs. Consistent with the method described in chapter 5 of FDA's Bacteriological Analytical Manual (BAM) the eggs that are submitted for testing may be pooled in samples of 20 eggs each. If pooled into samples of 20 eggs each, a total of 200 egg tests are conducted. If any of these egg tests are positive, the farm will be required to divert its eggs until four consecutive rounds of egg tests are found to be negative. Furthermore, a farm that has had a positive egg test must continue to test 1,000 eggs each month for the life of the flock.

If the cost of egg testing is high enough, however, the farmer may simply choose to forego egg testing and divert all eggs for the life of the flock.[53]

ii. *Current industry practices; Follow-up egg testing.* We assume that those farms currently under a recognized quality assurance plan that mandates egg testing following a positive environmental test are currently in partial compliance with this provision. Of the major plans, only the Pennsylvania and Maryland plans have follow-up testing provisions that are largely the same as this provision (Ref. 76). According to ''Chicken and Eggs'' (Ref. 75), egg production in Maryland and Pennsylvania accounted for 9.7 percent of the U.S. total. Only 85 percent of the eggs in these States fall under the State quality assurance programs. We therefore estimate that 8.2 percent (9.7 percent × 85 percent) of all eggs are currently in partial compliance. Because farms with fewer than 3,000 layers are not currently in these quality assurance programs, we assume that no farms with fewer than 3,000 layers conduct follow-up egg tests.

Farms using the number of eggs for sampling required by the Pennsylvania and Maryland plans are sampling fewer eggs than are required by this rule. Specifically, this provision would require that batches of 1,000 eggs be tested if egg testing is required, while the Pennsylvania and Maryland plans only require 480 eggs to be tested in each batch. Farms on either the Pennsylvania or the Maryland plans are only 48 percent (480 ÷ 1000) in compliance with the provision. Furthermore, the testing protocol used in Pennsylvania and Maryland is less rigorous than the one prescribed by FDA. Therefore, farms currently testing under the Pennsylvania and Maryland plans will also have to change their testing protocol. Because these farms are already paying for egg testing, however, not all costs of the new testing plan will be new costs. The tests under the Pennsylvania plan cost about 71 percent as much as the test required under the FDA plan.

These numbers suggest that the current net level of compliance with the provision is 2.8 percent (8.2 percent under state quality control plans × 48 percent as many eggs tested as required by this rule × 71 percent the cost of FDA test) for farms with more than 3,000 layers.

iii. *Egg testing costs.* The cost of follow-up egg testing is composed of the following: (1) The labor cost of collecting the eggs, (2) the value of the eggs being tested, (3) the cost of shipping the eggs to a qualified laboratory, and (4) the lab costs of testing the eggs. The cost of collecting the eggs is the hourly cost of labor times the number of hours spent collecting the eggs. We estimate that it will take the typical farmhand approximately one-half minute per egg to select eggs for testing, so the labor cost of egg testing is $119.50 per 1,000 eggs tested (50 samples × 20 eggs per sample × 0.0083 hours per egg × $14.34 dollars per hour) (Ref. 89).

The lost value of the eggs used for testing is the number of eggs tested

[51] The cost of shipping 12 swabs (12 pounds) overnight is estimated to be between $25.58 and $70.73, including pickup charges (Ref. 98). We divide the average cost of shipping by 12 to obtain the cost per swab ($3.98).

[52] The cost of shipping 32 swabs (32 pounds) overnight is estimated to be between $42.10 and $114.65, including pickup charges (Ref. 98). We divide the average cost of shipping ($77.44) by 32 to obtain the cost per swab ($2.42).

[53] Under the provision on diversion, farms that test positive for SE in their eggs would be required to divert their eggs for treatment until they are able to show via testing that SE is not present in the eggs produced in the infected house. This is discussed in detail in the following section on diversion costs.

times the producer price of an egg.[54] To avoid double counting of the cost of diversion (for those eggs being tested), we modify this value to account for the fact that as many as 26 percent of eggs being tested may be required to be diverted at the time of testing. The price that the typical producer receives for table eggs is about $0.43 per dozen, while the price a producer receives for diverted eggs is about $0.26 per dozen eggs (see table 21 of this document). The expected value of a tested egg is the weighted average of the value of a table egg and a diverted egg, or about $0.03 per egg.[55] The value of the eggs tested is the value per egg times the number of eggs tested. The value of every 1,000 eggs tested is $32.15.

Eggs that are collected will have to be shipped to a laboratory for analysis. The cost of shipping these eggs depends on the weight of the eggs being shipped. We estimate that 1,000 large eggs weigh approximately 111 pounds. The cost of shipping these eggs in two 60-pound packages (including packing) to the laboratory is approximately $260.[56]

The largest cost of egg testing is the laboratory; we estimate the average lab cost for 1 batch of 20 eggs to be $35.16.[57] Hence, for 50 tests the laboratory cost of eggs testing is $1,758 per 1,000 eggs tested (50 batches × $35.16 per test).

The total cost of egg testing is the sum of each of the previously stated costs. Therefore, the cost of egg testing is $2,169 per 1,000 eggs tested ($119.50 collection costs + $32.37 lost income from egg sales + $259.05 shipping costs + $1,758 lab costs).

g. *Diversion.*—i. *Diversion provisions.* Under this provision, farms that test positive for SE in their eggs would be required to divert their eggs for treatment until they are able to determine via testing that SE is not present in the eggs produced in the infected house. Both the expected level of diversion and the expected cost of diversion will vary by each operation's location and size.

ii. *Regional differences in the cost of diversion.* Regional differences in the cost of production have led to the centralization of the breaker industry in the North Atlantic and North Central regions of the United States. As table 20 of this document shows, these regions are responsible for only 52 percent of overall egg production, but over 86 percent of breaker eggs.[58] The centralization of the breaker industry is even more clearly illustrated in the fourth column of table 20. While 36 to 44 percent of eggs make it to breaker plants in the northern regions, the corresponding figures for the West and South are only 10 percent and 6 to 7 percent. The primary purpose of breaker plants outside of the North appears to be as an outlet for eggs not suitable for retail sale as table eggs.

TABLE 20—PRODUCTION AND BREAKING OF EGGS

Region	Eggs produced		Eggs broken		Percent of eggs produced that are broken
	Millions of eggs[1]	Percent	Thousands of dozens[2]	Percent	
North Atlantic	10,106	12.3	300,406	17.1	35.7
North Central	32,869	40.0	1,212,758	69.1	44.3
South Atlantic	13,979	17.0	69,774	4.0	6.0
South Central	14,512	17.7	84,071	4.8	7.0
West	10,636	13.0	87,662	5.0	9.9
Total	82,102	100.0	1,754,671	100.0	25.7

[1] National Agricultural Statistical Services (NASS) (Ref. 75).
[2] NASS (Ref. 101).

To predict how the industry will respond to a provision mandating diversion, it is important to consider the following information: (1) Why the breaker egg industry is regionally concentrated while the shell egg industry is distributed more evenly throughout the United States and (2) Why the concentration has occurred in the northern regions of the United States.

There are several reasons why the breaker industry is centralized and the shell egg industry is not. First, it is much more expensive to transport shell eggs than it is to transport egg products. Shell eggs are relatively bulky and are susceptible to breakage in transit. Second, shell eggs are ultimately delivered directly to consumers in their natural state, while egg products are often used as ingredients in large-scale food manufacturing operations. Because processed foods are less costly to transport than are their ingredients, it makes sense to locate processed food facilities in areas where ingredients are locally available. To the extent that these ingredients are available in the northern regions, processed food plants will locate there. Consequently, it makes sense to locate breaker plants in this region as well.

If centralization of breaker plants is going to occur, it will likely occur in the northern regions, for several reasons. The cost of egg production is lowest in the north, partly because feed grains (such as corn and wheat) are locally available at low prices in this region.[59] Also, farms in the north are more likely to be characterized by large in-line houses (up to 250,000 layers). These houses take advantage of economies of scale to produce more eggs more

[54] Using the producer price of the egg may slightly underestimate the value of the lost egg. Although much of the price increase between producer and consumer includes transfers, there is real value added during some processing.

[55] The following calculation is used to reach this figure. [(74 percent of eggs not diverted × $0.43 per dozen table eggs) + (26 percent of eggs diverted × $0.26 per dozen diverted eggs)] ÷ 12 eggs in a dozen = $0.03215 per egg.

[56] The cost of shipping a 60-pound package overnight is between $67.35 and $191.70, including pickup charges (Ref. 98). We multiply the average cost of shipping ($129.52) by 2 to obtain the total cost of $259.05.

[57] For the testing method FDA prescribes, the lab cost per 20 egg pool is $35 initially and an additional $30 for confirmation if the pool tests positive (Ref. 100). Upon an environmental positive, eggs will test positive at a rate of 2.75 per 10,000 (Ref. 92). Therefore the probability of a pool of 20 eggs testing negative is 99.45 percent ((1 − (2.75/10,000)) − 20). Conversely the probability of a pool testing positive is 0.55 percent. So the expected cost of a test is $35.16 (($35 × 0.9945) + ($65 × 0.0055)).

[58] In table 20 of this document, the number of eggs produced includes hatching eggs as well as table eggs. Because most hatching eggs are produced in the South and hatching eggs do not go to breaker plants, the percentages of eggs going to breaker plants are biased downward for the southern regions.

[59] Shipping grains from the Midwest to the West Coast by rail car cost over $1 per bushel (Ref. 102).

cheaply. Furthermore, because the demand for egg products is higher in the northern regions, breaker plants can avoid the high transportation costs of shipping to food processors by locating closer to their customers.

The implication of the industry structure is that there are likely to be regional disparities in the cost of diversion. Egg products and, hence, breaker egg prices are not expected to vary regionally by as much as shell egg prices. Where the cost of egg production and freight for diverted eggs is relatively high (such as in California), the cost of diversion is likely to be high. Similarly, where the price of egg production and freight is low (such as in Ohio and Pennsylvania), the cost of diversion is likely to be low. Furthermore, there are some remote areas, such as Hawaii, where the absence of breaker plants makes local diversion impossible. Because it is not economical to ship these eggs to breaker plants in the continental United States, the cost of diversion is simply the lost value of a clean table egg.

FDA met with industry representatives in each of the previously mentioned regions and was given estimates of diversion costs that are consistent with the above reasoning. The diversion cost per dozen eggs in Pennsylvania was estimated to be insignificant while the diversion cost in California was estimated to be $0.21 to $0.42 per dozen.

iii. *Effect of operation size on diversion costs.* Operation size can have a significant effect on average diversion costs for a given producer. A large producer is less likely to be affected by an individual house that tests positive, because the cost is generally spread across many houses and farm sites. Furthermore, in areas where it is economically feasible to produce eggs that are dedicated to breaker plants, large operations are less likely to have contract problems [60] because they can substitute SE-positive eggs for the eggs that originally were contracted to go to the breaker plant. By contrast, the economic losses from a positive house may cause a small farm with one house to incur significant losses for that farm.

iv. *Effect of SE-positive status on diversion costs.* It has been suggested that eggs from an SE-positive flock will command a lower price at the breaker than will other eggs. The pasteurization process for breaker eggs is designed to achieve at least a 5-log reduction in any SE that may be in eggs. Further, the actual cost of marking the shipments and stamping documents accompanying diverted eggs as ''these eggs must be treated to achieve at least a 5-log destruction of *Salmonella* Enteritidis or processed as egg products in accordance with the Egg Products Inspection Act'' will be insubstantial.[61] However, because these eggs are limited in how they may be used, SE-positive eggs are intrinsically less valuable than SE-negative eggs.

v. *Cost of a diverted egg.* Given all of the factors stated in the previous paragraphs, we estimate that, on average, breaker eggs from an SE-positive flock will command a price below that received for shell eggs. Table 21 of this document illustrates the prices that producers receive for shell and breaker eggs by region. As expected, the north-central region, with its proximity to inexpensive feed and a large food processing industry, has the highest level of production, the lowest prices for eggs, and the lowest cost for diversion. The West, with its higher feed costs and smaller layer houses, has the highest prices for eggs and the highest cost of diversion. We find the weighted average cost of diversion to be between $0.13 and $0.23 per dozen eggs. If there is an additional discount for those eggs with SE, the total cost could rise as high as $0.33 per dozen eggs.

TABLE 21—TOTAL COST OF DIVERTING EGGS

Region	Regional weight (in %)	Shell egg price to producer [1]	Breaking eggs (nest run) [2]	Cost of diversion (nest run)
North-Atlantic	12.3	$0.42	$0.31	$0.11
North-Central	40	0.39	0.30	0.09
South-Atlantic	17	0.43	0.31	0.12
South-Central	17.7	0.47	0.30	0.17
West	13	0.53	0.31	0.22
Average Cost of Diverting Eggs [3]				0.13–0.23
Additional Discount for SE+ Eggs [4]				0.00–0.10
Total Cost of Diverting Eggs				0.13–0.33

[1] The shell egg price paid to producers for the north-central region was estimated as equivalent to the prices AMS reported as paid in Iowa, Minnesota, and Wisconsin. For regions other than the north-central region, the shell egg price to the producer was calculated by discounting the price to retailer by a percentage equal to the percent difference between the price to the producer and the price to retailer in the north-central region. All figures were taken from AMS data accessed through The Institute of Food and Agricultural Services at the University of Florida (Ref. 103).

[2] All figures are from AMS data accessed through the North Carolina Department of Agriculture (Ref. 104).

[3] The lower bound of this range is the average cost of diverting eggs calculated as described above, and is weighted by regional production (Ref. 75). The upper bound of this range is calculated using data from comments to the analysis of the proposed rule, suggesting that the difference between the value of shell eggs and breakers has been greater recently. Because prices tend to fluctuate, and therefore differences in the price between shell eggs and breaker eggs fluctuate, the full range of estimated price differences is used in the calculation of the total cost of diverting eggs.

[4] Ref. 91 and comment to analysis of the proposed rule.

[60] Filling orders for table eggs when eggs from one house must be diverted.

[61] Eggs are typically shipped on palates holding 900 dozen eggs. The palates are shrink-wrapped. Diverted eggs will need to be marked somewhere on the shrink wrapping. Based on FDA's estimate of 474 million eggs diverted annually (discussed in detail in section F.1.h of this document), between 45,000 and 60,000 labels would have to be affixed to palates each year. This estimate accounts for the fact that some shipments may use partially full palates. The labels themselves will cost about $0.025 each and require less than 30 seconds to apply. Thus, a conservative estimate puts the cost at less than $8,000 annually across the entire industry, or less than two one-thousandths of a cent additional cost per egg. Each farm will need to buy a label gun for a one time cost of approximately $100. Amortized over 10 years, this cost is less than $15 per year, per farm. The cost of stamping the accompanying documents is discussed in the recordkeeping section F.2.a of this document.

vi. *Expected cost of diversion.* The expected cost of diversion is determined by the cost of diverting an egg, the number of eggs in commerce affected by the provision, and the probability that a given egg will be diverted.

h. *A model of testing and diversion costs.*—i. *The model.* We use a dynamic model for estimating testing and diversion costs. We model these costs as depending on the probability of SE detection, farm size, molting practices, and the farmer's choice between conducting follow-up egg tests and diverting until depopulation of the contaminated house.

In the first stage of the model, we estimate the probabilities associated with environmental and egg tests. For environmental tests, we estimate that 9.7 percent of all flocks currently test positive. We then adjust this estimate downwards to 8.4 percent initially and 7.0 percent eventually to account for the expected reduction of SE on the farm due to the adoption of other provisions of the rulemaking to reduce SE. In the experience of Pennsylvania, a flock with at least one environmental positive is likely to have at least one egg test positive 26 percent of the time (Ref. 105). We do not know if the experience of Pennsylvania is representative of the nation as a whole. In the absence of better information, we use the Pennsylvania figure.

In the next stage of the dynamic model, the expected cost of testing and diversion is calculated for farms in each of the five size categories used throughout this analysis. There are two reasons why this is a necessary step. First, the estimation of cost for different size categories allows for the explicit representation of the fact that both the number of tests required and the cost of diversion are directly related to the number of layers on the farm. Second, using different size categories facilitates an algebraic model design that uses logical operators to allow farmers (in the model) to make the low cost choice between egg testing and diversion.

Molting practices are accounted for in the next stage. The different testing protocols for molted and non-molted layers make it necessary to look at the cost of testing and diversion separately for each of these types of flocks. At this stage of the model, we set out the possible scenarios for testing and diversion, derive the expected cost of each scenario, and calculate the statistical probability that each scenario will occur.[62]

In the final stage of the testing cost model, we insert logical operators into the model in such a way that farmers are given the choice of diverting rather than testing eggs when it is cost-efficient to do so. Failure of the model to give the farmer this choice may lead to estimated costs that are up to double the actual expected costs.[63]

ii. *The costs of testing and diversion.* The model described in the previous paragraph produces estimates of the annual expected cost of testing and diversion for layer houses. Estimates are obtained for each of the size categories by molting practice.

As tables 22 and 23 of this document illustrate, the expected costs of testing and diversion for a poultry house range from $160 to over $5,500, depending on house size, environmental testing protocol, and molting practices.[64] The low figures in the environmental testing and total cost columns represent costs given the row-based sampling scheme, while the high estimates represent the random swab sampling method. The costs for molted houses are annualized for the purpose of comparison.

TABLE 22—COST PER HOUSE

[Non-molted flocks]

Farm size (number of layers)	Environmental testing	Egg testing	Diversion	Dynamic total cost	Static total cost
Fewer than 3,000	$150 to $1,340	$0	$6	$156 to $1,346	$1,313 to $2,503.
3,000 to 19,999	$530 to $1,340	843	311	$1,684 to $2,494	$1,885 to $2,695.
20,000 to 49,999	$530 to $1,340	843	722	$2,095 to $2,905	$2,140 to $2,950.
50,000 to 99,999	$530 to $1,340	1,124	556	$2,210 to $3,020	$2,352 to $3,162.
Over 100,000	$530 to $1,340	1,124	1,288	$2,942 to $3,752	$3,223 to $4,033

TABLE 23—COST PER HOUSE

[Molted flocks]

Farm size (number of layers)	Environmental testing	Egg testing	Diversion	Dynamic total cost	Static total cost
3,000 to 19,999	$530 to $1,340	$1,378	$537	$2,454 to $3,314	$2,522 to $3,332.
20,000 to 49,999	$530 to $1,340	1,597	766	$2,893 to $3,703	$2,955 to $3,765.
50,000 to 99,999	$530 to $1,340	1,597	1,129	$3,256 to $4,066	$3,315 to $4,125.
Over 100,000	$530 to $1,340	1,597	2,618	$4,745 to $5,555	$4,793 to $5,603

The inclusion of a choice to opt out of egg testing also results in egg testing costs that increase with farm size. The choice to opt out of egg testing significantly increases diversion costs for smaller farms while having a limited effect on larger farms.[65] This difference is apparent in the comparison between dynamic total costs and static total costs. If the option to switch from egg testing into diversion were removed, the costs incurred would be the static total

[62] For a detailed look at the mathematical model for this stage, see Ref. 106.

[63] A further refinement of the model would be to include the option of depopulating the flock and starting over with a new flock. There is a large degree of uncertainty over whether this is feasible given that the growing cycle of chicks and pullets must be coordinated with the laying cycle of flocks. Therefore, we did not include this option in our analysis. We invited comment on the feasibility of this option in the analysis of the proposed rule but did not receive any responses.

[64] Tables 22 and 23 of this document present the cost estimates for houses based on the current estimated prevalence of SE. In the total cost tables (24 and 25 of this document), we also present an estimate that reflects the expected prevalence following the full implementation of this rule.

[65] It is never in the interest of the smallest farms to test eggs because the expected cost of testing exceeds the revenue loss from simply diverting all eggs for the life of the flock.

costs. Nonetheless, diversion costs also generally rise with farm size.

Whether or not a farmer chooses to molt the flock also has an effect on cost. The annual cost of testing and diversion for a molted flock is greater than that for a non-molted flock, largely because a molted flock forced to divert for the life of the flock is expected to experience diversion for a longer time. In the dynamic model, where the farmer can opt out of testing, molting has a secondary effect of increasing egg-testing costs due to the high expected cost of opting out.

For comparison with dynamic costs, the static cost of testing and diversion is included in the final column of tables 22 and 23 of this document. As expected, when the producer is given the choice of opting out of egg testing the total cost of testing and diversion falls. The savings to the farmer are greatest on the smallest farms, where expected costs may fall by over 60 percent.[66] On the largest farms, it is less economical to divert, and thus the cost savings can be insignificant.

To obtain the total cost of testing and diversion for all houses on all farms we multiply the cost per house in each category by the number of houses in each category and the percentage of houses that would be affected by the provision. These costs are summarized in tables 24 and 25 of this document.

TABLE 24—TOTAL COST OF TESTING AND DIVERSION: ROW-BASED SAMPLING

[Thousands of dollars]

Farm size (number of layers)	Number of houses	Percent molted	Environmental testing	Egg testing	Diversion	Total cost
Fewer than 3,000	45,700	0	$6,798	$0	$271	$7,069
3,000 to 19,999	2,445	28	617	2,357	839	3,813
20,000 to 49,999	1,295	65	327	1,675	892	2,894
50,000 to 99,999	595	86	150	886	574	1,610
Over 100,000	3,024	84	763	4,476	6,687	11,926
Farms with ≥ 3,000 layers, Initially			1,857	9,393	8,992	20,242
Farms with ≥ 3,000 layers, Eventually			1,857	6,812	6,512	15,181

TABLE 25—TOTAL COST OF TESTING AND DIVERSION: RANDOM SWAB SAMPLING

[Thousands of dollars]

Farm size (number of layers)	Number of houses	Percent molted	Environmental testing	Egg testing	Diversion	Total cost
Fewer than 3,000	45,700	0	$61,425	$0	$271	$61,696
3,000 to 19,999	2,445	28	2,432	2,357	839	5,627
20,000 to 49,999	1,295	65	1,288	1,675	892	3,855
50,000 to 99,999	595	86	592	886	574	2,051
Over 100,000	3,024	84	3,008	4,476	6,687	14,171
Farms with ≥ 3,000 layers, Initially			7,319	9,393	8,992	25,704
Farms with ≥ 3,000 layers, Eventually			7,319	7,319	7,319	21,958

As shown in table 24 of this document, the estimated eventual total cost of testing and diversion is approximately $15.2 million when row-based sampling is used. When we assume that a random swab method of environmental sampling is used, as in table 25 of this document, the eventual estimated costs increase to $22.0 million.

iii. *Benefits of testing and diversion.* While the primary purpose of testing is to obtain an indication of the effectiveness of the farm's SE prevention measures, the testing and diversion program would also directly reduce SE infection by preventing SE-positive eggs from reaching consumers. To the extent that SE-positive eggs are diverted for treatment, the number of these eggs that reach the consumer in an untreated form will decline. We estimate the benefits from diversion using the experience of the states.

The first key measure to be determined is the probability that the environment of a flock will test positive. We used two sources to estimate the current prevalence of SE-positive houses. Our first source is the Layers study (Ref. 29), which recruited 200 farm sites to be tested across the United States. We also use estimates based on the experience of testing under quality assurance plans.

The Layers study estimates that 7.1 percent of all houses are positive for SE. Regionally, SE prevalence ranges from a low of 0 percent in the Southeast to a high of 17.2 percent in the Great Lakes region. Nonetheless, because only 200 of an original sample of 526 farm sites chose to participate in this phase of the study, we are hesitant to rely solely on this figure for SE prevalence (for example, those that chose to participate may be a biased sample who are more likely to have cleaner houses).

Regional quality assurance programs have also collected data on SE prevalence on farms. As an upper bound, Pennsylvania experienced a prevalence of 40 percent in the early 1990's (Ref. 107). As a lower bound, we use 1 to 3 percent, which is the current prevalence of houses with SE-positive environments in Maine (Ref. 108). We believe that Pennsylvania's current prevalence of 7 to 9 percent (Ref. 105) is a mode for the nation as a whole.[67] When we put this data into a Beta-Pert probability distribution using a uniform distribution over 1 to 3 percent as the lower bound, 40 percent as the upper bound, and a uniform distribution over 7 to 9 percent as the mode, or most

[66] This conclusion assumes that the farmer will be paying all of the costs of testing and diversion.

[67] This assumption is based on the fact that the number of outbreaks in the Northeast (where Pennsylvania is located) has fallen to a level equivalent with the rest of the nation (Ref. 11).

likely value, we estimate a national prevalence rate of 12.3 percent.

We consider that the Layers study and quality assurance program estimates are equally likely to be valid. Therefore, we put these values in a uniform distribution (7 to 12.3 percent) to estimate that an expected 9.7 percent of farms would currently test SE-positive. Based on the experience of Pennsylvania, we estimate that 26 percent of houses that are environmentally positive also will have eggs that test positive (Ref. 105).

These figures imply that 469 million eggs from affected farms,[68] or 0.5 percent of all shell eggs,[69] would be diverted initially following the initial effective date of the provision. Of these eggs, we expect eggs to be positive at a rate of 2.75 per 10,000 (Ref. 92). Consequently, we estimate that an average of 129,000 SE-positive eggs would be diverted annually. Given a total estimated number of positive eggs of 1.5 million, we estimate that diversion would initially decrease the number of SE-related illnesses by 10.8 percent. This translates to potentially 15,300 illnesses (valued at $274.1 million) prevented each year. Standing alone, the testing and diversion provisions would cost about $1,300 per illness avoided and provide about $261.6 million in net benefits.

If we account for estimated reductions in SE prevalence due to the provisions pertaining to chicks and pullets, rodent and pest control, biosecurity, and cleaning and disinfecting, (a 28 percent reduction in prevalence when all provisions are in place and fully effective), all occurring earlier in the production cycle, the refrigeration provisions would provide a nearly 8 percent decline in SE illness, preventing about 11,000 illnesses annually ((1–0.28) × 15,300 illnesses). Because the baseline SE prevalence will be reduced by other provisions, FDA expects that over 40 million less eggs will be diverted once the rule is fully effective. Furthermore, less egg tests will be necessary. Therefore we expect annual costs to decrease by $3.5 million once all provisions are fully effective. In place with the other provisions of the final rule, the cost of testing and diversion is about $1,900 per SE case prevented. The eventual net benefits of testing and diversion are about $189.6 million per year.

i. *SE-Monitored chicks and pullets.*—

i. *Chick and pullet provisions.* Under the final rule, farms must procure pullets that are SE monitored or raise pullets under SE monitored conditions. Pullets to be used as layer hens must be raised under SE control conditions that prevent SE, including (1) procurement of chicks from SE-monitored breeder flocks,[70] (2) cleaning and disinfection, and (3) environmental testing at 14 to 16 weeks of age. If the environmental test is negative, the farm will not need to perform any additional testing of those birds or their environment until the environmental test at 40 to 45 weeks of age. If the 14 to 16 week environmental test is positive, farms must begin egg testing within 2 weeks of the start of egg laying. A positive egg test triggers diversion.

ii. *SE-Monitored chicks.* Farms must procure pullets that have been raised from chicks from SE-monitored breeder flocks that meet the NPIP's standards for ''U.S. S. Enteritidis Clean'' status (9 CFR 145.23(d)) or equivalent standard.

iii. *Current industry practices—SE-monitored chicks.* According to the Layers study (Refs. 27 and 28), 94.6 percent of farm sites representing 94.5 percent of layers received their chicks from flocks that were bred under the NPIP program. Furthermore, NPIP has successfully integrated all of these layers into the NPIP U.S. *Salmonella* Enteritidis monitored program (Ref. 109).

NASS estimates that a total of 138,292,380 chicks were sold in 1997 (Ref. 26). If 94.5 percent of these birds were purchased from breeder facilities that are NPIP SE monitored, then 5.5 percent (7,606,080) of chicks are not currently monitored for SE.

iv. *Costs of SE-monitored chicks.* We do not have data for the cost of monitoring chicks for SE. However, Morales and McDowell (Ref. 91) estimated that pullets monitored for SE cost approximately $0.003 to $0.02 more per pullet. If we assume the cost difference is the same for chicks, the total increased annual cost of requiring SE-monitored chicks is estimated to be about $87,000.[71] This cost would be borne by pullet growers but could be passed on to egg farms depending on market conditions.

v. *Benefits of SE-monitored chicks.* The prevalence of SE in breeder flocks is relatively low.[72] Between 1994 and 1996 only 2 out of 847 breeder flocks (0.2 percent) had layers that tested positive for SE. For our estimate of benefits, we used this figure because breeders under the NPIP program must destroy their flocks when layers test positive.[73]

The 0.2 percent estimate understates the probability that a farm not currently using NPIP SE-monitored layers will test positive. To the extent that farmers obtain their chicks from multiple sources,[74] we would expect the probability that a farm obtains SE-positive chicks to be greater than the underlying prevalence of SE in hatchery flocks.[75]

We calculated the expected benefit of this provision using the percentage of farms affected by the provision multiplied by the probability of a positive test. Because only 5.5 percent of farms receive birds from breeder flocks that are not SE monitored, the expected effect of this provision on SE contamination on the farm and, hence, human illness, is projected to be slightly greater than 0.01 percent (5.5 percent × 0.2 percent). This percent translates into an expected benefit of 14 illnesses averted on affected farms (valued at about $0.3 million). This provision attempts to bar the introduction of SE onto the farm. SE can be difficult to control once it has been introduced onto a farm, but if SE is never introduced, it is impossible for it to spread. For this reason, effective SE control in chick populations has been cited as critical.

vi. *Cleaning and disinfecting, and environmental testing in pullet houses.* To ensure that pullets about to begin the laying cycle are SE free, egg producers must only use pullets whose environments were tested for SE when the pullets were 14 to 16 weeks old. There are two consequences to a positive environmental test. First, an egg producer who uses those pullets must begin egg testing on the positive flock within 2 weeks of the start of egg laying. Second, the pullet house must have all manure removed, and be cleaned and disinfected before a new flock is added.

[68] The total cost of diversion is divided by the cost of diversion per egg to obtain the number of eggs diverted.

[69] The percent of shell eggs that are diverted is determined by dividing the number of eggs diverted by the total number of shell eggs produced (90,772 million) as published in the USDA's Chicken and Eggs report (Ref. 75).

[70] NPIP certified or the equivalent.

[71] If monitoring costs $0.003 per layer, the total cost is 7,606,080 layers × $0.003 = $22,820. If monitoring costs $0.02 per layer, the total cost is 7,606,080 layers × $0.02 = $152,120. The average of these two figures is $87,470.

[72] The data for this paragraph is drawn from Rhorer (Ref. 110).

[73] Under the NPIP program a flock only loses its certification as a NPIP SE-monitored flock if birds test positive.

[74] The Layers study estimates that 38.2 percent of farms obtain pullets from multiple sites (Refs. 27 and 28).

[75] The following example illustrates this point. If a farmer obtains pullets from two different flocks, each of which has a 0.2 percent chance of having SE-positive birds, the probability that the farm will obtain SE-positive birds is 0.2 percent + 0.2 percent − 0.04 percent = 0.36 percent.

vii. *Current industry practices—Cleaning and disinfecting, and environmental testing in pullet houses.* FDA does not have detailed information on SE monitoring practices in pullet houses. However, comments from state run programs and industry stated that pullet houses are typically subject to the same provisions as layer houses under state Egg Quality Assurance Programs (EQAPs) and other programs for egg farmers. Therefore, FDA estimates that pullet houses will be in compliance with these provisions at the same rate as estimated for layer houses in previous sections of this analysis.

FDA does not have specific data on the number of pullets and pullet houses there are in the United States. However, multiple comments stated that there are roughly one-third as many pullets as there are layers at any given time. Further, there are roughly one-third as many pullet houses as there are layer houses. FDA therefore estimates that 2,453 pullet houses (7,359 layer houses covered/3) will be covered under this provision. Some of the pullet houses are located onsite at layer farms and others are located on pullet growing facilities.

viii. *Costs of environmental testing in pullet houses.* Because the requirements for tests will be the same for both pullet and layer houses, per house costs are calculated the same way. As in layer houses, the cost of routine environmental testing in pullet houses depends on how many samples are tested, the labor cost of collecting the samples, the cost of shipping the samples to a laboratory, and the laboratory cost per sample tested.[76] The total annual cost of environmental testing in pullet houses is estimated to be $1.3 million.

ix. *Costs of cleaning and disinfecting in pullet houses.* The rule requires a similar cleaning and disinfecting routine for both pullet houses and layer houses. Therefore, the per house costs and the number of houses affected are calculated similarly to the costs for cleaning and disinfecting a layer house. We calculate the number of houses affected as the product of the percent of houses not using a practice (100 minus the percent using the practice in Table 14 of this document), the probability of a positive flock, and the number of pullet houses.[77] The total annual cost of cleaning and disinfecting pullet houses that test environmentally positive is $226,000.

x. *Follow-up egg testing and diversion.* Upon an environmental positive, farms must begin egg testing on the positive flock within 2 weeks of the start of egg laying. Farms that test positive for SE in their eggs would be required to divert their eggs for treatment until they are able to show via testing that SE is not present in the eggs produced in the infected house.

xi. *Current Industry Practices—Follow-up egg testing and diversion.* Comments to the proposed rule suggest that farms do not typically test eggs when a pullet house tests positive for SE. FDA therefore estimates that all pullet flocks in houses that test environmentally positive will be affected by this provision.

xii. *Cost of egg testing and diversion.* Total costs are estimated once again using the testing and diversion model described in section V.F.1.l of this document. The model takes into account prevalence of SE in the environment and the farmer's decision between egg testing and immediate diversion to minimize costs.[78] The prevalence of SE in pullet flocks is relatively low compared to layer flocks. Data gathered from comments, citing PEQAP and CEQAP databases, show that the environmental prevalence of SE in pullet houses ranges from 0 to 1.5 percent. We use a uniform distribution bound between 0 and 1.5 percent to estimate that 0.75 percent of pullet houses would currently test environmentally positive.

The per test cost of egg testing is discussed in detail in section V.F.1.f of this document. The cost of diverted eggs is discussed in detail in section V.F.1.g of this document. To summarize, we find the weighted average cost of diversion to be between $0.13 and $0.23 per dozen eggs. If there is an additional discount for those eggs with SE, the total cost could rise as high as $0.33 per dozen eggs.

To obtain the total cost of testing and diversion for all houses on all farms, we multiplied the cost per house in each category by the number of houses in each category and the percentage of houses that would be affected by the provision. These costs are summarized in tables 26 and 27 of this document.

TABLE 26—TOTAL COST OF TESTING IN PULLET HOUSES, FOLLOW-UP EGG TESTING, AND DIVERSION: ROW-BASED SAMPLING

[Thousands of dollars]

Farm size (number of layers)	Number of houses	Environmental testing	Egg testing	Diversion	Total cost
3,000 to 19,999	815	$58	$53	$50	$161
20,000 to 49,999	432	31	47	18	96
50,000 to 99,999	198	14	22	12	48
Over 100,000	1,008	72	111	144	326
Farms with ≥ 3,000 layers		174	233	225	632

[76] For a detailed breakdown of per house environmental testing costs, see section V.F.1.e of this document.

[77] For a detailed discussion of cleaning and disinfecting costs, see previous section on cleaning and disinfecting costs for layer houses.

[78] The choice on whether to destroy the flock or move it to the layer house is also included in the pullet section of the testing and diversion model. However, except for very small flocks not covered by this rule, the cost of flock destruction, including the cost of disposal, bird replacement costs, and lost production, is much greater than the costs of egg testing and diversion. Therefore, FDA believes nearly all farms covered by this rule will choose to test eggs rather than destroying the flock upon and environmental positive in the layer flock.

TABLE 27—TOTAL COST OF TESTING IN PULLET HOUSES, FOLLOW-UP EGG TESTING, AND DIVERSION: RANDOM SWAB SAMPLING

[Thousands of dollars]

Farm size (number of layers)	Number of houses	Environmental testing	Egg testing	Diversion	Total cost
3,000 to 19,999	815	$811	$53	$50	$914
20,000 to 49,999	432	429	47	18	495
50,000 to 99,999	198	197	22	12	231
Over 100,000	1,008	1,003	111	144	1,258
Farms with ≥ 3,000 layers		2,440	233	225	2,897

Table 26 of this document shows that the estimated eventual total cost of testing in the pullet house and diversion is approximately $0.6 million when row-based sampling is used. If a random swab method of environmental sampling is used, as in table 27 of this document, the estimated costs increase to $2.9 million.

xiii. *Benefits of SE-monitored chicks and pullets.* While the primary purpose of an SE monitoring program is to ensure that pullets entering layer houses producing table eggs are SE free, testing and diversion will also directly reduce SE infection by preventing SE-positive eggs from reaching consumers. Furthermore, cleaning and disinfecting a house after an environmental positive will help ensure SE does not spread and infect current and future flocks on the same farm.

As stated in the previous section, FDA estimates that the national prevalence of SE in pullet houses varies uniformly from 0 to 1.5 percent, for an average of 0.75 percent. As with layer houses, we estimate that 26 percent of houses that are environmentally positive also will have eggs that test positive (Ref. 105).

These figures imply that 12 million eggs from affected farms would be diverted due to environmental testing in the pullet house and follow-up eggs testing and diversion. We expect eggs to be positive at a rate of 2.75 per 10,000 in an SE-positive house (Ref. 92). Therefore, we estimate that an average of 3,200 SE-positive eggs would be diverted annually. Given a total estimated number of positive eggs of 1.5 million, we estimate that diversion would decrease the number of SE-related illnesses by 0.2 percent. This translates to potentially 306 illnesses (valued at about $5.5 million) prevented annually.

The chick and pullet program will potentially prevent 320 illnesses per year, for a total benefit of about $5.7 million. The total annual cost per illness of the program is $6,500. The annual net benefits for the chick and pullet provisions are $3.6 million.[79]

j. *Summary of costs and benefits of on-farm SE prevention measures.* Table 28 of this document summarizes the costs and benefits of the on-farm SE prevention measures. In this paragraph we emphasize some of the key features of these summary estimates. First, because the effectiveness of rodent and other pest control is strongly linked to biosecurity and cleaning and disinfecting practices, we estimated the benefits of these provisions jointly. Second, we derive benefits without taking into account the interdependence of all provisions. Therefore, table 28 reflects the incremental effects of each provision starting from a baseline of no new regulation. The benefits reported for the provisions in table 28 can be added together, mixed and matched, to achieve a rough upper bound estimate of the effectiveness of different combinations of provisions. Because some of the provisions are substitutes in benefits, particularly diversion and rodent and other pest control, the actual benefits of combinations of provisions, as well as the final rule, will be somewhat smaller than what is reflected in table 28. A rough lower bound estimate of the incremental effect of each provision when combined with another is shown in table 33 of this document.

TABLE 28—SUMMARY OF ANNUAL COSTS AND BENEFITS OF ON-FARM MEASURES

	Costs (millions of dollars)	Cases of SE averted (eventual)	Cost per case of SE averted	Total benefits (millions of dollars)	Net benefits (millions of dollars)
Rodent and Pest Control [4]	$21.4	38,954	$529	$697.3	$675.9
Biosecurity		--[1]	--[1]	--[1]	--[1]
Cleaning and Disinfecting	0.3	--[1]	--[1]	--[1]	--[1]
Refrigeration	20.2	44,727	451	800.6	780.4
Environmental Tests (average)	4.6	--[2, 3]	--[2, 3]	--[2, 3]	--[2, 3]
Egg Tests	9.7	--[2]	--[2]	--[2]	--[2]
Diversion	12.5	15,312	1,343	274.1	261.6
SE Monitored Chicks and Pullets	2.1	320	6,494	5.7	3.6

[1] Estimated rodent control benefits also include benefits from biosecurity and cleaning and disinfecting.
[2] The benefits from all elements of the testing and diversion program are reported jointly under diversion.
[3] The environmental testing cost number reported is the average of the costs of the random swab and row based sampling methods.
[4] This calculation nets out feed savings.

[79] These figures are correct if the chick procurement provisions and the pullet provisions are put in place simultaneously, so the costs and benefits of the pullet provisions are net the effect of the change in SE prevalence due to the chick procurement provision. Because the chick procurement provisions alone only reduce prevalence by about 0.01 percent, the difference, if calculated separately, is less than 1 illness per year.

k. *Other on-farm prevention measures considered.* This section analyzes the costs and benefits of two prevention measures, SE-monitored feed, and flock vaccination, considered by the FDA, but not required by the final rule.

i. *SE-negative feed provisions.* We considered requiring the use of feed that meets the standards for SE-negative feed, as defined by FDA's Center for Veterinary Medicine (CVM). CVM defines SE-negative as 10 subsamples that are negative for SE (measured using the BAM method) collected for a lot of feed (60 FR 50098, September 28, 1995). Composite samples may be used to reduce testing costs. We received comments that SE-negative feed is not currently available commercially.

ii. *Current industry practices—SE monitoring of feed.* The layer industry obtains feed from both independent feed mills and from egg farmers that produce feed in their own mills. The Economic Research Service report on the feed manufacturing industry estimates that egg producers operated a total of 144 feed mills in 1984 (Ref. 111). In the absence of more recent data, we assume that they operated the same number in 2006. To isolate the number of independent feed mills operating in the United States, we used the July 2000 version of Dun's Market Identifiers (Ref. 112). Using this database, we were able to isolate 210 mills that primarily produce poultry and chicken feeds. This figure is our low estimate of the number of independent feed mills producing layer feed. For a high estimate, we assume that all 2,459 establishments that Dun's Market Identifiers reports as producers of animal feed produce layer feed.[80] This estimate is similar to the 1984 Economic Research Service estimate of 2,432 primary feed manufacturers. Assuming that the true number of feed mills producing layer feed is uniformly distributed between the low and high estimates, we estimate that approximately 1,300 feed mills produce layer feed.

iii. *Costs of monitoring feed for SE.* The cost of this provision to a feed mill would be the sum of the labor, laboratory, and shipping costs for testing, multiplied by the number of lots tested. In addition, SE-positive feed would have to be treated or destroyed.

The laboratory cost per test has been estimated to be approximately $61.00 per sample.[81] In addition, we estimate that the collection and preparation of each subsample will take approximately 10 minutes. Given an hourly wage of $15.51 for production inspectors at grain and feed mills (Ref. 113), plus 50 percent to include overhead costs, we estimate the cost of labor to be $38.78 ($23.27 x 1.667 hours) for each full sample. The cost of shipping each sample to a lab is estimated to be $30.20.[82] The total cost per composite sample is about $130 ($61.00 + $38.78 + $30.20).

Samples must be taken for each lot of feed. We expect that, because of limited storage space for finished feed, a lot of feed will not exceed 3 days worth of production for most large mills. For some small mills, however, a lot may be a week's worth of production; for some large mills a lot may be a day's worth of production. Given these parameters, we assume that the frequency of feed testing will be distributed uniformly between once a week and five times a week with a mean frequency of three times a week. Consequently, the expected annual cost of testing for a typical feed mill is calculated to be approximately $20,300 ($130 per sample × 52 weeks × 3 times a week). The cost of testing all of the approximately 1,450 entities that produce feed is estimated to be $29.4 million. If these costs are passed on to farmers at a rate proportional to the number of layers on the farm, the total cost to affected farms would be $29.2 million.

In the event of a positive feed test, feed mills would have to treat or destroy the suspect feed. It is also likely that the mill would take action to address the problem at its source. Furthermore, we assume that the mill would recall this feed and treat or dispose of it, which could be very costly.

iv. *Benefits of monitoring feed for SE.* Feed contaminated with SE is theoretically also a vehicle for the introduction of SE on the farm. Testing for SE in finished layer feed at mills has almost never yielded positive results. However, SE has been isolated in ingredients at feed mills so SE contamination of feed is a potential problem (Ref. 114).

If finished feed is contaminated with SE, the consequences for human health are potentially large. A feed mill that does not test feed for SE and becomes contaminated with SE could deliver a large number of shipments of contaminated feed before the problem is uncovered. The potential financial consequences to the farms using the feed include costs due to increased cleaning and disinfecting, egg testing, and diversion of eggs. Also, there likely would be adverse health effects from the consumption of SE-positive eggs.

v. *Vaccination provision.* Inoculating layers with vaccines is another potential way of preventing the growth of SE in layers. FDA could mandate that all layers be inoculated against SE.

vi. *Current industry practices; vaccination of flocks.* The Layers study (Refs. 27 and 28) estimates that at least 14.6 percent of all layers on farms with 3,000 or more layers are vaccinated against SE.

vii. *Cost of vaccinating flocks.* Estimation of vaccination costs range from approximately $0.13 per layer (Ref. 115) to $0.15 per layer[83] for an inoculation. The average of these estimates is an expected vaccination cost of $0.14 per layer for an inoculation.[84] Given 272.1 million layers on larger farms and 1.4 million layers on smaller farms, we expect that this provision would result in 232.2 million new vaccinations on larger farms and 1.4 million new vaccinations on smaller farms. Consequently, the cost of vaccination on farms with at least 3,000 layers would be $31.2 million.

viii. *Benefits of vaccinating flocks.* While vaccines have shown some promise in the lab, there is insufficient evidence from field trials about their efficacy to estimate any benefit from their use.

In a controlled environment vaccines were found to reduce incidence of intestinal colonization and mean number of SE shed in the feces. Further, in a controlled setting, the same vaccines have been shown to reduce the number of SE-positive eggs laid when compared to non-vaccinated controls (Ref. 116). Hens were vaccinated at 38 weeks of age followed by a booster 4 weeks later and subsequently challenged intravaginally 2 weeks later. Despite the high level of SE recovery from cloacal and vaginal swabs of vaccinated and unvaccinated hens, vaccination resulted in a significant

[80] The low estimate is likely to underreport the number of mills producing layer feed because most firms did not report to Dun's Market Identifiers what kinds of feeds they produced.

[81] This is the cost of an Association of Official Analytical Chemists test for *Salmonella* genus and a serotype test at Silliker Laboratories (Ref. 99). One option that mills have is to initially test for the genus of *Salmonella* ($28.00) and then, if the test is positive, follow through with a test for the serotype enteritidis ($33.00). We assume that mills will not choose this option because *Salmonella* positive feed is considered adulterated and firms will not want to test to see if their feed is adulterated unless mandated to do so by FDA.

[82] The cost of shipping a 2-pound package overnight in the United States ranges from $21.15 to $39.25. These figures include a $6 pickup charge. The average charge is estimated to be $30.20 (Ref. 98).

[83] This is based on a per layer cost of $0.035 for vaccine plus $0.10 for labor (Ref. 115), adjusted for inflation.

[84] These costs are recalculated in terms of year 2005 constant dollars using the GDP deflator.

decrease in the number of SE-positive eggs when compared to non-vaccinated controls (19 percent versus 37 percent, respectively). The degree of protection was only partial though, because more than half the population was still shedding SE at a high rate (Ref. 116).

However, the primary test for efficacy of a vaccine is a field trial, and it is common for vaccines to be effective in the laboratory but fail to perform up to expectations under field conditions. In a series of Pennsylvania field studies, despite the use of SE vaccine, 63.6 percent of the houses had SE-positive environmental cultures and 100 percent of the flocks had SE organ positive birds. With regard to all parameters tested, there were no statistical differences between vaccinated or unvaccinated controls—indicating the ineffectiveness of either commercially available bacterins or autogenously manufactured SE vaccines (Ref. 117). Lab results show promise for vaccines to become a useful tool in fighting SE transmission to eggs in the future. However, currently, there is no vaccine that has been shown to be efficacious in the field. Therefore, FDA is not requiring vaccination in this final rule.

2. Administrative Measures

a. *Plan design and recordkeeping.*—i. *Plan design and recordkeeping provisions.* Each farm site with 3,000 or more layers that sells raw eggs to the table egg market, other than directly to the consumer, and does not have the eggs treated, must design and monitor an SE prevention plan. This prevention plan includes all measures the farm is taking to prevent SE in its flock. The following information includes potential components of the plan: (1) Chicks and pullets, (2) biosecurity, (3) rodent and other pest control, (4) cleaning and disinfecting, (5) refrigeration, and (6) testing and diversion. Records are also required for review and of modifications of the SE prevention plan and corrective actions taken. Farms are required to have a trained or experienced supervisor that would be responsible for overseeing the plan.

ii. *Current industry practices; plan design and recordkeeping.* We assume that those farms that are currently operating according to recognized industry or State quality assurance plans are already largely in compliance with the plan design and recordkeeping provisions discussed in this section, and therefore would not experience additional costs to comply with record keeping provisions. Using data from the Layers study (Refs. 27 and 28), we find that 59 percent of farms with more than 50,000 layers are currently members of State or industry quality assurance plans. Fewer than 8 percent of farms with fewer than 50,000 layers are currently members of quality assurance plans.[85] The estimated number of farms and houses affected by plan design and recordkeeping provisions is shown in table 29 of this document.

TABLE 29—FARMS AFFECTED BY PLAN DESIGN AND RECORDKEEPING PROVISIONS

Farm size (number of layers)	Number of farms	Houses per farm	Percent of farms on a quality assurance program	Farms affected by the rule	Houses affected by the rule
3,000 to 19,999	1,746	1.4	4.9	1,661	2,325
20,000 to 49,999	925	1.4	27.7	669	936
50,000 to 99,999	248	2.4	58	104	250
100,000 or more	409	7.4	59.7	165	1,219
All farms	3,328	1.4	21.9	2,599	4,730

As table 29 of this document shows, we expect that a total of 2,598 farm sites with 4,730 poultry houses would be affected by plan design and recordkeeping provisions.

iii. *Plan design costs.* The per provision plan design cost is calculated in table 30 of this document. Because information on the costs of designing the SE prevention plan for eggs is not available, we base these costs on assumptions used to analyze the design of HACCP programs (63 FR 24253 at 24275 to 24285, May 1, 1998). In particular, we assume that each plan component will take approximately 20 labor hours to design. We add 50 percent to the cost of labor for designing the plan to account for overhead. The cost of designing a plan with one component is expected to be $560 ($27.98 × 20) (Ref. 89). Amortized over 10 years at 7 percent, the total cost of plan design will be about $207,000 ($80 per farm) per provision. Amortized over 10 years at 3 percent, the total cost of plan design for all farms will be about $171,000 ($66 per farm) per provision. For six provisions (rodent and other pest control, biosecurity, cleaning and disinfecting, chick and pullet procurement, refrigeration, and testing and diversion), the total cost of the plan design would be $1.2 million when amortized over 10 years at 7 percent ($1.0 million when amortized over 10 years at 3 percent).

TABLE 30—COST OF PLAN DESIGN PER PROVISION

Farm size (number of layers)	Farms affected by the proposal	Cost per farm	Total costs (in thousands of dollars)
3,000 to 19,999	1,661	$560	$930
20,000 to 49,999	669	560	375
50,000 to 99,999	104	560	58
100,000 or more	165	560	92
All farms	2,599	560	1,455
Amortized over 10 years at 7%	.....	.....	207

[85] We do not have data on participation by farms with fewer than 3,000 layers. We assume that none of these farms are currently members of recognized quality assurance programs.

iv. *Recordkeeping costs.* We assume that the time required for recordkeeping is roughly equivalent to the time necessary to monitor and document the food safety provisions of a HACCP plan (63 FR 24253 at 24275 to 24286). Because the HACCP time estimate upon which we are basing our estimate involves multiple control points and monitoring, this assumption tends to overstate the cost of recordkeeping for a provision of this final rule. In particular, we expect that, for each house affected, recordkeeping will take one half hour per week per required provision for provisions that would require weekly or daily monitoring. Records kept for biosecurity measures, rodent and other pest control and refrigeration are assumed to be recorded on a weekly basis.

The cost of weekly recordkeeping for biosecurity and rodent and other pest control, assuming $18.65 an hour for labor, plus 50 percent to reflect overhead costs, would be $727 ($27.98 × 0.5 hours × 52 weeks) per record, per house. The total annual cost for all houses for these two records is $3.4 million ($27.98 × 0.5 hours × 52 weeks × 4,730 houses). Refrigeration records, collected weekly on a farm-by-farm basis, rather than by-house, will cost $1.9 million annually ($27.98 × 0.5 hours × 52 weeks × 2,598 farms).

Environmental and egg sampling and testing, diversion and treatment records [86] together have daily, weekly, and monthly aspects, in the event of an environmental positive. In the case of an environmental positive, the records' annual cost is assumed to be similar to the cost estimated for the weekly records discussed previously, $727 per record, per house. However, as discussed previously in this document FDA estimated that 9.7 percent of houses will test environmentally positive initially and 7.0 percent will test positive after the provisions of this rule have taken effect. Additionally, farms would have to keep records of egg testing, diversion, and treatment if they receive pullets from a house that has tested environmentally positive; FDA estimated that pullet houses will test positive 0.75 percent of the time. The cost for houses that test negative would be similar to keeping an annual record [87]; at a half hour per record the annual cost would be $14 per record, per house. The initial total annual cost of the environmental and egg testing, diversion, and treatment records is $0.4 million (((0.097 × $727) + (0.903 × $14) + (0.0075 × $727)) × 4,730 houses). The eventual total expected cost of the environmental and egg testing, diversion, and treatment records is about $0.3 million (((0.070 × $727) + (0.930 × $14) + (0.0075 × $727)) × 4,730 houses).

Records of chick and pullet procurement and records of cleaning and disinfection will take one half hour each, per year, per house. At a half hour per record, the annual cost will be $14 per record, per house. These two records will cost farms $0.1 million (2 records × $14 × 4,730 houses).

In the event of an environmental positive, the farm must review and modify as necessary its plan design. FDA estimates this will take roughly half the time (10 hours per provision) than it took to originally draft the plan. To calculate how many farms will need to review their plans, the estimation of 9.7 percent of houses testing positive initially and 7.0 percent of houses testing positive eventually is applied.[88] The initial total expected cost of the plan design review and modification records is $0.8 million (0.097 × ($280 × 6 provisions) × 4,730 houses). The eventual total expected cost of the plan design review and modification records is $0.6 million (0.070 × ($280 × 6 provisions) × 4,730 houses).

We assume that pullet growers will keep a record of each environmental test performed on a per house, per flock basis. Each house can hold approximately 3 flocks per year and, as comments to proposed rule state, there are roughly one third as many pullet houses as there are layer houses. At a half hour per record, the annual cost would be $42 per pullet house ($14 × 3 records annually). The total annual expected cost of environmental testing records for pullet houses is $66,200 ($42 × 1,577 houses).

The calculation of the initial and eventual costs of $10.2 million and $9.8 million, respectively, for all records for affected farms is shown in table 31 of this document.

TABLE 31—TOTAL COST OF ON-FARM RECORDKEEPING

Record kept	Total cost (in thousands of dollars)	
	Initial	Eventual
Chick and pullet procurement	$66	$66
Rodent and pest control	3,440	3,440
Biosecurity	3,440	3,440
Cleaning and disinfection	66	66
Refrigeration	1,890	1,890
Testing, diversion, and treatment	419	328
Design plan review and modification	770	556
Environmental testing for pullet houses	66	22
Total	10,158	9,809

b. *Training.* The person responsible for overseeing the SE prevention measures will have to be trained or have equivalent job experience. Under the final rule, one person may oversee the SE prevention measures on more than one farm. Alternatively, more than one person may be trained to oversee a single farm. The latter is likely on some of the larger operations. FDA assumes that, on average, one person will need to be trained to oversee preventions measures on each farm covered by the rule. A training course would last 2 to 3 days. The cost of taking a course

[86] Including stamping documents accompanying diverted egg shipments. The cost of the actual rubber stamp is assumed to be negligible.

[87] The cost of environmental tests to pullet houses is discussed in a separate paragraph.

[88] This may tend to overstate costs because farms with 3,000 layers or more have on average more than one house per farm. Some of the 459 (0.097 × 4,730 houses) houses expected to test positive initially could be located on the same farm and test positive at roughly the same time as one or more other SE-positive houses. This would require only one review and modification of the entire plan.

consists of tuition, the cost of the supervisor's labor while in class (opportunity cost), and any travel related expenditures that may be incurred.

The cost of a recent 3-day HACCP training course was advertised to be $600 to $650 (Ref. 118).[89] The cost of the supervisor's labor is estimated to be $895 (32 hours[90] × $27.98 an hour).

Travel expenditures consist of transportation, hotel, and miscellaneous expenses. These costs range from insignificant (reimbursement for minimal mileage) to $1,000 ($400 airfare + $400 hotel expenses + $200 expenses). We believe that most training will be relatively close to where producers are located. In addition, training is likely to take place in rural areas where lodging is relatively inexpensive. Therefore, we estimate that the most likely travel expense will be roughly $200 to $300. We use a Beta-Pert distribution to estimate that the expected cost of travel is $330.

The average cost of attending a training class is estimated to be $1,850 ($625 tuition + $895 labor + $330). Not all producers will have to send a supervisor to a class. The 12 percent of large farms with established quality assurance programs will have a trained supervisor already running the program. Of the remaining farms, some have experienced personnel who do not need formal training. Without better information, we assume that the true number of establishments that will need to formally train a supervisor will be uniformly distributed between 0 and 100 percent for all sizes of farms. Therefore, we expect 1,299 farms with 3,000 or more layers to incur training expenses. This cost will have to be incurred only at the outset of the program, and then again when a farm loses a trained supervisor. The total cost for all farms training a supervisor every 10 years, whether amortized at 7 percent or 3 percent, is estimated to be $0.3 million.

c. *Registration.*—i. *Registration provision.* Under this provision, all farms covered by any part of the rule are required to register with FDA. Registration of all producers covered by any of the SE prevention measures will enable more efficient inspection, as well as better management and oversight of a shell egg recall.

ii. *Current industry practices—registration.* FDA assumes that no farms are currently registered with the FDA.[91] Therefore, this provision will affect all farms with 3,000 or more layers.

iii. *Registration costs.* We assume that the time required for registration under this rule is roughly equivalent to the time necessary to register a domestic facility under the Registration of Food Facilities under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 rule (68 FR 5378 at 5392 to 5403, February 3, 2003) (BT registration rule). In particular, FDA expects that it will take farms with access to the Internet, either through their own computer, or through a friend, public library, or internet café, 2 hours to research the requirements, fill out the form and send it in. We expect that for farms without easy access to the Internet, due to increased time for research and to send the documents, the process will take 3 hours.

FDA assumes the number of farms with easy access to the Internet is similar to the number used in the BT Registration Rule (68 FR 5378 at 5392 to 5403), that is, 71 percent of farms. This number has two potential biases. The first is that the 71 percent of farms used in the BT Registration Rule is related to small businesses in general, not specifically to farms. Because farms are typically rural, whereas small business in general may be rural or urban, the estimate for all small businesses may overstate the Internet access for farmers. That being said, FDA believes that the small business estimate is a good proxy for farms, and it is the most detailed data available. The second bias comes from the fact that the survey data used in the BT regulations is relevant to the year 2002. Internet access has certainly increased since that particular data was published.

We estimate that approximately 3,328 farms with 3,000 or more layers are covered by a registration provision. We assume the value of labor is $18.65 per hour, plus 50 percent for overhead costs, for a total cost of $55.95 per producer with Internet access and $83.93 for producers with no Internet access. The total one-time cost to the industry is $0.2 million (($27.98 × 3,328 farms) × ((0.71 × 2) + (0.29 × 3))). Amortized at 7 percent, the annual cost of one-time registration is $30,400. Amortized at 3 percent, the annual cost of registration is expected to be $25,000.

d. *Summary of costs and benefits of administrative provisions.* The costs of administrative provisions are summarized in table 32 of this document. These provisions do not have independently quantifiable benefits. The provisions would be likely to generate benefits because administrative provisions are essential for farmers to effectively implement SE prevention measures. Further, the administrative measures are critical for FDA to be able to ensure compliance, and thus for the benefits of the SE prevention measures to be realized.

TABLE 32—ANNUAL COST OF ADMINISTRATIVE PROVISIONS

[Thousands of dollars]

Plan design	$1,243
Recordkeeping	9,809
Training	343
Registration	30
Total	11,425

G. Summary of Benefits and Costs of the Final Rule

In the previous section of this document, we described and estimated the benefits and costs of all of the SE prevention measures we have considered. Here, we summarize and estimate the benefits and costs of the final rule.

1. Coverage

All of the on-farm SE prevention measures in the final rule apply to farms with at least 3,000 layers that do not have all of their eggs treated, do not sell all of their eggs directly to consumers, and produce shell eggs for the table market. Only the refrigeration and registration requirements apply to farms whose eggs all receive a treatment to destroy SE. Only the refrigeration requirement applies to persons who transport and supply shell eggs for shell egg processing or egg products facilities.

2. Provisions of the Final Rule

a. *On-Farm preventive controls.* Many of the on-farm preventive controls examined previously are included in this final rule. Provisions included in the final rule are rodent and other pest control, biosecurity, cleaning and disinfecting, and procurement of chicks and pullets from SE-monitored breeders.

[89] The cost of a similar 3-day HACCP training course for egg processors was advertised to be $450 to $550 in 2000 (Ref. 119) and was offered through the U.S. Poultry and Egg Association. It is no longer offered. The course sited above is a course geared towards meat processors. In a conversation with the International HACCP Alliance, FDA confirmed that a similar course geared towards egg farmers, if offered today, would cost roughly the same amount ($600 to $650).

[90] The number of hours is estimated as 24 hours of class time plus 8 hours of travel time.

[91] Farms are not required to register under FDA's Registration of Food Facilities regulation (68 FR 5378 at 5392 to 5403). If a farm also has a packing or processing facility, then only the packing or processing facility is required to register under the registration rule (68 FR 5378 at 5392 to 5403). If the information that would be provided by an egg producer during registration has already been provided under the registration regulation, the producer may submit its registration number rather than registering again.

b. *On-Farm SE prevention measures.* The rule also contains most of the on-farm SE prevention measures described previously. In particular, the refrigeration, sampling, testing, and diversion provisions are included in the final rule.

c. *Administrative provisions.* All of the administrative provisions discussed in this analysis are required by the final rule. In particular, the rule requires that producers maintain records for chick and pullet procurement, biosecurity, rodent and other pest control, cleaning and disinfecting, refrigeration, and testing and diversion.

Farms are required to use SE prevention measures and are required to have a written SE prevention plan. Each farm is required to have a trained or otherwise qualified individual to administer the prevention measures required by the final rule.

Furthermore, all farms covered by any part of the rule are required to register with FDA.

3. Summary of Costs and Benefits

In table 33 of this document, we summarize the costs and illnesses averted of this final rule and its provisions. After the on-farm adjustment phase (up to 4 years), we expect costs to fall and illnesses averted to increase. Eventually, the final rule will prevent approximately 79,170 cases of SE per year at a cost of $1,000 per illness averted. This value is less than the lowest estimate of the expected value of an SE related illness, shown in table 5 of this document. Furthermore, table 34 shows the cost per estimated QALY saved. Assuming a 7-percent discount rate, we estimate the rule will save approximately 5,055 QALYs annually. Assuming a 3-percent discount rate, the estimated number of QALYs saved annually is 8,708. This translates to $16,100 per QALY saved using a 7-percent discount rate and $9,300 per QALY saved using a 3-percent discount rate.[92] Either estimate falls well below our most conservative estimate of $100,000 for the value of a quality adjusted statistical life year.

[92] QALDs were converted back to QALYs for each possible outcome by multiplying by 365. Annual QALYs lost for a case of chronic arthritis (0.14) and for death (1.0) were summed and subsequently discounted (at 3 percent and 7 percent) over 50 years.

TABLE 33. SUMMARY OF ANNUAL COSTS AND BENEFITS OF FINAL RULE

	Costs (Millions of Dollars)		Illnesses Averted		Cost per Illness Averted (Thousands of Dollars)		Total Benefits (Millions of Dollars)		Net Benefits (Millions of Dollars)	
Provision	Initial	Eventual	Initial	Eventual	Initial	Eventual	Initial	Eventual	Initial	Eventual
On-Farm Measures										
Rodent and Pest Control[1]	$21.4	$21.4	19,477	38,866	$1.4	$0.7	$348.6	$695.7	$327.2	$674.3
Biosecurity	$5.3	$5.3	--[1]		--[1]		--[1]		--[1]	
Cleaning and Disinfecting	$0.3	$0.3	--[1]		--[1]		--[1]		--[1]	
Refrigeration	$20.2	$20.2	33,682	28,888	$0.6	$0.7	$602.9	$517.1	$582.7	$496.9
Environmental Testing (Average)	$4.6	$4.6	--[2,3]		--[2,3]		--[2,3]		--[2,3]	
Egg Testing	$9.7	$7.0	--[2]		--[2]		--[2]		--[2]	
Diversion	$12.5	$9.0	15,312	11,096	$1.7	$1.9	$274.1	$198.6	$261.6	$189.6
Procurement of SE-Monitored Chicks and Pullets	$2.1	$2.1	320	320	$6.5	$6.5	$5.7	$5.7	$3.6	$3.6
On-Farm Administrative Measures										
Plan Design	$1.2	$1.2	--		--		--		--	
Recordkeeping	$10.2	$9.8	--		--		--		--	
Training	$0.3	$0.3	--		--		--		--	
Registration	$0.03	$0.03	--		--		--		--	
Total	$87.7	$81.2	68,790	79,170	$1.3	$1.0	$1,231.3	$1,417.1	$1,143.6	$1,335.9

[1] Estimated rodent control benefits also include benefits from biosecurity and cleaning and disinfecting.

[2] The benefits from all elements of the testing and diversion program are reported jointly under diversion.

[3] The environmental testing cost number reported is the average of the costs of the random swab and row based sampling methods.

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TABLE 34—COSTS PER QALY SAVED

	Eventual costs (millions of dollars)	QALYs saved		Cost per QALY saved (thousands of dollars)	
Discount rate		3%	7%	3%	7%
Provision					
On-Farm Measures					
Rodent and Pest Control[1]	$21.4	4,275	2,481	$6.3	$10.9
Biosecurity	5.3	--[1]		--[1]	
Cleaning and Disinfecting	0.3	--[1]		--[1]	

TABLE 34—COSTS PER QALY SAVED—CONTINUED

	Eventual costs (millions of dollars)	QALYs saved		Cost per QALY saved (thousands of dollars)	
Discount rate		3%	7%	3%	7%
	0.0				
Refrigeration	20.2	3,177	1,844	6.3	10.9
Environmental Testing (Average)	4.6	--[2, 3]		--[2, 3]	
Egg Testing	7.0	--[2]		--[2]	
Diversion	9.0	1,221	708	16.9	29.0
Procurement of SE-Monitored Chicks and Pullets	2.1	35	20	59.0	101.7
On-Farm Administrative Measures					
Plan Design	1.2				
Recordkeeping	9.8				
Training	0.3				
Registration	0.0				
Total	81.2	8,708	5,055	9.3	16.1

[1] Estimated rodent control benefits also include benefits from biosecurity and cleaning and disinfecting.
[2] The benefits from all elements of the testing and diversion program are reported jointly under diversion.
[3] The environmental testing cost number reported is the average of the costs of the random swab and row based sampling methods.

The mean estimated dollar values of the benefits, the complete range and discussion of which is shown in table 37 of this document, range from $228 million to over $9.5 billion, depending on the uncertainty in the efficacy of the provisions and baseline number of illnesses, and the assumptions made about VSL, QALY, and the discount rate. The lowest estimate of annual benefits is well above the high estimate of $117 million estimated annual costs of the rule. Using the assumption set resulting in our central estimate (VSL of $5 million, a VSLY of $300,000, and a discount rate of 7 percent) gives us estimated benefits of $1.5 billion, or net benefits in excess of $1.4 billion. Considering the widest range of benefits and costs, net benefits of the final rule could be as low as $111 million annually and as high as $9.4 billion annually.

The benefits of some provisions in the final rule are slightly lower in table 33 of this document than are the benefits listed in the analysis of potential provisions. This difference arises from the fact that each provision in the rule reduces the base line number of illnesses that is used to estimate the benefits of the next provision in the list. In this way, table 33 can also be used to illustrate the costs and lower incremental benefits of individual provisions or combinations of provisions. Because table 33 shows the effects of each provision when all are enacted, and the interdependence of each is accounted for, these estimates can be added together, or mixed and matched, to achieve a rough estimate of the lower bound effects of different combinations of provisions. Between table 28 of this document and table 33, a bounded estimate of the incremental effect of each provision is achieved.

Table 33 illustrates that we have not explicitly determined the benefits for the administrative provisions. The administrative provisions enhance the effectiveness of the SE prevention measures mandated by the rule, and the benefits are therefore embedded in the benefits estimates for each control measure.

4. Analysis of Uncertainty

In table 33 of this document and elsewhere we present the expected effects of the final rule as point estimates. While this is a convenient way to summarize the effects of individual provisions and alternative regulatory options, the use of point estimates neglects the large degree of uncertainty intrinsic to the underlying analysis. In table 35 of this document, we present the results of a Monte Carlo simulation of uncertainty for the eventual annual costs of the rule. Results are reported for the 5th and 95th percentiles, as well as for the mean value. Because many uncertainties could not be measured, this table should not be seen as a complete characterization of the uncertainty underlying the analysis. Nonetheless, table 34 is a good illustration of the effect of the uncertainties we know to exist. Based on the data for which we have been able to characterize uncertainty, we believe that the eventual annual cost of the final rule will lie between $57.5 million and $116.5 million. A complete description of the distributions underlying the estimates of uncertainty can be found in Ref. 106. While some of the range is driven by uncertainty in unit costs of adopting the provisions, much of the range is a product of uncertainty in baseline practices. Indeed, the largest contributor to the range in total cost, the uncertainty in the cost of the rodent and pest control provisions, is due in large part to the uncertainty in the current baseline practices and extent of current rodent and pest problems.

TABLE 35—COSTS OF THE FINAL RULE: ANALYSIS OF UNCERTAINTY

[Millions of dollars] [1]

On-farm measures	5th Percentile	Mean	95th Percentile
Rodent and Pest Control	$12.0	$22.5	$36.1
Biosecurity	4.9	5.3	5.7
Cleaning and Disinfecting	0.1	0.3	0.5
Refrigeration	15.6	20.2	24.7
Environmental Testing	3.4	4.6	5.7
Egg Testing	4.6	7.0	12.1
Diversion	4.9	9.0	16.1
SE Monitoring of Chicks and Pullets	1.9	2.1	2.2
On-Farm Administrative Measures	10.0	11.3	13.2
Total Costs of Final Rule	57.5	82.2	116.5

[1] *See* Ref. 106 for a description of the distributions underlying this table.

In tables 36 and 37 of this document, we characterize the uncertainties associated with the benefits of the final rule. The expected annual benefits in terms of illness averted from the final rule range from nearly 30,000 SE illnesses averted to over 191,000 cases of SE illnesses averted.

TABLE 36—ILLNESSES AVERTED BY THE FINAL RULE: ANALYSIS OF UNCERTAINTY[1]

Provision on-farm measures	5th Percentile	Mean	95th Percentile
Rodent and Pest Control	6,405	38,866	123,772
Biosecurity	Included in Rodent and Pest Control		
Cleaning and Disinfecting	Included in Rodent and Pest Control		
Refrigeration	9,305	28,888	73,724
Testing and Diversion	3,382	11,096	46,634
SE Monitoring of Chicks and Pullets	21	320	1,233
Total	29,853	79,170	191,273

[1] *See* Ref. 106 for a description of the distributions underlying this table.

Table 37 of this document shows the estimated annual benefits in constant 2005 dollars range from $228 million to $9.5 billion. A complete description of the distributions underlying the estimates of uncertainty can be found in Ref. 106. The large range is due in great part to the uncertainties underlying the economic assumptions and number of baseline illnesses. The range is also affected by the uncertainty that expected target efficacies are met (e.g.: rodent and pest control, biosecurity, and cleaning and disinfecting, and refrigeration), the underlying prevalence of SE (e.g.: testing and diversion), and the uncertainty in baseline practices of all provisions. Under very reasonable economic assumptions, the expected benefits of the final rule exceed the expected costs, regardless of uncertainty in efficacy of the provisions, the underlying prevalence of SE on farms, baseline practices, or even the uncertainty inherent in the estimation of baseline number of illnesses.

TABLE 37—ESTIMATED VALUE OF ALL ILLNESSES AVERTED, GIVEN DIFFERENT ECONOMIC ASSUMPTIONS

[Millions of dollars] [1, 2, 3, 4]

	Discount rate = 3%					
	VSL = $5 million			VSL = $6.5 million		
	5th Percentile	Mean	95th Percentile	5th Percentile	Mean	95th Percentile
VSLY = $100 thousand	$355.9	$943.8	$2,280.2	--	--	--
VSLY = $300 thousand	907.5	2,406.7	5,814.6	926.7	2,457.6	5,937.5
VSLY = $500 thousand	--	--	--	1,478.3	3,920.5	9,471.9
	Discount rate = 7%					
	VSL = $5 million			VSL = $6.5 million		
	5th Percentile	Mean	95th Percentile	5th Percentile	Mean	95th Percentile
VSLY = $100 thousand	$227.6	$603.5	$1,458.1	--	--	--
VSLY = $300 thousand	534.4	1,417.1	3,423.8	553.6	1,468.0	3,546.7

	Discount rate = 7%					
	VSL = $5 million			VSL = $6.5 million		
	5th Percentile	Mean	95th Percentile	5th Percentile	Mean	95th Percentile
VSLY = $500 thousand	__	__	__	860.4	2,281.7	5,512.5

[1] *See* Ref. 106 for a description of the distributions underlying this table.
[2] VSL means Value of a Statistical Life.
[3] VSLY means Value of a Statistical Life Year.
[4] VSL and effects of long term arthritis are annualized over 50 years.

Tables 35 through 37 of this document show that the range of potential costs is much narrower than the range of potential benefits. The monetary estimates of benefits cover a broad range largely because of the different values placed on cases of chronic reactive arthritis that result from SE illness. The higher the VSLY used to value the health effects of chronic reactive arthritis, the higher the estimated monetary benefits of this final rule.

Even the lowest 5th percentile of estimated benefits, under the most conservative reasonable assumptions, exceeds the 95th percentile of estimated costs.

5. Rule as Final Versus Rule as Proposed

Table 38 of this document shows the estimated costs and benefits of the final rule versus the proposed rule. The proposed rule estimates have been updated to correct model errors, add new data, and express costs and benefits in terms of 2005 constant dollars.

TABLE 38—SUMMARY OF ANNUAL COSTS AND BENEFITS AS ESTIMATED FOR THE FINAL AND PROPOSED RULES

[Millions of dollars]

Provision	Costs		Illnesses averted		Total benefits		Net benefits	
	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed
On-Farm Measures								
Rodent and Pest Control [1]	$21.4	$21.4	38,866	38,950	$695.7	$697.2	$668.7	$659.3
Biosecurity	5.3	13.7	__[1]		__[1]		__[1]	
Cleaning and Disinfecting	0.3	2.8	__[1]		__[1]		__[1]	
Refrigeration	20.2	13.5	28,888	20,286	517.1	363.1	496.9	349.6
Environmental Testing (Average)	4.6	4.6	__[2, 3]		__[2, 3]		__[2, 3]	
Egg Testing	7.0	6.9	__[2]		__[2]		__[2]	
Diversion	9.0	8.0	11,096	9,541	198.6	170.8	178.1	151.4
Procurement of SE-Monitored Chicks and Pullets	2.1	0.1	320	14	5.7	0.3	3.6	0
On-Farm Administrative Measures								
Plan Design	1.2	1.2	__		__		__	
Recordkeeping	9.8	9.8	__		__		__	
Training	0.3	0.3	__		__		__	
Registration	0.03	0	__		__		__	
Total	81.2	82.2	79,170	68,791	1,417.1	1,231.4	1,335.9	1,149.1

[1] Estimated rodent control benefits also include benefits from biosecurity and cleaning and disinfecting.
[2] The benefits from all elements of the testing and diversion program are reported jointly under diversion.
[3] The environmental testing cost number reported is the average of the costs of the random swab and row based sampling methods.

The annual costs are about $1.0 million higher for the final rule, as provisions were added that were not included in the proposed rule; the most notable additions are the additional refrigeration provisions. However, some costs associated with the biosecurity and cleaning and disinfecting provisions decrease between the proposed and final rule. Cost decreased because, as suggested by comments to the proposed rule, some of the more prescriptive or less effective elements of the provisions were removed.

Illnesses averted (and therefore total benefits) as well as net benefits are much higher in the final rule, due mainly to increased refrigeration provisions and the earlier required environmental test for flocks post-molt. We estimate that the final rule will avert about 10,400 additional illnesses annually and provide for more than $185 million in additional annual net benefits, when compared to the proposed rule.

Table 38 of this document shows the benefits of the rules, with all provisions in place simultaneously. This is worth noting because it appears that the rodent and other pest control, biosecurity, and cleaning and disinfecting provisions are less effective in the final rule. However, this is simply because the chick and pullet provision is more effective in the final rule, so the baseline SE prevalence in flocks upon entry to the layer house is lower in the final rule than in the proposed rule. For the same reason, table 38 likely understates the effectiveness of the refrigeration, and testing and diversion, and other provisions if they were implemented on their own.

VI. Final Regulatory Flexibility Analysis

A. Introduction

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency believes that this final rule will have a significant economic impact on a substantial number of small entities. The comments received concerning the Initial Regulatory Flexibility Analysis (IRFA) and Proposed Regulatory Impact Analysis (PRIA) are contained in Section V.C.

B. Economic Effects on Small Entities

1. Regulated Entities

a. *Number of small entities affected.*[93] The Small Business Administration (SBA) defines chicken and egg producers to be small if their total revenues are less than $11.5 million (Ref. 120). A producer that receives $0.45 per dozen eggs and has layers that produce 265 eggs per year would have to have over 1,100,000 layers in production to earn revenues of over $11.5 million. Because only about 400 farms fall into the category of 100,000 or more layers, more than 99 percent of the farms with more than 3,000 layers are considered small by SBA standards, and account for roughly 60 percent of all production.[94]

b. *Costs to small entities.* The final rule will result in costs to small businesses. These costs are presented in Table 39 of this document. For the industry as a whole, the average annual cost of the final rule is estimated to be about $24,100 per farm site covered by the rule. This translates into an average cost of $0.30 per layer. Because almost all farms are defined by SBA to be small, these overall industry costs are representative of the average costs to small farms.

TABLE 39—DISTRIBUTION OF COST BY FARM SIZE, AND AS A PERCENTAGE OF REVENUE

Farm size (number of layers)	Annual per farm cost of rule [1]	Annual per layer cost of rule	Cost as a percentage of revenue [2]
Less than 3,000	$0	$0	$0
3,000 to 19,999	12,295	1.01	7.95%
20,000 to 49,999	13,899	0.49	3.86%
50,000 to 99,999	25,794	0.36	2.83%
100,000 or more	96,847	0.19	1.50%
All farms	24,130	0.30	2.36%

[1] These figures are derived from calculations made in the Regulatory Impact Analysis (RIA).
[2] The average revenue between 2001–2008 was $12.40 per hen. For the purposes of calculating cost as a percentage of revenue, before dividing categorical costs by average revenue, FDA adds the average per hen cost to the average per hen revenue. Thus, we implicitly assume that the costs of the rule will be passed on to the consumer. Although not quantified, it is possible that revenues actually increase after the publication of the rule, as consumers perceive eggs to be safer.

2. Other Affected Entities [95]

a. *Number of small entities affected.* i. *Introduction.* The final rule requires that layer farms use layers that were raised in SE-monitored chick and pullet flocks and that they hold and ship shell eggs under proper refrigeration. In addition to affecting layer farms, the final rule will likely have an impact on some small chick and pullet farmers, trucking companies, and holding facilities.

ii. *Chick and pullet farms.* As with layer farms, nearly 100 percent of all chick and pullet farms are considered small by SBA definition. We were unable to break out the number of chick and pullet farms by data from NAICS or NASS,[96] but, based on comments received, we estimate that there are roughly one third as many pullet-raising farms and chick-raising farms as there are layer farms affected by the rule. Also from comments, we learned that pullet farms participate in state EQAPS at the same rate as layer farms. Accordingly, approximately 1,000 pullet houses will be affected by the rule. Because nearly all chicks are currently raised as certified SE-monitored (95 percent), some 50 or fewer of these facilities will be affected.

iii. *Trucking companies and holding facilities.* SBA defines trucking companies and holding facilities for farm products to be small if their total revenues are less than $23.5 million annually (Ref. 120). By this definition, FDA estimates that over 80 percent of trucking companies and over 60 percent of holding facilities are small (Ref. 121). Thus, more than 300 holding facilities that are affected by the final rule are small by SBA definition.[97]

[93] Please refer to Table 6 for a breakdown of the size of layer farms affected by the rule.

[94] FDA does not know the exact percentage of production that comes from farms with more than 1.1 million layers, since the NASS Census of Agriculture (Ref. 71) does not include detail on the industry above 100,000 layers. For the purpose of this calculation, we assume that half of the eggs produced on farms with more than 100,000 layers are produced on farms that are small by SBA definition.

[95] The costs calculated for layer farms in Table 39 include the costs to chick and pullet farms, transport companies, and holding facilities. FDA believes that layer farms will absorb much of the costs associated provisions affecting these other entities.

[96] NASS does not break pullet farms down by size of operation. The 25,624 pullet farms listed in the 2002 NASS (Ref. 71) are roughly one fourth the total number of layer farms listed. For the purposes of this analysis, we used data received from public comment that indicated there are roughly one third as many pullet farms as there are farms affected by the rule.

[97] FDA only estimated the number of new refrigerated shipments necessary due to the final rule. There are nearly 57,000 general freight trucking establishments (ref. 121). More than 47,000 of these are small by SBA definition. We do not have information on the number of trucking companies that specifically ship eggs from farms with 3,000 or more layers and will therefore be affected by the final rule.

b. *Costs to small entities.* i. *Chick and pullet farms.* We do not have data for the cost of monitoring chicks for SE. However, Morales and McDowell (Ref. 91) estimated that pullets monitored for SE cost approximately $0.003 to $0.02 more per pullet. If we assume the cost difference is the same for chicks, the total increased annual cost of requiring SE-monitored chicks is estimated in the RIA for this rule to be about $87,000, for a cost of about $1,700 per chick farm if roughly 50 are affected. This cost will be borne by pullet growers but could be passed on to egg farms depending on market conditions.

In addition, pullet houses must be tested for environmental SE before the pullets are transferred to the layer houses. If the environment tests positive, the house must be cleaned and disinfected before another flock enters the house. Furthermore, upon an environmental positive in the pullet house, layer farms must begin egg testing on the positive flock within 2 weeks of the start of egg laying. Farms that test positive for SE in their eggs would be required to divert their eggs for treatment until they are able to show via testing that SE is not present in the eggs produced in the infected house. The cost of the additional steps, cleaning and disinfecting, and egg testing and diversion, depends on the prevalence of SE in pullet houses. From data gathered from comments, FDA estimates that the prevalence of SE in pullet houses is 0 to 1.5 percent. Based on these factors, as shown in detail in the RIA for this rule, FDA estimates the total costs generated by the provisions addressing pullets is about $2 million annually, or about $2,000 per pullet farm, per year. FDA expects that some of these costs could be passed on to the layer farms.[98]

ii. *Trucking companies and holding facilities.* Based on the cost per cubic foot of extra refrigeration necessary to meet the 45 °F threshold, FDA estimates that the refrigeration requirement will cost the smallest holding facilities less than $500 annually and the largest holding facilities (those holding more than 1 million eggs at a time) more than $18,000 annually, for an industry average of nearly $10,000 in increased costs per facility each year. If we assume that the costs for increased refrigeration are proportional to revenues (because costs are directly proportional to the volume of eggs held) the smallest 60 percent of holding facilities will incur increased annual costs of between $500 and $11,000. The larger numbers in this range will be incurred by the larger facilities still meeting SBA's definition of small.

FDA does not have information on the cost of the refrigeration provision to trucking companies. However, FDA estimates that the large majority of eggs are currently shipped in refrigerated trucks. For eggs that are not currently shipped at 45 °F, FDA estimates that the provision will cost approximately $0.02 per dozen eggs shipped, or $1.7 million across the industry.

C. Regulatory Options

1. Exemption for Small Entities

i. One possible approach to reduce the impact on small entities would be to exempt all small entities from the rule. Although this would significantly reduce costs, it would also significantly reduce benefits. As mentioned previously, under the SBA size standards the vast majority of entities affected by this final rule are small. Small farms include not only farms with a few hundred layers, but also some larger farms with over 100,000 layers.

An alternative approach, implemented in the final rule, exempts producers with fewer than 3,000 layers at a particular farm.[99] While over 90 percent of farm sites have fewer than 3,000 layers, less than 1 percent of the eggs produced in the United States are produced on these farms.

FDA has decided to exempt all farms with fewer than 3,000 layers and those farms that sell all of their eggs directly to consumers.

By exempting these farms, we reduce expected benefits by less than 1 percent while reducing expected costs by more than one half. Table 40 of this document shows a detailed breakdown of the potential costs and benefits of regulating farms with less than 3,000 layers.

TABLE 40—SUMMARY OF ANNUAL COSTS AVERTED AND BENEFITS FOREGONE BY EXEMPTING FARMS LESS THAN 3,000 LAYERS

[Millions of dollars]

Provision	Costs	Illnesses averted	Total benefits	Net benefits
On-Farm Measures				
Rodent and Pest Control [1]	$16.0	189	$3.4	−$21.5
Biosecurity	8.3	−−[1]	−−[1]	−−[1]
Cleaning and Disinfecting	0.5	−−[1]	−−[1]	−−[1]
Refrigeration	6.1	147	2.6	−3.5
Environmental Testing (Average)	6.8	−−[2, 3]	−−[2, 3]	−−[2, 3]
Egg Testing	0.0	−−[2]	−−[2]	−−[2]
Diversion	0.3	198	3.6	−3.5
Procurement of SE-Monitored Chicks and Pullets	2.3	21	0.4	−1.9
On-Farm Administrative Measures				
Plan Design	10.9	−−	−−	−−
Recordkeeping	56.9	−−	−−	−−
Training	6.7	−−	−−	−−
Registration	0.42	−−	−−	−−

[98] To see the effects of the costs if passed completely to layer farms, please refer to Tables 39 and 33.

[99] An exemption for farms with fewer than 3,000 birds is consistent with the exemption given by the EPIA for egg farms that are also egg processors.

TABLE 40—SUMMARY OF ANNUAL COSTS AVERTED AND BENEFITS FOREGONE BY EXEMPTING FARMS LESS THAN 3,000 LAYERS—Continued

[Millions of dollars]

	Costs	Illnesses averted	Total benefits	Net benefits
Total	115.3	556	9.9	−105.3

[1] Estimated rodent control benefits also include benefits from biosecurity and cleaning and disinfecting.
[2] The benefits from all elements of the testing and diversion program are reported jointly under diversion.
[3] The environmental testing cost number reported is the average of the costs of the random swab and row based sampling methods.

The exemption of farms with less than 3,000 layers carries over to entities potentially affected by, but not directly regulated by, the rule. Pullet farms supplying layer farms with less than 3,000 layers, will not necessarily need to prove SE-monitored status. Trucks and storage facilities holding eggs only for farms with less than 3,000 layers need not be refrigerated at 45 °F.

2. Longer Compliance Periods

We recognize that it may be more difficult for some small farms to learn about and implement these SE prevention measures than it will be for other farms. Because of this, FDA is giving farm sites with 3,000 or more, but fewer than 50,000 layers, 3 years (as opposed to 1 year for larger farm sites) to comply with this rule. The longer compliance period also affects chick and pullet flocks supplied to farms, and the shipment and storage of eggs for farms with between 3,000 and 50,000 layers.

FDA will continue to evaluate the impact of this rule on smaller farms and will consider taking appropriate steps to mitigate those impacts, where it is possible to do so without reducing safety. Further, FDA will publish guidance for all covered egg producers, and small entity compliance guides, which will help inform and educate small businesses on the requirements of the rule. We plan to use guidance, to the extent feasible, as a vehicle to identify areas where compliance could be achieved via flexible approaches that would mitigate the financial impact while preserving the public health benefits of the rule. Stakeholder participation in these documents will be solicited and considered.

D. Description of Recordkeeping and Recording Requirements

The Regulatory Flexibility Act requires a description of the recordkeeping required for compliance with this final rule. Each farm site that sells raw (untreated) eggs to the table egg market, other than directly to the consumer, must design and monitor an SE-prevention plan. This prevention plan includes all measures the farm is taking to prevent SE in its flock. The following elements must be included in the plan: (1) Chicks and pullets, (2) biosecurity, (3) rodent and other pest control, (4) cleaning and disinfecting, (5) refrigeration, and (6) testing and diversion. Records are also required for review and of modifications of the SE-prevention plan and corrective actions taken. Farms are required to have a trained or experienced supervisor that would be responsible for overseeing the plan. Furthermore, all farms covered by any part of the rule are required to register with FDA. The cost of recordkeeping is exhibited in Table 41 of this document. We detail in section V.F of this document how recordkeeping costs are calculated.

TABLE 41—COST OF RECORDKEEPING BY FARM SIZE

Farm size (number of layers)	Per farm cost of recordkeeping	Per layer cost of recordkeeping
Less than 3,000	$0	$0.00
3,000 to 19,999	2,070	0.17
20,000 to 49,999	2,070	0.07
50,000 to 99,999	3,143	0.04
100,000 or more	8,509	0.02
All Farms	2,941	0.04

E. Summary

FDA finds that, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), this final rule will have a significant impact on a substantial number of small entities. More than 1,000 small farms will be affected by the final rule.

VII. Unfunded Mandates

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product.[100] FDA has determined that this final rule is significant under the Unfunded Mandates Reform Act. FDA has carried out the cost-benefit analysis in preceding sections. The other requirements under the Unfunded Mandates Act of 1995 include assessing the rule's effects on:

- Future costs;
- Particular regions, communities, or industrial sectors;
- National productivity;
- Economic growth;
- Full employment;
- Job creation; and
- Exports.

The issues listed above are covered in detail in the cost benefit analysis of the

[100] In table 7 of this document, describing the total costs of the rule, costs are annualized. When costs are not annualized, particularly the first year costs of refrigeration, the total initial costs are clearly more than $127 million.

preceding sections, with the exception of the trade effects of this final rule, which we will discuss here.

Given the fragile and highly perishable nature of table eggs and the restrictions imposed by USDA to ensure safety of imported animals and animal products (9 CFR part 94), few eggs are imported into the United States. Only three countries, Canada, Mexico, and New Zealand are permitted to export shell eggs to the United States. Further, since 2004, only New Zealand continues to send shell eggs to the United States (Ref. 122). In 2006, a firm from New Zealand shipped 55,112 dozen eggs to the United States. These eggs originated from a single farm in New Zealand with a little more than 3,000 layers (Ref. 122). These eggs represent about one one-thousandth of the eggs produced in the United States annually.

In order to qualify to export eggs to the United States, New Zealand egg production is already highly regulated. Therefore, it is unlikely the farm that produces the exports to the United States would bear even the average cost estimated for a similar sized farm in the United States. However, if we assume the costs are similar across countries, the final rule would cost the New Zealand farm, or similar exporting farms, about $3,000 annually, or about $0.04 per dozen eggs produced.

VIII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million or more; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, the Office of Management and Budget (OMB) has determined that this final rule is a major rule for the purpose of congressional review.

IX. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given in the following paragraphs with an estimate of the annual recordkeeping and reporting burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation—Recordkeeping and Registration Provisions Under 21 CFR Part 118.

Description: FDA is requiring shell egg producers to implement measures to prevent SE from contaminating eggs on the farm and from further growth during storage and transportation. Each farm site with 3,000 or more egg laying hens that sells raw eggs to the table egg market, other than directly to the consumer, and does not have all of the eggs treated, must design and monitor an SE prevention plan. This prevention plan includes all measures the farm is taking to prevent SE in its flock. Records are also required for each of the provisions included in the plan and for plan review and modifications if corrective actions are taken. Furthermore, all farms covered by any part of the rule are required to register with FDA.

We have concluded that recordkeeping is necessary for the success of the SE prevention measures. Written SE prevention plans and records of actions taken due to each provision are essential for farms to implement SE prevention plans effectively. Further, they are essential for FDA to be able to determine compliance.

Description of Respondents: Businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 42—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1, 6]

21 CFR section	Number of record-keepers [2]	Annual frequency of recordkeeping	Total annual records	Hours per recordkeeper	Total hours
118.10(a)(1) [5]	2,600	1	2,600	20	52,000
118.10(a)(2)	4,731	1	4,731	0.5	2,366
118.10(a)(3)(ii)	4,731	52	246,012	0.5	123,006
118.10(a)(3)(i)	4,731	52	246,012	0.5	123,006
118.10(a)(3)(iii) [5]	459	1	459	0.5	230
118.10(a)(3)(iii)	331	1	331	0.5	166
118.10(a)(3)(iv)	2,600	52	135,200	0.5	67,600
118.10(a)(3)(v) through (a)(3)(viii) [3, 4, 5]	471	52	24,492	0.5	12,246
	5,837	1	5,837	0.5	2,919
118.10(a)(3)(v) through (a)(3)(viii) [3, 4]	343	52	17,836	0.5	8,918
	5,965	1	5,965	0.5	2,983
118.10(a)(4) [5]	459	1	459	10	4,590
118.10(a)(4)	331	1	331	10	3,310
Total hours for first year					387,962
Total recurring hours					331,354

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] Some records are kept on a by-farm basis and others are kept on a by-house basis. See section V.F of this document for a detailed description of the breakdown.

[3] The annual frequency of records kept for this provision depends on whether the house actually tests positive for SE.

[4] Calculations include requirements for pullet and layer houses.
[5] First year burden.
[6] Calculations include the burden on foreign firms. FDA identified a single farm with more than 3,000 layers in New Zealand that exports shell eggs to the United States.

FDA estimates the recordkeeping burden of this final rule to be 387,962 hours in the first year, and 331,354 each year thereafter, as shown in table 42 of this document.

The number of recordkeepers estimated in column 2 of table 42 of this document are based on estimates of the total number of layer and pullet houses affected by this final rule from statistics obtained from the Layers study, NASS, and comments to the proposed rule. We assume that those farms that are currently operating according to recognized industry or State quality assurance plans are already largely in compliance with the plan design and recordkeeping provisions discussed in this section, and therefore would not experience additional costs to comply with recordkeeping provisions. Using data from the Layers study (Refs. 27 and 28), we find that 59 percent of farms with more than 50,000 layers are currently members of State or industry quality assurance plans. Fewer than 8 percent of farms with fewer than 50,000 layers are currently members of quality assurance plans. The estimated number of layer farms incurring a new recordkeeping burden because of this rule is 2,600, and the number of houses affected is 4,731. A detailed breakdown of this estimation is shown in table 29 of this document.

Plan design (§ 118.10(a)(1)) and refrigeration records (§ 118.10(a)(3)(iv)) will be kept on a per farm basis, so the number of recordkeepers for these provisions is 2,600. Plan design is a first year burden only.

Records of chick and pullet procurement (§ 118.10(a)(2)), rodent and other pest control (§ 118.10(a)(3)(ii)), and biosecurity (§ 118.10(a)(3)(i)) will be kept on a per house basis, so the number of recordkeepers for these provisions is 4,731.

Records of cleaning and disinfection (§ 118.10(a)(3)(iii)) will also be kept on a per house basis, but will only need to be kept in the event that a layer house tests environmentally positive. Design plan and review (§ 118.10(a)(4)) will also need to be performed every time a house tests positive. As discussed in section V.F of this document, FDA estimates that 9.7 percent of houses will test environmentally positive initially and 7.0 percent will test positive after the provisions of this rule have taken effect. Therefore, the number of recordkeepers for these provisions is estimated to be 459 (4,731 houses × 0.097) in the first year and 331 (4,731 houses × 0.070) annually after the first year.

Records of testing, diversion, and treatment (§ 118.10(a)(3)(v) through (a)(3)(viii)) will be kept on a per house basis and will include records on flocks from pullet houses. From data provided by comments, FDA estimates that there are one third as many pullet houses as there are layer houses. Therefore the total number of recordkeepers for these provisions is 6,308 (4,731 + (4,731/3)). The number of annual records kept depends on whether houses test positive for SE or not. This is further discussed in the following paragraphs.

Because information on the costs of designing the SE prevention plan for eggs is not available, we base these costs on assumptions used to analyze the design of HACCP programs (63 FR 24253 at 24275 to 24285). In particular, we assume that each plan component will take approximately 20 hours to design. In the event of an environmental positive, the farm must review and modify as necessary its plan design. FDA estimates this will take roughly half the time (10 hours per provision) that it took to originally draft the plan.

We assume that the time required for recordkeeping is roughly equivalent to the time necessary to monitor and document the food safety provisions of a HACCP plan (63 FR 24253 at 24275 to 24286). Because the HACCP time estimate upon which we are basing our estimate involves multiple control points and monitoring, this assumption tends to overstate the cost of recordkeeping for a provision of this final rule. In particular, we expect that, for each house affected, recordkeeping will take one half hour per week per provision that would require weekly or daily monitoring. Records kept for biosecurity measures, rodent and pest control, and refrigeration are assumed to be recorded on a weekly basis.

Records for chick and pullet procurement and cleaning and disinfection will only have to be collected roughly once per year and are assumed, as above, to require one half hour to produce each record.

Environmental and egg sampling and testing, diversion and treatment records together have daily, weekly, and monthly aspects, in the event of an environmental positive. In the case of an environmental positive, the record's annual burden is assumed to be similar to the burden estimated for the weekly records discussed previously. If a house tests environmentally negative, the burden is similar to the yearly burden estimated above. In the first year, 471 layer and pullet houses ((4,731 layer houses × 0.097) + ((4731/3 pullet houses) × 0.0075)) are expected to test positive and 5,837 are expected to test negative ((4,731 layer houses × 0.903) + ((4731/3 pullet houses) × 0.9925)). In following years 343 layer and pullet houses ((4,731 layer houses × 0.070) + ((4731/3 pullet houses) × 0.0075)) are expected to test positive [101] and 5,965 are expected to test negative ((4,731 layer houses × 0.930) + ((4731/3 pullet houses) × 0.9925)).

The reporting burden due to the registration requirement is shown in table 43 of this document.

TABLE 43—ESTIMATED ANNUAL REPORTING BURDEN [1, 4]

21 CFR section	FDA form No.	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
118.11 [3]	FDA 3733 [2]	3,329	1	3,329	2.3	7,657

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The term "Form FDA 3733" refers to both the paper version of the form and the electronic system known as the Shell Egg Producer Registration Module, which will be available at *http://www.access.fda.gov* per § 118.11(b)(1).
[3] First year burden.

[101] As discussed in section V.F.1.i of this document, the pullet houses are estimated to test positive at only a rate of 0.75 percent.

[4] Calculations include the burden on foreign firms. FDA identified a single farm with more than 3,000 layers in New Zealand that exports shell eggs to the United States.

The registration requirement will be a new, one time reporting burden for all farms with more than 3,000 layers. FDA used NASS to estimate that there are 3,329 such farms, as detailed in section V.D of this document. Using experience gained from implementing section 415 of the FFDCA (21 U.S.C. 350d), FDA estimates that listing the information required by the final rule and presenting it in a format that will meet the agency's registration regulations will require a burden of approximately 2.3 hours per average facility registration. As detailed in section V.F of this document, FDA expects that it will take farms with access to the Internet 2 hours to register and for farms without easy access to the Internet it will take 3 hours to register. FDA assumes the number of farms with easy access to the Internet is similar to the number used in the BT Registration Rule (68 FR 5378 at 5392 to 5403), that is, 71 percent of farms. The average facility burden hour estimate of 2.3 hours takes into account that some respondents completing the registration may not have readily available Internet access (29 percent).

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this final rule to OMB for review. Interested persons are requested to fax comments regarding information collection by (*see* **DATES**), to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, FAX: 202–395–6974.

Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

X. Analysis of Environmental Impact

The agency has determined under 21 CFR 25.30(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132 on federalism. We have examined the effects of the requirements of this rule on the relationship between the Federal Government and the States. The agency concludes that preemption of State or local rules that establish requirements for the prevention of *Salmonella* Enteritidis (SE) in shell eggs during production, storage, or transportation that are less stringent than those in this rule is consistent with this Executive order and has added § 118.12(d) to the rule to reflect this preemptive effect.

Section 3(b) of Executive Order 13132 recognizes that Federal action limiting the policymaking discretion of States is appropriate ''where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.'' The constitutional basis for FDA's authority to regulate the safety and labeling of foods is well established.

Section 4(a) of Executive Order 13132 expressly contemplates preemption where the exercise of State authority conflicts with the exercise of Federal authority under a Federal statute. Moreover, section 4(b) of Executive Order 13132 authorizes preemption of State law by rulemaking when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that Congress intended the agency to have the authority to preempt State law.

State and local laws and regulations that would impose less stringent requirements for prevention of SE in shell eggs during production, storage, and transportation would undermine the agency's goal of ensuring that shell eggs are produced, stored, and transported using measures that will prevent their contamination with SE. These requirements are the minimal national prevention measures that we believe are necessary to ensure safety. However, the requirements of this final rule do not preempt State and local laws, regulations, and ordinances that establish more stringent requirements with respect to prevention of SE in shell eggs during production, storage, or transportation.

Section 4(e) of the Executive order provides that, ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' As required by the Executive order, FDA provided the States and local governments with an opportunity for appropriate participation in this rulemaking when it sought input from all stakeholders through publication of the proposed rule in the **Federal Register** on September 22, 2004 (69 FR 56824 at 56889). In the proposal, FDA specifically described this preemptive effect. The proposal stated that, through this notice of proposed rulemaking, State and local governments have a chance to participate in the proceedings, and that in addition, ''appropriate officials and organizations will be consulted before this proposed action is implemented; the agency plans to have public meetings specifically addressing the issue of implementation of these proposed regulations.''

The agency consulted with a working group comprised of State officials in developing the provisions of that proposed rule. In addition, we sent facsimiles of a **Federal Register** document announcing a public meeting of egg safety and the availability of egg safety ''current thinking'' documents prepared by FDA and USDA to Governors, State health and agriculture commissioners, State attorneys general, and State food program coordinators.

Further, subsequent to the publication of the proposed rule, the agency held three public meetings to discuss the provisions of the rule, answer questions, and solicit comments from stakeholders. Meetings were held October 28, 2004, in College Park, MD; November 9, 2004, in Chicago, IL; and November 16, 2004, in Los Angeles, CA. Additionally, presentations on the proposed rule were made to the following groups: Iowa Egg Industry Symposium in Ames, IA, on November 10, 2004; Central Atlantic States Association of Food and Drug Officials Meeting in Laurel, MD, in December 2004; Agricultural Research Service—Food Safety and Inspection Service Joint Food Safety Meeting in Shepherdstown, WV, in Spring 2005; National Egg Regulatory Officials Meeting in Orlando, FL, in March 2005; National Egg Quality School in Indianapolis, IN, in May 2005; and National Egg Regulatory Officials Meeting in Oklahoma City, OK, in March 2006. Both State and local government officials attended and participated in these meetings.

As a result of the extensive outreach FDA conducted during the proposed rule notice and comment period to provide State and local officials with the opportunity for meaningful input, we received comments from numerous State government agencies. Many of the comments support FDA in developing a national standard for the prevention of SE in shell eggs during production, storage, and transportation. In fact, one State agency commented that ''we completely agree with proposed regulations that make measures already taken by many producers voluntarily, mandatory for all producers * * *.'' Another State agency stated that, ''Overall FDA's proposal to require SE prevention measures for egg production would provide for an effective nationwide program to reduce SE. The prevention measures outlined in the proposal have proven to be effective in the existing State programs.''

FDA recognizes that existing voluntary State programs using egg quality assurance plans (EQAPs) have been successful in reducing SE contamination in poultry houses in certain states, as discussed in section I.G of this document. However, as discussed in response to comment 1 in section III of this document, these programs are not uniformly administered or equally comprehensive in their prevention measures. In addition, currently the EQAPs that exist are voluntary for shell egg producers. Although the existing EQAPs have similar requirements, they vary in how those requirements are implemented. This rule will establish uniform, nationwide requirements to prevent SE in shell eggs during production, storage, and transportation. FDA believes that these uniform, nationwide requirements will further reduce SE illness and deaths associated with egg consumption.

Although comments received from the State agencies agreed that uniform, nationwide requirements would be most effective, many States commented that inspections and enforcement by State Departments of Agriculture would be the most effective method of implementing these nationwide requirements. They commented that many States have been conducting similar inspections to ensure compliance with state EQAPs and have the expertise and knowledge to conduct inspections for FDA. We agree that we can enlist the assistance of existing EQAP organizations and State and/or local officials in implementing FDA's regulation. The rule provides that a State or locality may, in its own jurisdiction, enforce this rule by carrying out inspections under § 118.12(b) and by using the administrative remedies in § 118.12(a) unless FDA notifies the State or locality in writing that its assistance is no longer needed. FDA plans to provide guidance to States and localities through an enforcement and implementation guidance subsequent to this final rule.

In conclusion, the agency has determined that the preemptive effects of this final rule are consistent with Executive Order 13132.

XII. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

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List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 118

Eggs and egg products, Incorporation by reference, Recordkeeping requirements, Safety.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 16 and 118 are amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

■ 1. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

■ 2. Section 16.5 is amended by adding paragraph (a)(5) to read as follows:

§ 16.5 Inapplicability and limited applicability.

(a) * * *

(5) A hearing on an order for diversion or destruction of shell eggs under section 361 of the Public Health Service Act (42 U.S.C. 264), and § 118.12 of this chapter.

* * * * *

■ 3. Part 118 is added to read as follows:

PART 118—PRODUCTION, STORAGE, AND TRANSPORTATION OF SHELL EGGS

Sec.
118.1 Persons covered by the requirements in this part.
118.3 Definitions.
118.4 *Salmonella* Enteritidis (SE) prevention measures.
118.5 Environmental testing for *Salmonella* Enteritidis (SE).
118.6 Egg testing for *Salmonella* Enteritidis (SE).
118.7 Sampling methodology for *Salmonella* Enteritidis (SE).
118.8 Testing methodology for *Salmonella* Enteritidis (SE).
118.9 Administration of the *Salmonella* Enteritidis (SE) prevention plan.
118.10 Recordkeeping requirements for the *Salmonella* Enteritidis (SE) prevention plan.
118.11 Registration requirements for shell egg producers covered by the requirements of this part.
118.12 Enforcement and compliance.

Authority: 21 U.S.C. 321, 331–334, 342, 371, 381, 393; 42 U.S.C. 243, 264, 271.

§ 118.1 Persons covered by the requirements in this part.

(a) If you are a shell egg producer with 3,000 or more laying hens at a particular farm that does not sell all of your eggs directly to consumers and that produces shell eggs for the table market, you are covered by some or all of the requirements in this part, as follows:

(1) If any of your eggs that are produced at a particular farm do not receive a treatment as defined in § 118.3, you must comply with all of the requirements of this part for egg production on that farm.

(2) If all of your eggs that are produced at the particular farm receive a treatment as defined in § 118.3, you must comply only with the refrigeration requirements in § 118.4(e) for production of eggs on that farm and with the registration requirements in § 118.11.

(b) If you transport or hold shell eggs for shell egg processing or egg products facilities, you must comply with the refrigeration requirements in § 118.4(e). This section applies only to eggs from farms with 3,000 or more laying hens.

§ 118.3 Definitions.

The definitions and interpretations of terms in section 201 of the Federal Food, Drug, and Cosmetic Act (the FFDCA) (21 U.S.C. 321) are applicable to such terms when used in this part, except where they are redefined in this part. The following definitions also apply:

Biosecurity means a program, including the limiting of visitors on the farm and in poultry houses, maintaining personnel and equipment practices that will protect against cross contamination from one poultry house to another, preventing stray poultry, wild birds, cats, and other animals from entering poultry houses, and not allowing employees to keep birds at home, to ensure that there is no introduction or transfer of *Salmonella* Enteritidis (SE) onto a farm or among poultry houses.

Egg products facility means a USDA-inspected egg products plant where liquid, frozen, and/or dried egg products are produced.

Farm means all poultry houses and grounds immediately surrounding the poultry houses covered under a single biosecurity program.

Flock means all laying hens within one poultry house.

Group means all laying hens of the same age within one poultry house.

Induced molting means molting that is artificially initiated.

Laying cycle means the period of time that a hen begins to produce eggs until it undergoes induced molting or is permanently taken out of production and the period of time that a hen produces eggs between successive induced molting periods or between induced molting and the time that the hen is permanently taken out of production.

Molting means a life stage during which hens stop laying eggs and shed their feathers.

Pest means any objectionable animal including, but not limited to, rodents, flies, and larvae.

Positive flock means a flock that has had an egg test that was positive for SE. A flock is considered positive until that flock meets the egg testing requirements in § 118.6(c) to return to table egg production.

Positive poultry house means a poultry house from which there has been an environmental test that was positive for SE at any time during the life of a group in the poultry house until that house is cleaned and disinfected according to § 118.4(d).

Poultry house means a building, other structure, or separate section within a structure used to house poultry. For structures comprising more than one section containing poultry, each section that is separated from the other sections is considered a separate house.

Producer means a person who owns and/or operates a poultry house containing laying hens which produce shell eggs for human consumption.

Shell egg (or egg) means the egg of the domesticated chicken.

Shell egg processing facility means a facility that processes (e.g., washes, grades, packs) shell eggs for the table egg market.

Treatment (or treated) means a technology or process that achieves at least a 5-log destruction of SE for shell eggs, or the processing of egg products in accordance with the Egg Products Inspection Act.

§ 118.4 Salmonella Enteritidis (SE) prevention measures.

You must follow the SE prevention measures set forth in this section. In addition, you must have and implement a written SE prevention plan that is

specific to each farm where you produce eggs and that includes, at a minimum, the following SE prevention measures:

(a) *Pullets.* You must procure pullets that are SE monitored or raise pullets under SE monitored conditions. ''SE monitored'' means the pullets are raised under SE control conditions that prevent SE, including:

(1) *Procurement of chicks.* Chicks are procured from SE-monitored breeder flocks that meet the National Poultry Improvement Plan's standards for ''U.S. S. Enteritidis Clean'' status (9 CFR 145.23(d)) or equivalent standard;

(2) *Environmental testing.*

(i) The pullet environment is tested for SE when pullets are 14 to 16 weeks of age;

(ii) If the environmental test required in paragraph (a)(2)(i) of this section is negative, you do not need to perform any additional testing of those birds or their environment until the environmental test at 40 to 45 weeks of age specified in § 118.5(a); and

(iii) If the environmental test required in paragraph (a)(2)(i) of this section is positive, you must begin egg testing, as specified in § 118.6, within 2 weeks of the start of egg laying.

(3) *Cleaning and disinfection.* If the environmental test required in paragraph (a)(2) of this section is positive, the pullet environment is cleaned and disinfected, to include:

(i) Removal of all visible manure;

(ii) Dry cleaning the positive pullet house to remove dust, feathers, and old feed; and

(iii) Following cleaning, disinfection of the positive pullet house with spray, aerosol, fumigation, or another appropriate disinfection method.

(b) *Biosecurity.* As part of this program, you must take steps to ensure that there is no introduction or transfer of SE into or among poultry houses. Among such biosecurity measures you must, at a minimum:

(1) Limit visitors on the farm and in the poultry houses;

(2) Maintain practices that will protect against cross contamination when equipment is moved among poultry houses;

(3) Maintain practices that will protect against cross contamination when persons move between poultry houses;

(4) Prevent stray poultry, wild birds, cats, and other animals from entering poultry houses; and

(5) Not allow employees to keep birds at home.

(c) *Rodents, flies, and other pest control.* As part of this program, you must:

(1) Monitor for rodents by visual inspection and mechanical traps or glueboards or another appropriate monitoring method and, when monitoring indicates unacceptable rodent activity within a poultry house, use appropriate methods to achieve satisfactory rodent control;

(2) Monitor for flies by spot cards, Scudder grills, or sticky traps or another appropriate monitoring method and, when monitoring indicates unacceptable fly activity within a poultry house, use appropriate methods to achieve satisfactory fly control.

(3) Remove debris within a poultry house and vegetation and debris outside a poultry house that may provide harborage for pests.

(d) *Cleaning and disinfection.* You must clean and disinfect the poultry house according to these procedures before new laying hens are added to the house, if you have had an environmental test or an egg test that was positive for SE at any point during the life of a flock that was housed in the poultry house prior to depopulation. As part of the cleaning and disinfection procedures, you must:

(1) Remove all visible manure;

(2) Dry clean the positive poultry house to remove dust, feathers, and old feed; and

(3) Following cleaning, disinfect the positive poultry house with spray, aerosol, fumigation, or another appropriate disinfection method.

(e) *Refrigeration.* You must hold and transport eggs at or below 45 °F ambient temperature beginning 36 hours after time of lay. If the eggs are to be processed as table eggs and are not processed for the ultimate consumer within 36 hours from the time of lay and, therefore, are held and transported as required at or below 45 °F ambient temperature, then you may then hold them at room temperature for no more than 36 hours just prior to processing to allow an equilibration step to temper the eggs.

§ 118.5 Environmental testing for Salmonella Enteritidis (SE).

(a) *Environmental testing when laying hens are 40 to 45 weeks of age.* As one indicator of the effectiveness of your SE prevention plan, you must perform environmental testing for SE (as described in §§ 118.7 and 118.8) in a poultry house when any group of laying hens constituting the flock within the poultry house is 40 to 45 weeks of age.

(1) If an environmental test at 40 to 45 weeks is negative and your laying hens do not undergo induced molting, then you do not need to perform any additional environmental testing within that poultry house, unless the poultry house contains more than one group of laying hens. If the poultry house contains more than one group of laying hens, then you must perform environmental testing on the poultry house when each group of laying hens is 40 to 45 weeks of age.

(2) If the environmental test at 40 to 45 weeks is positive, then you must:

(i) Review and make any necessary adjustments to your SE prevention plan to ensure that all measures are being properly implemented and

(ii) Begin egg testing (described in § 118.6), unless you divert eggs to treatment as defined in § 118.3 for the life of the flock in that poultry house. Results of egg testing must be obtained within 10-calendar days of receiving notification of the positive environmental test.

(b) *Environmental testing after an induced molting period.* If you induce a molt in a flock or a group in a flock, you must perform environmental testing for SE in the poultry house at 4 to 6 weeks after the end of any molting process.

(1) If an environmental test at 4 to 6 weeks after the end of the molting process is negative and none of your laying hens in that poultry house is molted again, then you do not need to perform any additional environmental testing in that poultry house. Each time a flock or group within the flock is molted, you must perform environmental testing in the poultry house at 4 to 6 weeks after the end of the molting process.

(2) If the environmental test at 4 to 6 weeks after the end of a molting process is positive, then you must:

(i) Review and make any necessary adjustments to your SE prevention plan to ensure that all measures are being properly implemented; and

(ii) Begin egg testing (described in § 118.6), unless you divert eggs to treatment as defined in § 118.3 for the life of the flock in that poultry house. Results of egg testing, when conducted, must be available within 10-calendar days of receiving notification of the positive environmental test.

§ 118.6 Egg testing for Salmonella Enteritidis (SE).

(a)(1) If the environmental test for pullets at 14 to 16 weeks of age required by § 118.4(a) is positive, you must divert eggs to treatment (defined in § 118.3) for the life of any flock or conduct egg testing within 2 weeks of the start of egg laying, as specified in paragraphs (b) through (e) of this section.

(2) If you have an SE-positive environmental test at any time during the life of a flock, you must divert eggs to treatment (defined in § 118.3) for the life of the flock in that positive poultry

house or conduct egg testing as specified in paragraphs (b) through (e) of this section.

(b) Eggs must be sampled as described in § 118.7 and tested using methodology as described in § 118.8.

(c) You must conduct four egg tests, using sampling and methodology in §§ 118.7 and 118.8, on the flock in the positive poultry house at 2-week intervals. If all four tests are negative for SE, you are not required to do further egg testing.

(d) If any of the four egg tests is positive for SE, you must divert, upon receiving notification of an SE-positive egg test, all eggs from that flock to treatment (defined in § 118.3) until the conditions of paragraph (c) of this section are met.

(e) If you have a positive egg test in a flock and divert eggs from that flock and later meet the negative test result requirements described in paragraph (c) of this section and return to table egg production, you must conduct one egg test per month on that flock, using sampling and methodology in §§ 118.7 and 118.8, for the life of the flock.

(1) If all the monthly egg tests in paragraph (e) of this section are negative for SE, you may continue to supply eggs to the table market.

(2) If any of the monthly egg tests in paragraph (e) of this section is positive for SE, you must divert eggs from the positive flock to treatment for the life of the flock or until the conditions of paragraph (c) of this section are met.

(f) If you are diverting eggs, the pallet, case, or other shipping container must be labeled and all documents accompanying the shipment must contain the following statement: ''Federal law requires that these eggs must be treated to achieve at least a 5-log destruction of *Salmonella* Enteritidis or processed as egg products in accordance with the Egg Products Inspection Act, 21 CFR 118.6(f).'' The statement must be legible and conspicuous.

§ 118.7 Sampling methodology for Salmonella Enteritidis (SE).

(a) *Environmental sampling.* An environmental test must be done for each poultry house in accordance with § 118.5 (a) and (b). Within each poultry house, you must sample the environment using a sampling plan appropriate to the poultry house layout.

(b) *Egg sampling.* When you conduct an egg test required under § 118.6, you must collect and test the following number of eggs from the positive poultry house:

(1) To meet the egg testing requirements of § 118.6(c), you must collect and deliver for testing a minimum of 1,000 intact eggs representative of a day's production. The 1,000-egg sample must be tested according to § 118.8. You must collect and test four 1,000-egg samples at 2-week intervals for a total of 4,000 eggs.

(2) To meet the monthly egg testing requirement of § 118.6(e), you must collect and deliver for testing a minimum of 1,000 intact eggs representative of a day's production per month for the life of the flock. Eggs must be tested according to § 118.8.

§ 118.8 Testing methodology for Salmonella Enteritidis (SE).

(a) *Testing of environmental samples for SE.* Testing to detect SE in environmental samples must be conducted by the method entitled ''Environmental Sampling and Detection of *Salmonella* in Poultry Houses,'' April 2008, or an equivalent method in accuracy, precision, and sensitivity in detecting SE. The April 2008 Environmental Sampling and Detection of *Salmonella* Web site is located at *http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/ucm114716.htm*, current as of June 26, 2009. The Director of the Federal Register approves the incorporation by reference of ''Environmental Sampling and Detection of *Salmonella* in Poultry Houses,'' April 2008, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The FDA will request approval to incorporate by reference any updates to this Web site. The FDA will change the date of the Web site in this paragraph with each update. You may obtain a copy from Division of Microbiology (HFS–710), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2364, or you may examine a copy at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, 301–436–2163, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulation/ibr_locations.html.*

(b) *Testing of egg samples for SE.* Testing to detect SE in egg samples must be conducted according to Chapter 5 of FDA's Bacteriological Analytical Manual (BAM), December 2007 Edition, or an equivalent method in accuracy, precision, and sensitivity in detecting SE. Chapter 5 of FDA's Bacteriological Analytical Manual, December 2007 Edition, is located at *http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/BacteriologicalAnalyticalManualBAM/ucm070149.htm,* current as of June 26, 2009. The method is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The FDA will request approval to incorporate by reference any updates to this Web site. The FDA will change the date of the Web site in this paragraph with each update. You may obtain a copy from Division of Microbiology (HFS–710), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2364, or you may examine a copy at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, 301–436–2163, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulation/ibr_locations.html.*

§ 118.9 Administration of the Salmonella Enteritidis (SE) prevention plan.

You must have one or more supervisory personnel, who do not have to be on-site employees, to be responsible for ensuring compliance with each farm's SE prevention plan. This person must have successfully completed training on SE prevention measures for egg production that is equivalent to that received under a standardized curriculum recognized by the Food and Drug Administration or must be otherwise qualified through job experience to administer the SE prevention measures. Job experience will qualify this person to perform these functions if it has provided knowledge at least equivalent to that provided through the standardized curriculum. This person is responsible for:

(a) Development and implementation of an SE prevention plan that is appropriate for your specific farm and meets the requirements of § 118.4;

(b) Reassessing and modifying the SE prevention plan as necessary to ensure that the requirements in § 118.4 are met; and

(c) Review of records created under § 118.10. This person does not need to have performed the monitoring or created the records.

§ 118.10 Recordkeeping requirements for the Salmonella Enteritidis (SE) prevention plan.

(a) *Records:* You must maintain the following records documenting your SE prevention measures:

(1) A written SE prevention plan required by § 118.4;

(2) Documentation that pullets were ''SE monitored'' or were raised under ''SE monitored'' conditions, including environmental testing records for pullets, as required by § 118.4(a)(2);

(3) Records documenting compliance with the SE prevention measures, as follows:

(i) Biosecurity measures;

(ii) Rodent and other pest control measures;

(iii) Cleaning and disinfection procedures performed at depopulation, when applicable;

(iv) Refrigeration requirements;

(v) Environmental and egg sampling procedures, when applicable, performed under § 118.7;

(vi) Results of SE testing, when applicable, performed under § 118.8 as required in §§ 118.4(a)(2), 118.5, and 118.6;

(vii) Diversion of eggs, if applicable, as required in § 118.6; and

(viii) Eggs at a particular farm being given a treatment as defined in § 118.3, if you are a producer complying with the requirements of this section as described in § 118.1(a)(2).

(4) Records of review and of modifications of the SE prevention plan and corrective actions taken.

(b) *General requirements for records maintained by shell egg producers.* All records required by § 118.10(a) must include:

(1) Your name and the location of your farm,

(2) The date and time of the activity that the record reflects,

(3) The signature or initials of the person performing the operation or creating the record. The written SE prevention plan must be dated and carry the signature(s) (not initials) of the person(s) who administers the plan as described in § 118.9, and

(4) Data and information reflecting compliance activities must be entered on records at the time the activity is performed or observed, and the records must contain the actual values observed, if applicable.

(c) *Length of time records must be retained.* You must retain all records required by this part at your place of business, unless stored offsite under § 118.10(d), for 1 year after the flock to which they pertain has been taken permanently out of production.

(d) *Offsite storage of records.* You may store the records required by this part, except for the written SE prevention plan, offsite. You must be able to retrieve and provide the records at your place of business within 24 hours of request for official review. Electronic records are considered to be onsite if they are accessible from an onsite location.

(e) *Official review of records.* You must have all records required by this part available for official review and copying at reasonable times.

(f) *Public disclosure of records.* Records required by this part are subject to the disclosure requirements under part 20 of this chapter.

§ 118.11 Registration requirements for shell egg producers covered by the requirements of this part.

(a) Shell egg producers covered under § 118.1(a) of this part are required to register their farms with the FDA within 30 days of becoming an egg producer or, if already an egg producer, by the applicable effective date of this regulation.

(b) Shell egg producers may register their farms by any of the following means:

(1) *Electronic registration.* To register electronically, you must register at *http://www.access.fda.gov*, which will be available for registration 24 hours a day, 7 days a week beginning May 10, 2010. This Web site is available from wherever the Internet is accessible, including libraries, copy centers, schools, and Internet cafes.

(i) An individual authorized by the owner or operator of a farm, such as an agent in charge, may also register a farm electronically.

(ii) FDA strongly encourages electronic registration for the benefit of both FDA and the registrant.

(iii) Once you complete your electronic registration, FDA will automatically provide you with an electronic confirmation of registration and a permanent registration number.

(iv) You will be considered registered once FDA electronically transmits your confirmation and registration number.

(2) *Registration by mail or by fax.* If, for example, you do not have reasonable access to the Internet through any of the methods described in paragraph (b)(1) of this section, an individual authorized by the owner or operator of a farm, such as an agent in charge, may register by mail or fax.

(i) You must register using FDA Form No. 3733. You may obtain a copy of this form by writing to the U.S. Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, or by requesting the form by phone at 1–888–INFO–FDA (1–888–463–6332).

(ii) When you receive the form, you must fill it out completely and legibly and either mail it to the address in paragraph (b)(2)(i) of this section or fax it to the number on the form.

(iii) If any required information on the form is incomplete or illegible when FDA receives it, FDA will return the form to you for revision, provided that your mailing address or fax number is legible and valid. When returning a registration form for revision, FDA will use the means by which the form was received by the agency (i.e., by mail or fax).

(iv) FDA will enter complete and legible mailed and faxed registration submissions into its registration system, along with CD–ROM submissions, as soon as practicable, in the order FDA receives them.

(v) FDA will then mail to the address or fax to the fax number on the registration form a copy of the registration as entered, confirmation of registration, and your registration number. When responding to a registration submission, FDA will use the means by which the registration was received by the agency (i.e., by mail or fax).

(vi) If any information you previously submitted was incorrect at the time of submission, you must immediately update your facility's registration. If any information you previously submitted that was correct at the time of submission subsequently changes, you must update your facility's registration within 60 calendar days.

(vii) Your facility is considered registered once FDA enters your facility's registration data into the registration system and the system generates a registration number.

(3) *Registration by CD–ROM for multiple submissions.* If, for example, you do not have reasonable access to the Internet through any of the methods provided under paragraph (b)(1) of this section, you may register by CD–ROM.

(i) Registrants submitting their registrations in CD–ROM format must use ISO 9660 (CD–R or CD–RW) data format.

(ii) These files must be submitted on a portable document format (PDF) rendition of the registration form (FDA Form No. 3733) and be accompanied by one signed copy of the certification statement that appears on the registration form.

(iii) Each submission on the CD–ROM must contain the same preferred mailing address in the appropriate block on FDA Form No. 3733.

(iv) A CD–ROM may contain registrations for as many facilities as needed up to the CD–ROM's capacity.

(v) The registration on the CD–ROM for each separate facility must have a unique file name up to 32 characters long, the first part of which may be used to identify the parent company.

(vi) You must mail the CD–ROM to the U.S. Food and Drug Administration,

10903 New Hampshire Avenue, Silver Spring, MD 20993.

(vii) If FDA receives a CD–ROM that does not comply with these specifications, it will return the CD–ROM to the submitter unprocessed.

(viii) FDA will enter CD–ROM submissions that comply with these specifications into its registration system, along with the complete and legible mailed and faxed submissions, as soon as practicable, in the order FDA receives them.

(ix) For each facility on the CD–ROM, FDA will mail to the preferred mailing address a copy of the registration(s) as entered, confirmation of registration, and each facility's assigned registration number.

(x) If any information you previously submitted was incorrect at the time of submission, you must immediately update your facility's registration. If any information you previously submitted that was correct at the time of submission subsequently changes, you must update your facility's registration within 60 calendar days.

(xi) Your facility is considered registered once FDA enters your facility's registration data into the registration system and the system generates a registration number.

(c) No registration fee is required.

(d) You must submit all registration information in the English language. All information must be submitted using the Latin (Roman) alphabet.

(e) Each registrant must submit the following information through one of the methods described in paragraph (b) of this section:

(1) The name, full address, and phone number of the farm; and

(2) The average or usual number of layers of each house and number of poultry houses on the farm.

(3) A statement in which the shell egg producer certifies that the information submitted is true and accurate. If the individual submitting the form is not the shell egg producer in charge of the farm, the registration must also include a statement in which the individual certifies that the information submitted is true and accurate, certifies that he/she is authorized to submit registration, and identifies by name, address, and telephone number, the individual who authorized submission of the registration. Each registration must include the name of the individual registering the farm submitting the registration, and the individual's signature (for paper and CD–ROM options).

(f) Registered egg producers must submit an update to a registration within 60-calendar days of any change to any of the information previously submitted by any of the means as provided in § 118.11(b).

(g) Registered egg producers must notify FDA within 120 days of ceasing egg production by completing sections 1b, 1c, and 2 of Form 3733. This notification is not required if you are a seasonal egg producer or you temporarily cease operation due to labor disputes, fire, natural disasters, or other temporary conditions.

§ 118.12 Enforcement and compliance.

(a) *Authority.* This part is established under authority of the Public Health Service Act (the PHS Act). Under the FFDCA, the Food and Drug Administration (FDA) can enforce the food adulteration provisions under 21 U.S.C. 331 through 334 and 342. Under the PHS Act (42 U.S.C. 264), FDA has the authority to make and enforce regulations for the control of communicable diseases. FDA has established the following administrative enforcement procedures for the diversion or destruction of shell eggs and for informal hearings under the PHS Act:

(1) Upon a finding that any shell eggs have been produced or held in violation of this part, an authorized FDA representative or a State or local representative in accordance with paragraph (c) of this section may order such eggs to be diverted, under the supervision of said representative, for processing in accordance with the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) or by a treatment that achieves at least a 5-log destruction of SE or destroyed by or under the supervision of an officer or employee of FDA, or, if applicable, of the State or locality in accordance with the following procedures:

(i) *Order for diversion or destruction under the PHS Act.* Any district office of FDA or any State or locality acting under paragraph (c) of this section, upon finding shell eggs that have been produced or held in violation of this regulation, may serve a written order upon the person in whose possession the eggs are found requiring that the eggs be diverted, under the supervision of an officer or employee of the issuing entity, for processing in accordance with the EPIA (21 U.S.C. 1031 *et seq.*) or by a treatment that achieves at least a 5-log destruction of SE or destroyed by or under the supervision of the issuing entity, within 10-working days from the date of receipt of the order, unless, under paragraph (a)(2)(iii) of this section, a hearing is held, in which case the eggs must be diverted or destroyed consistent with the decision of the Regional Food and Drug Director under paragraph (a)(2)(v) of this section. The order must include the following information:

(A) A statement that the shell eggs identified in the order are subject to diversion for processing in accordance with the EPIA or by a treatment that achieves at least a 5-log destruction of SE or destruction;

(B) A detailed description of the facts that justify the issuance of the order;

(C) The location of the eggs;

(D) A statement that these eggs must not be sold, distributed, or otherwise disposed of or moved except as provided in paragraph (a)(1)(iv) of this section;

(E) Identification or description of the eggs;

(F) The order number;

(G) The date of the order;

(H) The text of this entire section;

(I) A statement that the order may be appealed by written appeal or by requesting an informal hearing;

(J) The name and phone number of the person issuing the order; and

(K) The location and telephone number of the office or agency issuing the order and the name of its Director.

(ii) *Approval of District Director.* An order, before issuance, must be approved by FDA's District Director or the Acting District Director. If prior written approval is not feasible, prior oral approval must be obtained and confirmed by written memorandum as soon as possible.

(iii) *Labeling or marking of shell eggs under order.* An FDA, State, or local representative issuing an order under paragraph (a)(1)(i) of this section must label or mark the shell eggs with official tags that include the following information:

(A) A statement that the shell eggs are detained in accordance with regulations issued under section 361(a) of the PHS Act (42 U.S.C. 264(a)).

(B) A statement that the shell eggs must not be sold, distributed or otherwise disposed of or moved except, after notifying the issuing entity in writing, to:

(*1*) Divert them for processing in accordance with the EPIA or by a treatment that achieves at least a 5-log destruction of SE or destroy them or

(*2*) Move them to another location for holding pending appeal.

(C) A statement that the violation of the order or the removal or alteration of the tag is punishable by fine or imprisonment or both (section 368 of the PHS Act (42 U.S.C. 271)).

(D) The order number and the date of the order, and the name of the government representative who issued the order.

(iv) *Sale or other disposition of shell eggs under order.* After service of the order, the person in possession of the shell eggs that are the subject of the order must not sell, distribute, or otherwise dispose of or move any eggs subject to the order unless and until receiving a notice that the order is withdrawn after an appeal except, after notifying FDA's district office or, if applicable, the State or local representative, in writing, to:

(A) Divert or destroy them as specified in paragraph (a)(1)(i) of this section, or

(B) Move them to another location for holding pending appeal.

(2) The person on whom the order for diversion or destruction is served may either comply with the order or appeal the order to the Regional Food and Drug Director in accordance with the following procedures:

(i) *Appeal of a detention order.* Any appeal must be submitted in writing to FDA's District Director in whose district the shell eggs are located within 5-working days of the issuance of the order. If the appeal includes a request for an informal hearing, the hearing must be held within 5-working days after the appeal is filed or, if requested by the appellant, at a later date, which must not be later than 20-calendar days after the issuance of the order. The order may also be appealed within the same period of 5-working days by any other person having an ownership or proprietary interest in such shell eggs. The appellant of an order must state the ownership or proprietary interest the appellant has in the shell eggs.

(ii) *Summary decision.* A request for a hearing may be denied, in whole or in part and at any time after a request for a hearing has been submitted, if the Regional Food and Drug Director or his or her designee determines that no genuine and substantial issue of fact has been raised by the material submitted in connection with the hearing or from matters officially noticed. If the Regional Food and Drug Director determines that a hearing is not justified, written notice of the determination will be given to the parties explaining the reason for denial.

(iii) *Informal hearing.* Appearance by any appellant at the hearing may be by mail or in person, with or without counsel. The informal hearing must be conducted by the Regional Food and Drug Director or his designee, and a written summary of the proceedings must be prepared by the Regional Food and Drug Director.

(A) The Regional Food and Drug Director may direct that the hearing be conducted in any suitable manner permitted by law and by this section. The Regional Food and Drug Director has the power to take such actions and make such rulings as are necessary or appropriate to maintain order and to conduct an informal, fair, expeditious, and impartial hearing, and to enforce the requirements concerning the conduct of hearings.

(B) Employees of FDA will first give a full and complete statement of the action that is the subject of the hearing, together with the information and reasons supporting it, and may present oral or written information relevant to the hearing. The party requesting the hearing may then present oral or written information relevant to the hearing. All parties may conduct reasonable examination of any person (except for the presiding officer and counsel for the parties) who makes any statement on the matter at the hearing.

(C) The hearing shall be informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views will be made or considered, but any party may comment upon or rebut any information and views presented by another party.

(D) The party requesting the hearing may have the hearing transcribed, at the party's expense, in which case a copy of the transcript is to be furnished to FDA. Any transcript of the hearing will be included with the Regional Food and Drug Director's report of the hearing.

(E) The Regional Food and Drug Director must prepare a written report of the hearing. All written material presented at the hearing will be attached to the report. Whenever time permits, the Regional Food and Drug Director may give the parties the opportunity to review and comment on the report of the hearing.

(F) The Regional Food and Drug Director must include as part of the report of the hearing a finding on the credibility of witnesses (other than expert witnesses) whenever credibility is a material issue, and must include a recommended decision, with a statement of reasons.

(iv) *Written appeal.* If the appellant appeals the detention order but does not request a hearing, the Regional Food and Drug Director must render a decision on the appeal affirming or revoking the detention order within 5-working days after the receipt of the appeal.

(v) *Regional Food and Drug Director decision.* If, based on the evidence presented at the hearing or by the appellant in a written appeal, the Regional Food and Drug Director finds that the shell eggs were produced or held in violation of this section, he must affirm the order that they be diverted, under the supervision of an officer or employee of FDA for processing under the EPIA or by a treatment that achieves at least a 5-log destruction of SE or destroyed by or under the supervision of an officer or employee of FDA; otherwise, the Regional Food and Drug Director must issue a written notice that the prior order is withdrawn. If the Regional Food and Drug Director affirms the order, he must order that the diversion or destruction be accomplished within 10-working days from the date of the issuance of his decision. The Regional Food and Drug Director's decision must be accompanied by a statement of the reasons for the decision. The decision of the Regional Food and Drug Director constitutes final agency action, subject to judicial review.

(vi) *No appeal.* If there is no appeal of the order and the person in possession of the shell eggs that are subject to the order fails to divert or destroy them within 10-working days, or if the demand is affirmed by the Regional Food and Drug Director after an appeal and the person in possession of such eggs fails to divert or destroy them within 10-working days, FDA's district office or, if applicable, the State or local representative may designate an officer or employee to divert or destroy such eggs. It shall be unlawful to prevent or to attempt to prevent such diversion or destruction of the shell eggs by the designated officer or employee.

(b) *Inspection.* Persons engaged in production of shell eggs must permit authorized representatives of FDA to make, at any reasonable time, an inspection of the egg production establishment in which shell eggs are being produced. Such inspection includes the inspection and sampling of shell eggs and the environment, the equipment related to production of shell eggs, the equipment in which shell eggs are held, and examination and copying of any records relating to such equipment or eggs, as may be necessary in the judgment of such representatives to determine compliance with the provisions of this section. Inspections may be made with or without notice and will ordinarily be made during regular business hours.

(c) *State and local cooperation.* Under sections 311 and 361 of the Public Health Service Act, any State or locality that is willing and able to assist the agency in the enforcement of §§ 118.4 through 118.10, and is authorized to inspect or regulate egg production establishments, may, in its own jurisdiction, enforce §§ 118.4 through

118.10 through inspections under paragraph (b) of this section and through administrative enforcement remedies specified in paragraph (a) of this section unless FDA notifies the State or locality in writing that such assistance is no longer needed. A state or locality may substitute, where necessary, appropriate State or local officials for designated FDA officials in this section. When providing assistance under paragraph (a) of this section, a State or locality may follow the hearing procedures set out in paragraphs (a)(2)(iii) through (a)(2)(v) of this section, or may utilize comparable State or local hearing procedures if such procedures satisfy due process.

(d) *Preemption.* No State or local governing entity shall establish, or continue in effect any law, rule, regulation, or other requirement regarding prevention of SE in shell eggs during production, storage, or transportation that is less stringent than those required by this part.

Dated: July 2, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–16119 Filed 7–7–09; 1:30 pm]

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Federal Register

Thursday,
July 9, 2009

Part III

Department of Agriculture

Rural Utilities Service

Department of Commerce

National Telecommunications and Information Administration

Broadband Initiatives Program; Broadband Technology Opportunities Program; Notice

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

RIN 0572–ZA01

Broadband Initiatives Program

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

RIN 0660–ZA28

Broadband Technology Opportunities Program

AGENCIES: Rural Utilities Service (RUS), Department of Agriculture, and National Telecommunications and Information Administration (NTIA), Department of Commerce.

ACTION: Notice of Funds Availability (NOFA) and solicitation of applications.

SUMMARY: RUS and NTIA announce general policy and application procedures for broadband initiatives established pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act). RUS is establishing the Broadband Initiatives Program (BIP) which may extend loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. NTIA is establishing the Broadband Technology Opportunities Program (BTOP) which makes available grants for deploying broadband infrastructure in unserved and underserved areas in the United States, enhancing broadband capacity at public computer centers, and promoting sustainable broadband adoption projects. In facilitating the expansion of broadband communications services and infrastructure, both programs will advance the objectives of the Recovery Act to spur job creation and stimulate long-term economic growth and opportunity.

DATES: Applications will be accepted between July 14, 2009, at 8 a.m. Eastern Time (ET) until August 14, 2009, at 5 p.m. ET.

Application Submission: The application packages for electronic and paper submissions will be available at *http://www.broadbandusa.gov*.

Electronic submissions: Electronic submissions of applications will allow for the expeditious review of an applicant's proposal consistent with the goals of the Recovery Act. As a result, all applicants requesting more than $1 million in assistance (in the form of grants, loans, or a combination of grants and loans) must file their application electronically. Applicants whose authorized representatives are individuals with disabilities, however, may submit a paper application irrespective of the funding size of their request.[1] In addition, applicants who are requesting less than $1 million in assistance may forego the electronic filing requirement if filing electronically would impose a hardship on the applicant. Electronic applications must be submitted by 5 p.m. ET on August 14, 2009. The government electronic application system will provide a date and time stamped confirmation number that will serve as proof of submission.

Paper submissions: Applicants requesting less than $1 million in assistance (in the form of grants, loans, or a combination of grants and loans) may file their applications in a paper format if filing electronically would impose a hardship on the applicants. Applicants whose authorized representatives are individuals with disabilities may file their applications in a paper format irrespective of the funding size of their request. To the extent that applicants use electronic word processing software to create paper submissions, they should include in their filing, to the extent possible, an electronic copy of the paper application on an appropriate media such as a CD. This will assist the agencies in processing paper applications. Paper submissions must be postmarked no later than August 14, 2009, or hand-delivered no later than 5 p.m. ET on August 14, 2009, to the addresses listed in the **SUPPLEMENTARY INFORMATION** in this NOFA.

Contact Information: For general inquiries regarding BIP, contact David J. Villano, Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), e-mail: *bip@wdc.usda.gov* telephone: (202) 690–0525. For general inquiries regarding BTOP, contact Anthony Wilhelm, Deputy Associate Administrator, Infrastructure Division, Office of Telecommunications and Information Applications, National Telecommunications and Information Administration, U.S. Department of Commerce (DOC), email: *btop@ntia.doc.gov*, telephone: (202) 482–2048. For inquiries regarding BIP and BTOP compliance requirements, including applicable federal rules and regulations protecting against fraud, waste and abuse, contact *bipcompliance@wdc.usda.gov* for BIP and *btopcompliance@ntia.doc.gov* for BTOP. You may obtain additional information regarding applications for BIP via the Internet at *http://www.usda.gov/rus/telecom/* and for BTOP at *http://www.ntia.doc.gov/broadbandgrants/*.

Authority: This notice is issued pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009) and the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance (CFDA) Number: Broadband Initiatives Program (BIP)—10.787; Broadband Technology Opportunities Program (BTOP)—11.557.

Additional Items in Supplementary Information

I. Overview: Describes the purposes of the Recovery Act, the broadband goals of the Recovery Act, and the establishment of BIP and BTOP.

II. Funding Opportunity Description: Provides a more thorough description of BIP and BTOP.

III. Definitions: Sets forth the key statutory terms and other terms used in BIP and BTOP.

IV. Award Information: Describes funding availability, grant and loan terms, as applicable, and other award information.

V. Eligibility Information for BIP and BTOP: Establishes eligibility criteria, eligibility factors, eligible and ineligible costs, and other eligibility requirements.

VI. Application and Submission Information: Provides information regarding how to apply, application materials, and the application process.

VII. Application Review Information: Establishes the evaluation criteria for application review.

VIII. Anticipated Announcement and Award Dates: Identifies the initial announcement date for certain awards, and provides other information regarding BIP and BTOP.

IX. Award Administration Information: Provides award notice information, administrative and national policy requirements, terms and conditions, and other reporting requirements for award recipients.

X. Other Information: Sets forth guidance on funding, compliance with various laws, confidentiality, discretionary awards, and authorized signatures.

I. Overview

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) into law.[2] The essential goal of the Recovery Act is to provide a ''direct fiscal boost to help lift our Nation from the greatest economic crisis in our lifetimes and lay the foundation for

[1] *See* Rehabilitation Act of 1973 § 508, 29 U.S.C. 794d.

[2] American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009).

future growth.'' [3] Accordingly, the Recovery Act identifies five overall purposes: A. To preserve and create jobs and promote economic recovery; B. to assist those most impacted by the recession; C. to provide investments needed to increase economic efficiency by spurring technological advances in science and health; D. to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and E. to stabilize state and local government budgets.[4] The Recovery Act further instructs the President and the heads of federal departments and agencies to manage and expend Recovery Act funds to achieve these five purposes, ''commencing expenditures and activities as quickly as possible consistent with prudent management.'' [5]

Consistent with the purposes described above, the Recovery Act provides RUS and NTIA with $7.2 billion to expand access to broadband services in the United States. In so doing, it recognizes the growing importance of access to broadband services to economic development and to the quality of life of all Americans. Specifically, the Recovery Act tasks RUS, NTIA, and the Federal Communications Commission (FCC) with leading the federal government's efforts to begin the process of significantly expanding the reach and quality of broadband services.

RUS, NTIA, and the FCC have worked closely to leverage the authorities and resources provided in the Recovery Act to develop a coordinated federal government approach to addressing the challenge of rapidly expanding the access and quality of broadband services across the country. Each agency brings unique skills and resources to this effort. RUS has been the federal government leader in bringing telecommunications to rural America for decades. NTIA has experience in awarding technology-related grants through the Technology Opportunities Program and serves as the President's principal advisor on telecommunications and information policies.[6] And NTIA and the FCC together are responsible for the development of federal telecommunications policy.

Additionally, to aid in achieving Recovery Act objectives, on March 10, 2009, RUS, NTIA, and the FCC co-sponsored a public meeting to initiate public outreach about the current availability of broadband service in the United States and ways in which the availability of broadband services could be expanded.[7] The March 10 meeting was followed by the release of a Request for Information (RFI) and six days of additional public meetings and field hearings during March.[8] The meetings and hearings included nearly 120 panelists—including representatives from consumer and public interest groups, state and local governments, tribal governments, minority and vulnerable populations, industry, academia, and other institutions—who provided comment on how to make RUS's and NTIA's broadband initiatives effective, equitable, and efficient.[9]

In response to the RFI and the public meetings, RUS and NTIA received over 1,000 comments from institutions and individuals.[10] RUS and NTIA received comments on multiple issues surrounding BIP and BTOP, including how the terms ''broadband,'' ''unserved area,'' and ''underserved area'' should be defined, resulting in the definitions and program requirements announced in this NOFA. These comments played a crucial role in formulating the structure of the RUS and NTIA broadband programs. For further discussion and explanation of the agencies' reliance on the public comments in the policy decisions involved in BIP and BTOP, see the attached Policy Justification found in the Appendix at the end of this NOFA.

RUS and NTIA Recovery Act programs implement new authorities. Specifically, the Recovery Act expands RUS's existing authority to make loans and provides new authority to make grants to facilitate broadband deployment in rural areas. The Recovery Act appropriates $2.5 billion of budget authority for RUS to extend loans, loan/grant combinations, and grants to projects where at least 75 percent of an RUS-funded area is in a rural area that lacks sufficient access to high speed broadband service to facilitate rural economic development. RUS has developed BIP to fund broadband infrastructure in qualifying areas.[11]

The Recovery Act also appropriates $4.7 billion to NTIA to provide grants for broadband initiatives throughout the United States, including unserved and underserved areas.[12] NTIA is tasked to spur job creation, stimulate long-term economic growth and opportunity, and narrow gaps in broadband deployment and adoption. The NTIA program is titled BTOP. Consistent with its appropriation, BTOP is divided into three categories of projects: Broadband Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption.

Applications to fund broadband infrastructure projects in areas which are at least 75 percent rural are required to be submitted to RUS for consideration under BIP. If such applicants intending to serve rural areas also choose to be considered for BTOP funding, then they must complete the additional elements required of BTOP infrastructure applicants. NTIA may make awards to such applications NTIA determines to be meritorious after RUS has reviewed the application and determined not to fund it. All other applications for Broadband Infrastructure projects, as well as applications for Public Computer Centers or Sustainable Broadband Adoption projects, must be submitted to NTIA for consideration under BTOP.

The purpose of this NOFA is to describe the availability of the BIP and BTOP funds and set forth the application requirements for those entities wishing to participate in one or more of the Recovery Act's broadband programs. Applicants may submit projects that fit within one or more categories. Each application will be compared against objective criteria to determine whether an award is warranted.

In order to balance the burdens on applicants versus the needs of the agencies to efficiently evaluate applications, RUS and NTIA have developed a two-step application process. In step one, the goal is to create a pool of viable and potentially fundable applications. Step two is to fully validate the submissions in step one and identify the most highly qualified applications for funding.

Rapid disbursement of the funds available under this program is important because of the short time frames imposed by the Recovery Act. Additionally, a commitment to transparency in the award process and

[3] President Obama, Statement on Signing the American Recovery and Reinvestment Act of 2009 (Feb. 17, 2009).

[4] Recovery Act § 3(a), 123 Stat. at 115–16.

[5] *See id.* § 3(b), 123 Stat. at 116.

[6] *See* Technology Opportunities Program, *http://www.ntia.doc.gov/otiahome/top/index.html;* NTIA Organization Act of 1992, 47 U.S.C. 901 *et seq.*

[7] *See* Joint Notice of Public Meeting, 74 FR 8914 (Feb. 27, 2009).

[8] *See* Joint Request for Information and Notice of Public Meetings, 74 FR 10716 (Mar. 12, 2009).

[9] Agendas, transcripts, and presentations from each meeting are available on NTIA's Web site at: *http://www.ntia.doc.gov/broadbandgrants/meetings.html.*

[10] Comments may be viewed on NTIA's Web site at: *http://www.ntia.doc.gov/broadbandgrants/comments.*

[11] *See* Recovery Act div. A, tit. I, 123 Stat. at 118.

[12] *See id.* div. A, tit. II, 123 Stat. at 128.

rigorous reporting requirements will help ensure accountability.

Approximately $4 billion of program level funding has been allocated to this NOFA by RUS and NTIA. The remaining funds will be made available under subsequent NOFAs. The requirements for subsequent NOFAs may differ from this NOFA to better achieve the agencies' priorities.

II. Funding Opportunity Description

A. BIP

1. BIP Objectives

The Recovery Act expands RUS's existing authority to make loans and provides new authority to make grants for the purpose of facilitating broadband deployment in rural communities. Specifically, the Recovery Act requires that 75 percent of a funded area be in a rural area that lacks sufficient access to high speed broadband service to facilitate economic development. Because of the short time frames imposed by the Recovery Act, the requirements outlined in this NOFA will be used to govern program implementation.

Under BIP, RUS will award grants, loans, and loan/grant combinations for broadband infrastructure. Grants under BIP are to be used to fund applications proposing to exclusively serve remote, unserved, rural areas. BIP loan and loan/grant combination funds are to be used to provide funding to applications proposing to serve non-remote and underserved rural areas. Projects which include non-remote and remote areas will be funded by loans or loan/grant combinations. The size of the grant portion of any loan/grant combination award is determined by the applicant, but cannot exceed the amount of the loan portion of the award. RUS will favor applications that propose a higher percentage of loan funds. Applicants may request 100 percent loan funding. RUS will seek to make the extension of broadband infrastructure into difficult-to-serve areas affordable—a key objective of BIP funding—through substantial grant funds and attractive loan terms with reasonable security requirements.

The Recovery Act establishes the rapid disbursement of the funds as an important priority for the BIP program. However, the program also must be administered judiciously to ensure responsible use of public funds. To balance these two objectives, RUS will favor funding projects that can commence construction promptly and demonstrate technical and financial feasibility, organizational capacity, and compliance with other Administration priorities. A commitment to transparency in the award process and rigorous reporting requirements will help ensure accountability.

2. BIP Priorities

The Recovery Act requires that 75 percent of a BIP-funded area be in a rural area that ''lacks sufficient access to high speed broadband service to facilitate rural economic development.'' [13] Additionally, the Recovery Act mandates that priority be given to projects which: a. Give end users a choice of providers; b. Serve the highest proportion of rural residents that lack access to broadband service; c. Are projects of current or former RUS borrowers (Title II borrowers); and d. Are fully funded and ready to start once Recovery Act funding is received. BIP application scoring criteria awards projects that implement these priorities.[14]

3. BIP Application and Selection Process

RUS has adopted a two-phase application process. Step one of the application process requires the submission of the information described in section VI.D.1.a. This information will be evaluated by RUS for completeness and eligibility. Ineligible and incomplete applications will be rejected. Eligible applications will be evaluated and ranked based on the applicable scoring criteria described in section VII. The highest scoring applications will be invited to participate in step two of the application process by submitting the additional documentation described in section VI.D.1.b. to further support the applicants' representations made in step one of the application process. If the additional documentation does not adequately verify the first submission, then the application will be rejected.

B. BTOP

1. BTOP Objectives

Section 6001 of the Recovery Act establishes a national broadband service development and expansion program to promote five core purposes:

a. To provide access to broadband service to consumers residing in unserved areas of the country;

b. To provide improved access to broadband service to consumers residing in underserved areas of the country;

c. To provide broadband access, education, awareness, training, equipment, and support to community anchor institutions (*e.g.,* schools, libraries, medical facilities), or organizations and agencies serving vulnerable populations (*e.g.,* low-income, unemployed, aged), or job-creating strategic facilities located in state- or federally designated economic development areas;

d. To improve access to, and use of, broadband service by public safety agencies; and

e. To stimulate the demand for broadband, economic growth, and job creation.[15]

The Recovery Act provides $4.7 billion to NTIA for BTOP, to be awarded by September 30, 2010, which represents a significant investment to advance President Obama's national broadband strategy.[16] Of this amount, at least $200 million will be made available for competitive grants for expanding public computer center capacity. In addition, at least $250 million will be available for competitive grants for innovative programs to encourage sustainable adoption of broadband services. Up to $350 million is available from the Recovery Act to fund the State Broadband Data and Development Grant Program authorized by the Broadband Data Improvement Act [17] and to support the development and maintenance of a nationwide broadband map for use by policymakers and consumers. A forthcoming NOFA will outline policies and procedures for the State Broadband Data and Development Grant Program.

BTOP funds are available through three categories of eligible projects: Broadband Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption.[18] The Broadband Infrastructure category consists of two components—Last Mile and Middle Mile—and will fund projects to deliver broadband access to unserved and underserved areas. The Public Computer Center category will fund projects that expand public access to broadband service and enhance broadband capacity at entities, such as community colleges and public libraries, that permit the public to use these computing centers.[19] The Sustainable Broadband Adoption category will fund innovative projects that promote broadband demand, including projects focused on providing broadband education, awareness, training, access, equipment or support,

[13] *Id.* div. A, tit. I, 123 Stat. at 118.

[14] *Id.* at 118–19.

[15] *See id.* § 6001(b), 123 Stat. at 512–13.

[16] *See id.* div. A, tit. II, 123 Stat. at 128.

[17] Public Law 110–385, 122 Stat. 4096 (to be codified at 47 U.S.C. 1301 *et seq.*).

[18] *See* Recovery Act div. A, tit. II, 123 Stat. at 128.

[19] *Id.* div. A, tit. II & § 6001(b)(3), 123 Stat. at 128, 512–13.

particularly among vulnerable population groups where broadband technology has traditionally been underutilized.[20]

The Recovery Act also recognizes the valuable role that the states and territories can play in implementing BTOP, and permits NTIA to consult with them in identifying unserved and underserved areas within their borders and in allocating grant funds for projects in or affecting their jurisdictions.[21] Consistent with the Recovery Act, NTIA has consulted with the FCC on this NOFA.

2. BTOP Priorities

All projects funded under BTOP must advance one or more of the five statutory purposes outlined above. The program is designed to extend broadband access to unserved areas, improve access to underserved areas, and expand broadband access to a wide range of institutions and individuals, including vulnerable populations. It will seek to serve the highest priority needs for federal investment—particularly projects that offer the potential for economic growth and job creation, and provide benefits to education, health care, and public safety. The program will support viable, sustainable, and scalable projects. NTIA will favor proposals that satisfy the public-interest objectives specified in the statute and detailed in this NOFA. These projects can serve as models for future investors once economic conditions improve.

NTIA expects to distribute grants across geographic areas addressing these various public purposes. It will issue awards on a technologically neutral basis, and expects to support projects employing a range of technologies (*e.g.,* fixed and mobile wireless, fiber, satellite). In making these awards, NTIA will also take into consideration whether an applicant is a socially and economically disadvantaged small business concern as defined under section 8(a) of the Small Business Act (SBA) (15 U.S.C. 637(a)(4)).[22] Finally, it is also important to highlight the desire of the Recovery Act to extend non-discrimination and network interconnection obligations on awardees. In particular, the Recovery Act directs NTIA to impose contractual conditions on BTOP grants that would, at a minimum, adhere to the principles contained in the FCC's broadband policy statement.[23]

3. BTOP Application and Selection Process

NTIA will employ a two-step application review process. First, however, NTIA will conduct an initial screen of applications to determine whether an application meets the mandatory threshold requirements, such as application completeness, set forth in section V.C. of this NOFA. These are mandatory threshold requirements that qualify an application for further review. Applicants that fail to meet any of the eligibility factors will be notified in writing of the reason for the rejection. Subsequent to this initial screening, applications will proceed to the step one review process. The applications will receive at least three independent reviews (by a three-member review panel) against the eligibility factors as well as against the evaluation criteria provided in this NOFA. This review panel will be comprised of at least three peer/expert reviewers who have demonstrated subject-matter expertise. No consensus advice will be given by the reviewers. Each reviewer will independently score the application, and reviewer scores will be averaged. Based on these scores, applications that are considered the most highly qualified will advance to the step two, ''due diligence,'' review for further consideration. All other applications will be rejected, and the applicants will be notified in writing of the reason for the rejection.

In step two of the review process, the remaining applicants will be asked to submit additional information, as appropriate, such as more detailed plans or supporting documents[24] to further substantiate the representations made in their application.

The supplemental information will be reviewed and analyzed by NTIA staff with the support of external engineering, business, and subject-matter experts to evaluate the consistency of the applications with the supporting documents and ensure applications merit awards. Applicants whose supporting documents do not adequately substantiate the representations in their application may be rejected, and the applicants will be notified in writing of the reason for the rejection. Upon completion of its due diligence, NTIA program staff will complete its analysis of each application by assigning a rating based on its consistency with the representations made in the application. This rating will be based on a five-point scale (1–5), with a five representing the highest consistency and conformity with the information already provided, especially on technical and budget considerations.

All states will be provided an opportunity to make recommendations concerning the allocation of funds for qualifying projects in or affecting the individual states during step two of the BTOP application process, regardless of their participation in the State Broadband Data and Development Grant Program. During step two of the BTOP application process, the Governor's office of each state will receive a list of the applications under consideration. States may provide a list and prioritization of recommended projects, along with an explanation of why the selected proposals meet the greatest needs of the state. States are strongly encouraged to provide mapping and planning data to support their recommendations. States participating in the State Broadband Data and Development Grant Program may rely on their submission under that program to fulfill this request. All states will have 20 calendar days from the date of notification to submit to NTIA their recommendations.

Upon completion of the step two review, NTIA reserves the right to discuss with the applicant specific modifications to the application to resolve any differences that may exist between the applicant's original request and what NTIA is willing to fund. Not all applicants contacted will necessarily receive a BTOP award. The Director of BTOP (BTOP Director) will then prepare and present a package of recommended grant awards to the Associate Administrator for the Office of Telecommunications and Information Applications (OTIA Associate Administrator) for review and approval. The BTOP Director's recommendations and the OTIA Associate Administrator's review and approval will take into account the following selection factors:

a. The Evaluation Criteria Review score of the peer/expert reviewers;

b. The Due Diligence Review rating of the federal reviewers and the analysis of NTIA program staff;

c. Satisfaction of the program's purpose and priorities as described in the section entitled ''Program Description'' (*e.g.,* considering whether the applicant is a socially and economically disadvantaged small business concern; ensuring that service for health care delivery, education, and children is enhanced to the greatest

[20] *Id.* div. A, tit. II & 6001(b)(5), 123 Stat. at 128, 513.

[21] *Id.* § 6001(c), 123 Stat. at 513.

[22] *See id.* § 6001(h)(3), 123 Stat. at 514–15.

[23] *Id.* § 6001(j), 123 Stat. at 515.

[24] *See infra* section VI.D.1.b. for more details regarding the required additional information.

population of users; improve access to and use by public safety; ensuring that the greatest broadband speed is provided to the greatest population of users as set forth in the Recovery Act; providing broadband access to consumers in unserved areas; improving broadband service in underserved areas);

d. The geographic distribution of the proposed grant awards and diversity of populations served (*e.g.,* ensuring that, to the extent practical, NTIA award not less than one grant in each state as set forth in the Recovery Act);

e. The range of technologies and uses of the technologies employed by the proposed grant awards;

f. Avoidance of redundancy, conflicts with the initiatives of other federal agencies, including Department of Agriculture loan and grant programs for broadband services, and, to the extent practical, avoidance of unjust enrichment; [25]

g. The availability of funds; and

h. If applicable, the recommendations of states, including, but not limited to, such recommendations as described in their application for the State Broadband Data and Development Grant Program or as subsequently provided to NTIA either on its own or along with the submission of state-level broadband maps.[26]

Upon approval by the OTIA Associate Administrator, the BTOP Director's recommendation will then be presented to the Selecting Official, the Assistant Secretary of NTIA. The Assistant Secretary selects the applications for grant awards, taking into consideration the BTOP Director's recommendations and the degree to which the application package, taken as a whole, satisfies the selection factors described above and the program's stated purposes and priorities as set forth in section II.B of this NOFA. Awards will be made on a rolling basis subject to the availability of funds.

III. Definitions

The terms and conditions provided in this NOFA are applicable to and for purposes of this NOFA only. These terms, conditions, and definitions may change in subsequent NOFAs issued regarding BIP and BTOP.

Administrator means the RUS Administrator, or the Administrator's designee.

Applicant means an entity requesting approval of an award under this NOFA.

Assistant Secretary means the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, Department of Commerce, or the Assistant Secretary's designee.

Award documents mean, collectively, grant agreement, loan documents and/or loan/grant combination documents.

Award means a grant, loan, or loan/grant combination made under this NOFA by either RUS or NTIA.

Awardee means a grantee, borrower, or borrower/grantee.

BIP means the Broadband Initiatives Program, administered by the RUS, under the Recovery Act.

Borrower means the recipient of a RUS loan under this NOFA.

Borrower/grantee means the recipient of a RUS loan/grant combination under this NOFA.

Broadband means providing two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users.

BTOP means the Broadband Technology Opportunities Program, administered by NTIA, under the Recovery Act.

Build-out means the construction or improvement of facilities and equipment as specified in the application.

Composite economic life means the weighted (by dollar amount of each class of facility in the loan) average economic life of all classes of facilities financed by a BIP loan.

Community anchor institutions means schools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and agencies that provide outreach, access, equipment and support services to facilitate greater use of broadband service by vulnerable populations, including low-income, unemployed, and the aged.

Critical community facilities means public facilities that provide community services essential for supporting the safety, health, and well-being of residents, including, but not limited to, emergency response and other public safety activities, hospitals and clinics, libraries and schools.

Current ratio means the BIP applicant's current assets divided by the current liabilities; all financial terms are defined by GAAP.

Economic life means the estimated useful service life of an asset as determined by RUS in connection with awards made under BIP.

Forecast period means the time period used by RUS and NTIA to determine if an application is financially feasible. Financial feasibility of an application is based on five-year projections.

GAAP means generally accepted accounting principles.

Grant agreement means the agreement between RUS or NTIA and the grantee for grants awarded under this NOFA, including any amendments thereto, available for review at *http://www.broadbandusa.gov.*

Grant funds mean federal funds provided pursuant to a grant made under this NOFA.

Grantee means the recipient of a grant under this NOFA.

Last Mile project means any infrastructure project the predominant purpose of which is to provide broadband service to end users or end-user devices (including households, businesses, community anchor institutions, public safety entities, and critical community facilities).

Last Mile Non-Remote project means any broadband infrastructure project (or group of projects) that is not exclusively a last mile remote area project, and that provides broadband service to the end user or end-user devices in a service area eligible for BIP funding.

Last Mile Remote Area project means any broadband infrastructure project that provides broadband service to the end user or to end-user devices only in a remote area(s) eligible for BIP funding.

Loan means any loan made under this NOFA by RUS.

Loan contract means the loan agreement between RUS and the borrower, including all amendments thereto, available for review at *http://www.broadbandusa.gov.*

Loan documents mean the loan contract, note(s), and security instrument between the borrower and RUS and any associated documents pertaining to the loan.

Loan/grant means any loan/grant combination made under this NOFA by RUS.

Loan/grant contract means the loan/grant contract between RUS and the borrower/grantee, including all amendments thereto available at *http://www.broadbandusa.gov*.

Loan/grant documents mean the loan/grant contract, note(s), and security

[25] Recovery Act § 6001(h)(2)(D), 123 Stat. at 515.

[26] Consistent with Recovery Act, the application for the State Broadband Data and Development Grant Program will provide participating states the opportunity to identify unserved and underserved areas in their state. In their Mapping Grant application, states may also make recommendations concerning the allocation of funds for projects in or affecting the individual states at the time the state submits its Mapping Grant application.

instrument between the borrower/grantee and RUS and any associated documents pertaining to the loan/grant.

Middle Mile project means a broadband infrastructure project that does not predominantly provide broadband service to end users or to end-user devices, and may include interoffice transport, backhaul, Internet connectivity, or special access.

Pre-application expense means any reasonable expense incurred after the release of this NOFA to prepare an application, including engineering costs and accountant/consultant fees.

Proposed funded service area means the area (either in all or part of an existing service area or a new service area) where the applicant is requesting BIP or BTOP funds to provide broadband service pursuant to this NOFA.

Public computer center means a place, including but not limited to community colleges, libraries, schools, youth centers, employment service centers, Native American chapter houses, community centers, senior centers, assistive technology centers for people with disabilities, community health centers, and Neighborhood Network Centers in public housing developments, that provide broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities and people with disabilities.

RE Act means the ''Rural Electrification Act of 1936,'' as amended (7 U.S.C. 901 *et seq.*).

Recovery Act means the American Recovery and Reinvestment Act of 2009, Public Law No. 111–5, 123 Stat. 115 (2009).

Remote area means an unserved, rural area 50 miles from the limits of a non-rural area.

Rural area means any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within: 1. A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or 2. an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the latest decennial census of the U.S. Census Bureau.

Security document means any mortgage, deed of trust, security agreement, financing statement, or other document that RUS determines is necessary to perfect its interest in the security for a loan or loan/grant.

Service area means the entire area within which a service provider either offers or intends to offer broadband service and may include the proposed funded service area.

State means, for purposes of BTOP, a state or political subdivision thereof, the District of Columbia, or a territory or possession of the United States.

TIER means times interest earned ratio. TIER is the ratio of a BIP applicant's net income (after taxes) plus (adding back) interest expense, all divided by interest expense (existing and any new interest expense including the interest expense associated with the proposed loan); all financial terms are defined by GAAP.

Underserved area means a proposed funded service area, composed of one or more contiguous census blocks [27] meeting certain criteria that measure the availability of broadband service and the level of advertised broadband speeds. These criteria conform to the two distinct components of the Broadband Infrastructure category of eligible projects—Last Mile and Middle Mile. Specifically, a proposed funded service area may qualify as underserved for last mile projects if at least one of the following factors is met, though the presumption will be that more than one factor is present: 1. No more than 50 percent of the households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed (set forth in the definition of broadband above); 2. No fixed or mobile broadband service provider advertises broadband transmission speeds of at least three megabits per second (''mbps'') downstream in the proposed funded service area; or 3. The rate of broadband subscribership for the proposed funded service area is 40 percent of households or less. A proposed funded service area may qualify as underserved for Middle Mile projects if one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for Last Mile projects.

Unserved area means a proposed funded service area, composed of one or more contiguous census blocks, where at least 90 percent of households in the proposed funded service area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband transmission speed (set forth in the definition of broadband above). A household has access to broadband service if the household can readily subscribe to that service upon request.

[27] Census blocks are the smallest geographic areas for which the U.S. Bureau of the Census collects and tabulates decennial census data. Census blocks are formed by streets, roads, railroads, streams and other bodies of water, other visible physical and cultural features, and the legal boundaries shown on Census Bureau maps. Census data at this level serve as a valuable source for small-area geographic studies. See the Census Bureau's Web site at *http://www.census.gov* for more detailed information on its data gathering methodology.

IV. Award Information

A. Available Funds for BIP

1. General

Approximately $2,400,000,000 in program level funding has been set aside for funding opportunities under this NOFA.

2. Funding Limits

Award amounts under this NOFA will be limited as follows:

a. Last Mile Projects

Up to $1,200,000,000 is available for Last Mile projects. These projects may consist of Remote Area projects or Non-Remote projects. Up to $400,000,000 is available for grants for Remote Area projects. Up to $800,000,000 is available for loans or loan/grant combinations for Non-Remote projects.

b. Middle Mile Projects

Up to $800,000,000 is available for loans or loan/grant combinations for Middle Mile projects.

3. Repooling

For categories that do not receive applications that request the full amount of allocated funds, excess funds may be directed to another category at RUS's discretion. Additionally, if RUS does not make awards in the full amount allocated to a category, RUS may, at its discretion, direct such excess funds to another category.

4. National Reserve

Up to $325,000,000 is available for a national reserve. These funds may be used to augment the BIP funding categories established above, or remain unused for subsequent NOFAs. In any event, all funds will be awarded no later than September 30, 2010.

5. Unused Funds

Funds made available but not used for this NOFA may be directed to subsequent NOFAs.

6. Award Period

All awards under BIP must be made no later than September 30, 2010. While the completion time will vary depending on the complexity of the project, award recipients must

substantially complete projects supported by this program no later than two years, and projects must be fully completed no later than three years, following the date of issuance of the award.

7. Type of Funding Instrument

The funding instruments for BIP will be a grant, loan, and loan/grant combination.

B. Available Funds for BTOP

1. General

Up to $1,600,000,000 in budget authority has been set aside for funding opportunities under this NOFA. Publication of this NOFA does not obligate NTIA to award any specific project or obligate all or any parts of any available funds, although the Recovery Act indicates that the Assistant Secretary shall award at least one grant in each state to the extent practical by September 30, 2010.[28]

2. Funding Limits

Up to $1.4 billion is available to be awarded under this NOFA and will be allocated in the following categories:

a. Broadband Infrastructure projects will be awarded no greater than $1.2 billion;

b. Public Computer Center projects will be awarded no greater than $50 million; and

c. Sustainable Broadband Adoption projects will be awarded no more than $150 million.

3. Repooling

Subject to the statutory thresholds set forth in the Recovery Act, NTIA retains the discretion to divert funds from one category of projects to another.

4. National Reserve

Up to $200 million is available for a national reserve. These funds may be used to augment the BTOP funding categories established above, or remain unused for subsequent NOFAs. In any event, all funds will be awarded no later than September 30, 2010.

5. Unused Funds

Funds not awarded under this NOFA may be used to fund subsequent NOFAs.

6. Award Period

All awards under BTOP must be made no later than September 30, 2010.[29] While the completion time will vary depending on the complexity of the project, grant recipients must substantially complete projects supported by this program no later than two years, and projects must be fully completed no later than three years, following the date of issuance of the grant award.[30]

7. Type of Funding Instrument

The funding instrument for BTOP will be a grant.

V. Eligibility Information for BIP and BTOP

A. In General

Applicants must satisfy the following eligibility requirements to qualify for funding.

B. Eligible Entities

1. Applicant Organization

The following entities are eligible to apply for assistance:

a. States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof;

b. The District of Columbia;

c. A territory or possession of the United States;

d. An Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b));

e. A native Hawaiian organization;

f. A non-profit foundation, a non-profit corporation, a non-profit institution, or a non-profit association;

g. Other non-profit entities;

h. For-profit corporations;

i. Limited liability companies; and

j. Cooperative or mutual organizations.

2. BTOP Public Interest Finding

Section 6001(e)(1)(C) of the Recovery Act authorizes the Assistant Secretary to find by rule that it is in the public interest for any entity not otherwise encompassed by section 6001(e)(1) to be eligible for a BTOP grant to the extent that such finding will promote the purposes of BTOP in a technologically neutral manner. Through this NOFA, the Assistant Secretary has found it to be in the public interest to permit for-profit corporations and non-profit entities (not otherwise encompassed by section 6001(e)(1)(B)) that are willing to promote the goals of the Recovery Act and comply with the statutory requirements of BTOP to be eligible for a grant. By adopting this broad approach, the Assistant Secretary intends to invite a diverse group of applicants to participate in BTOP and to expand broadband capabilities in a technologically neutral manner.[31]

C. Application Eligibility Factors

The following eligibility factors establish basic requirements that all applicants must comply with in order to be eligible for an award. Applicants failing to comply with these requirements will not have their applications considered. This section lists eligibility factors (a) shared by BIP and all three BTOP project categories; (b) shared by BIP and BTOP Broadband Infrastructure projects; (c) that apply only to BIP projects; and (d) that apply only to the three BTOP project categories.

1. Eligibility Factors Common to All BIP and BTOP Applicants

a. Fully Completed Application

Applicants must submit a complete application and provide all supporting documentation required for the application.

b. Timely Completion

A project is eligible only if the application demonstrates that the project can be substantially completed within two years of the date of issuance of the grant, loan, or loan/grant award and finished within three years of the date of the award. For BIP, a project is considered ''substantially complete'' when an awardee has received 67 percent of its award funds. For BTOP, a project is considered ''substantially complete'' when the awardee has met 67 percent of the project milestones and received 67 percent of its award funds.

2. Additional Factors Applicable to BIP and BTOP Broadband Infrastructure Applicants

a. Broadband Service

All Broadband Infrastructure applicants must propose to offer service meeting the definition of Broadband as defined herein.

b. Technical Feasibility

Only projects that RUS and NTIA determine to be technically feasible will be eligible for an award under this NOFA. At minimum, applicants will be required to submit a system design and project timeline, certified by a professional engineer, for any project requesting funds over $1 million.

c. Nondiscrimination and Interconnection

All Broadband Infrastructure (both BIP and BTOP) applicants, must commit to the following Nondiscrimination and Interconnection Obligations: i. Adhere to the principles contained in the FCC's Internet Policy Statement (FCC 05–151, adopted August 5, 2005); ii. not favor

[28] Recovery Act § 6001(h)(1), 123 Stat. at 514.

[29] *Id.* § 6001(d)(2), 123 Stat. at 513.

[30] *Id.* § 6001(d)(3), 123 Stat. at 513.

[31] *Id.* § 6001(e)(1)(C), 123 Stat. at 513.

any lawful Internet applications and content over others; iii. display any network management policies in a prominent location on the service provider's web page and provide notice to customers of changes to these policies (awardees must describe any business practices or technical mechanisms they employ, other than standard best efforts Internet delivery, to allocate capacity; differentiate among applications, providers, or sources; limit usage; and manage illegal or harmful content); iv. connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network; and v. offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic. Applicants must disclose their proposed interconnection, nondiscrimination, and network management practices with the application.

All these requirements shall be subject to the needs of law enforcement and reasonable network management. Thus, awardees may employ generally accepted technical measures to provide acceptable service levels to all customers, such as caching and application-neutral bandwidth allocation, as well as measures to address spam, denial of service attacks, illegal content, and other harmful activities. In addition to providing the required connection to the Internet, awardees may offer managed services, such as telemedicine, public safety communications, and distance learning, which use private network connections for enhanced quality of service, rather than traversing the public Internet.

An awardee may satisfy the requirement for interconnection by negotiating in good faith with all parties making a bona fide request. The awardee and requesting party may negotiate terms such as business arrangements, capacity limits, financial terms, and technical conditions for interconnection. If the awardee and requesting party cannot reach agreement, they may voluntarily seek an interpretation by the FCC of any FCC rules implicated in the dispute. If an agreement cannot be reached within 90 days, the party requesting interconnection may notify RUS or NTIA in writing of the failure to reach satisfactory terms with the awardee. The 90-day limit is to encourage the parties to resolve differences through negotiation.

With respect to non-discrimination, those who believe an awardee has failed to meet the non-discrimination obligations should first seek action at the FCC of any FCC rules implicated in the dispute. If the FCC chooses to take no action, those seeking recourse may notify RUS or NTIA in writing about the alleged failure to adhere to commitments of the award.

Entities that successfully reach an agreement to interconnect with a system funded under BIP may not use that interconnection agreement to provide services that duplicate services provided by projects funded by outstanding telecommunications loans made under the RE Act. Further, interconnection may not result in a BIP-funded facility being used for ineligible purposes under the Recovery Act.

These conditions will apply for the life of the awardee's facilities used in the project and not to any existing network arrangements. The conditions apply to any contractors or subcontractors of such awardees employed to deploy or operate the network facilities for the infrastructure project. Recipients that fail to accept or comply with the terms listed above may be considered in default or breach of their loan or grant agreements. RUS and NTIA may exercise all available remedies to cure the default.

d. Last Mile Coverage Obligation

An applicant for a Last Mile Broadband Infrastructure project must identify the census block(s) selected for the project and provide documentation supporting the applicant's determination that the proposed funded service area is either unserved or underserved. There is a presumption that the applicant will provide service to the entire territory of each census block included in the proposed funded service area, unless the applicant files a waiver and provides a reasoned explanation as to why providing coverage for an entire census block is infeasible. Applicants may be permitted to serve less than an entire census block under certain conditions. For example, an applicant might request to be relieved of this requirement if the census block exceeds 100 square miles or more or is larger than the applicant's authorized operating territory, *e.g.,* it splits a rural incumbent local exchange carrier's (ILEC's) study area or exceeds the boundaries of a wireless carrier's licensed territory.

3. Additional Factors for BIP

a. Eligible Service Area

A project is eligible only if the applicant demonstrates that at least 75 percent of the proposed funded service area qualifies as a rural area without sufficient access to broadband service to facilitate rural economic development.[32] For the purposes of this NOFA, RUS has determined that ''without sufficient broadband access'' shall mean without access to broadband, as defined herein. Furthermore, RUS has determined that only rural areas which are unserved or underserved, as defined herein, shall qualify as ''areas without sufficient access to broadband service.'' Therefore, to qualify for BIP funding, projects must serve at least 75 percent unserved or underserved rural areas.

b. Overlapping Service Areas

RUS will not fund more than one project to serve any given geographic area. If more than one application would serve any overlapping geographic area, the application with the highest score will be funded; other applications for the same area will be rejected in their entirety unless RUS, in its discretion, determines that the extent of the overlap is de minimis.

c. Fully Funded

A project is eligible only if, after approval of the grant, loan, or loan/grant combination, all project costs can be fully funded. To demonstrate this, applicants must include with the application evidence of all funding, other than the RUS award, necessary to support the project, such as bank account statements or firm letters of commitment from equity participants or other lenders documenting the timely availability of funds.

d. Financial Feasibility and Sustainability

Only projects that RUS determines to be financially feasible and/or sustainable will be eligible for an award under this NOFA.

Loans: A project funded by a loan or loan/grant combination is financially feasible when the applicant is able to generate sufficient revenues to cover its expenses, has sufficient cash flow to service its debts and obligations as they come due, and meet the minimum Times Interest Earned Ratio (TIER) requirement of one by the end of the forecast period, as determined by RUS.

Grants: A project funded by a grant is financially sustainable when the applicant is able to generate a minimum

[32] *See id.* div. A, tit. I, 123 Stat. at 118.

current ratio of one by the end of the forecast period and can demonstrate a positive cash balance for each year of the forecast period.

4. Additional Factors for BTOP

a. Conformity With Statutory Purposes

A project is eligible only if it advances at least one of the statutory purposes for BTOP.[33]

b. Cost Sharing/Matching

Awardees under BTOP will be required to provide matching funds of at least 20 percent toward the total eligible project cost. Applicants must document their capacity to provide matching funds. NTIA will provide up to 80 percent of total eligible project costs, unless the applicant petitions the Assistant Secretary for a waiver of the matching requirement and that waiver is granted by the Assistant Secretary based on the applicant's demonstration of financial need.[34] In requesting such a waiver, an applicant should fully explain and document its inability to provide the required 20 percent share of the cost of its proposed project. An applicant should submit complete financial documentation supporting its need for a waiver of the matching requirement. These documents should include the applicant's assets, liabilities, operating expenses and revenues from any existing operations, and any other documents that will demonstrate financial need and sustainability, including such items as a denial of funding from a public or private lending institution. The Assistant Secretary will evaluate the information provided in support of the petition and may increase the federal share if financial need is demonstrated.

Generally, federal funds may not be used as matching funds except as provided by federal statute.[35] In-kind contributions, including third party in-kind contributions, are non-cash donations to a project that may count toward satisfying the non-federal matching requirement of a project's total budget. In-kind contributions must be allowable project expenses. Such contributions may be accepted as part of an applicant's matching when such contributions meet certain criteria.[36]

Applications that propose to provide matching funds of greater than 20 percent and that are all cash will be given additional favorable consideration in step one of the application review process.

c. Demonstration That Project Could Not Be Implemented but for Federal Grant Assistance

Grant applicants must provide documentation that the project would not have been implemented during the grant period without federal grant assistance. This documentation may consist of, but is not limited to, such items as a denial of funding from a public or private lending institution, denial of a funding request from RUS for a loan or loan/grant combination, a current fiscal year budget that shows the lack of available revenue options for funding the project, or a business case that demonstrates that the project would not be economically feasible without grant financing.

d. Reasonableness of Project Budget

A project will only be eligible if it demonstrates that its budget is appropriate to the proposed technical and programmatic solutions, its costs are reasonable and eligible consistent with the principles outlined in section V.D below, and that the allocation of funds will be sufficient to complete the tasks outlined in the project plan.

D. Eligible Cost Purposes

1. General

Award funds must be used only to pay for eligible costs. Eligible costs are consistent with the cost principles identified in the applicable OMB circulars[37] and in the grant or the loan/grant program's authorizing legislation. In addition, costs must be reasonable, allocable, necessary to the project, and comply with the funding statute requirements. Any application that proposes to use any portion of the award funds for any ineligible cost will be rejected.

2. Eligible and Ineligible Costs for BIP and BTOP Infrastructure Projects

a. Eligible Infrastructure Award Expenses

Award funds may be used to pay for the following expenses:

i. To fund the construction or improvement of all facilities required to provide broadband service, and for BIP only, including facilities required for providing other services over the same facilities;

ii. To fund the cost of leasing facilities required to provide broadband service if such lease qualifies as a capital lease under GAAP. Award funds may be used to fund the cost of the capital lease for no more than the first five years after the date of the first advance of award funds;

iii. To fund reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses may be reimbursed if they are incurred after the publication date of this NOFA and prior to the date on which the application is submitted to RUS or NTIA; and

iv. For BTOP only undertaking such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established.

b. Ineligible Award Expenses

Award funds may not be used for any of the following purposes:

i. To fund operating expenses of the project, including fixed and recurring costs of a project;

ii. To fund costs incurred prior to the date on which the application is submitted, with the exception of eligible pre-application expenses;

iii. To fund an acquisition, including the acquisition of the stock of an affiliate, or the purchase or acquisition of any facilities or equipment of an affiliate;

iv. To fund the purchase or lease of any vehicle other than those used primarily in construction or system improvements;

v. To fund broadband facilities leased under the terms of an operating lease;

vi. To fund merger or consolidation of entities; and

[33] *See id.* § 6001(b), 123 Stat. at 512–13.

[34] *See id.* § 6001(f), 123 Stat. at 514.

[35] *See* Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-profit, and Commercial Organizations, 15 CFR § 14.23(a)(5); *see also* Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 24 CFR § 24.24(b)(1).

[36] *See* 15 CFR §§ 14.23(a), 24.24(a).

[37] For example there is a set of federal principles for determining eligible or allowable costs. Allowability of costs will be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by state, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR pt. 74, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR pt. 31. *See* 15 CFR 14.27, 24.22 (governing the Department of Commerce's implementation of OMB requirements).

vii. To fund costs incurred in acquiring spectrum as part of an FCC auction or in a secondary market acquisition.

3. Eligible and Ineligible Costs for Public Computer Centers and Sustainable Broadband Adoption

a. General

Grantees for BTOP funds under these two project categories are required to show how such funding serves the stated purposes of: i. Providing broadband education, awareness, training, access, equipment, and support to community anchor institutions (*e.g.,* schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations), or organizations and agencies serving vulnerable populations (*e.g.,* low-income, unemployed, aged), or job-creating strategic facilities located in state- or federally-designated economic development areas; ii. improving access to, and use of, broadband service by public safety agencies; and iii. stimulating the demand for broadband, economic growth, and job creation.

b. Eligible Costs for Public Computer Centers

Grantees may use BTOP funding under this project category to expand computer center capacity by:

i. Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services;

ii. Developing and providing training, education, support and awareness programs or web-based resources;

iii. Facilitating access to broadband services, including, but not limited to, making public computer centers accessible to the disabled; and

iv. Undertaking such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established.

c. Eligible Costs for Sustainable Broadband Adoption

Grantees may use BTOP funding under this project category to encourage sustainable adoption of broadband services by:

i. Acquiring broadband-related equipment, hardware and software, and digital network technology for broadband services;

ii. Developing and providing training, education, support and awareness programs or web-based content;

iii. Conducting broadband-related public education, outreach, support and awareness campaigns;

iv. Implementing innovative programs to facilitate greater access to broadband service, devices, and equipment; and

v. Undertaking such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established.

d. Ineligible Costs for Public Computer Centers and Sustainable Broadband Adoption

BTOP grant funds may not be used to fund purchases that are not used predominantly for the provision of broadband education, awareness, training, access, equipment and support.

E. Use of Program Income

Grantees are required to account for any program income directly generated by projects financed in whole or in part with federal funds. Given the Recovery Act's objectives to spur job creation and stimulate long-term economic growth and opportunity, projects funded by BIP and BTOP grants are expected to convincingly demonstrate the ability to be sustained beyond the funding period. While grant funds are intended to cover the capital costs of a project as part of the Recovery Act's effort to stimulate the economy, grant recipients for all grant programs are expected to present projects that will sustain long-term growth and viability.

For purposes of BIP and BTOP, any program income generated by a proposed project during the grant period shall be retained by the grant recipient and shall be added to the funds committed to the project by RUS or NTIA and the recipient. The grant recipient should use program income to further eligible project objectives, including reinvestment in project facilities. Program income means gross income earned by the recipient that is either directly generated by a supported activity, or earned as a result of the award during the funding period. Grant recipients shall have no obligation to the federal government regarding program income earned after the end of the project period. However, the federal government retains an interest in property in the event that it is sold, consistent with the guidance outlined in section IX of this NOFA.[38]

VI. Application and Submission Information

A. Request for Application Package

Complete application packages, including required federal forms and instructions, will be available at *http://www.broadbandusa.gov*. Additional information for BIP and BTOP can be found in the *Application Guidelines* at *http://www.broadbandusa.gov*. This Web site will be updated regularly.

B. Registration

1. DUNS Number

All applicants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number. Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or via the Internet at *http://www.dunandbradstreet.com*.

2. Central Contractor Registration (CCR)

All applicants must provide a CCR (CAGE) number evidencing current registration in the Central Contractor Registration (CCR) database. If the applicant does not have a current CCR (CAGE) number, the applicant must register in the CCR system available at *http://www.ccr.gov/StartRegistration.aspx*.

C. Choosing the Proper Agency and Category for an Application

1. Broadband Infrastructure

a. Choosing BIP or BTOP Broadband Infrastructure

i. *Applications for Rural Areas.* All applications to fund broadband infrastructure in proposed funded service areas which are at least 75 percent rural are required to be submitted to RUS for consideration under BIP. If such applicants also choose to be considered for BTOP funding, they must complete the additional elements required of BTOP infrastructure applicants. RUS will consider all applications for projects in proposed funded service areas which are at least 75 percent rural in accordance with the BIP procedures outlined in this NOFA. If the applicant also chooses to be considered under BTOP, NTIA will review these applications using its own objective evaluation criteria and in accordance with BTOP procedures outlined in this NOFA. NTIA may make awards with respect to such applications NTIA determines to be meritorious after RUS has reviewed the application and determined not to fund it. RUS and NTIA have adopted these application procedures to reflect the fact that Congress, in the Recovery Act, intended that RUS focus its activities on rural areas and mandated that NTIA funding could not be applied in the same area funded by RUS under the Recovery Act.

[38] 2 CFR 215.24; 15 CFR 14.24, 24.25.

ii. *Applications for All Other Areas.* All applications to fund broadband infrastructure projects in proposed funded service areas that are less than 75 percent rural must be submitted to NTIA for consideration under BTOP. Submissions to BIP of such applications will be rejected.

b. BIP Broadband Infrastructure Categories

i. Last Mile Remote Area

Applications for Last Mile Remote Area projects must predominantly provide broadband directly to the premise or to end users within completely remote areas, as defined herein. The BIP Program will consider applications for grant funds up to 100 percent. For grants receiving greater than 80 percent of eligible costs, the Administrator must determine that the awardee has a specific financial need that justifies funding greater than 80 percent.

ii. Last Mile Non-Remote Projects

Applications for Last Mile Non-Remote Area projects must predominantly provide broadband directly to the premise or to end users that are not exclusively within remote areas, as defined herein. Last Mile Non-Remote Area projects may encompass both remote and non-remote areas, and will be awarded scoring points for remote areas within the application. Only those applications for loans or loan/grant combinations whose total proposed funded service area contains 75 percent or more unserved or underserved rural areas, as defined herein, will be considered for BIP funding.

iii. Broadband Infrastructure Middle Mile Projects

Applications for Middle Mile projects must connect at least two points without predominantly providing broadband service to the premise or end users, and must be capable of bringing broadband service to eligible service areas. The BIP program will consider only those applications for loans and loan/grant combinations whose total proposed funded service area benefits at least 75 percent or more unserved or underserved rural areas, as defined herein.

c. BTOP Broadband Infrastructure Categories

i. Last Mile

For the purposes of BTOP grant funds, applications for Last Mile projects must be for unserved or underserved areas and have the predominant purpose to provide broadband service to end users or end-user devices (including homes, businesses, schools, libraries, medical and health care providers, community support organizations, public safety entities, vulnerable populations and other institutions and individuals). Highly responsive Last Mile projects should be technically feasible, sustainable, and scalable, and address BTOP's priority needs, including offering substantial economic, educational, health care, and public safety benefits relative to the costs of providing service.

iii. Middle Mile

For the purposes of BTOP grant funds, applications for Middle Mile projects must be for unserved or underserved areas and have a predominant purpose other than providing broadband service to end users or to end-user devices and may include interoffice transport, backhaul, Internet connectivity, or special access. Highly responsive Middle Mile projects should be technically feasible, sustainable, and scalable and offer substantial benefits to unserved and underserved areas relative to the costs of providing service.

2. BTOP—Public Computer Centers

For the purposes of BTOP grant funds, applicants requesting a Public Computer Center grant must have a project that provides broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities and people with disabilities. Projects must create or expand a public computer center meeting a specific public need for broadband service, including but not limited to education, employment, economic development, and enhanced service for health-care delivery, children, and vulnerable populations. As described below, NTIA will consider information related to the demographics, size and scope of the populations to be served, as well as the capacity of the proposed centers.

3. BTOP—Sustainable Broadband Adoption

Applications for Sustainable Broadband Adoption projects should demonstrate a sustainable increase in demand for and subscribership to broadband services. Projects should meet a specific public need for broadband service, including, but not limited to, education, employment, economic development, and enhanced service for health-care delivery, children, and vulnerable populations. Projects should describe the barriers to adoption in a given area, especially among vulnerable populations, and propose an innovative and persuasive solution to encourage adoption. Applicants might show how variations on one or more proven demand stimulation strategy—such as awareness-building, development of relevant content, and demand aggregation—would promote sustainable adoption.

D. Contents of the Application

1. BIP and BTOP Broadband Infrastructure Project Applications

a. Requirements for Step One of the Application Process

A complete application will include the following:

i. The identity of the applicant and general applicant and project information including:

(1) A description of the project that will be made public consistent with the requirements of the Recovery Act;

(2) The Congressional Districts affected by the project;

(3) The estimated dollar amount of the funding request;

ii. Verification that the application meets certain eligibility factors, including submission of a complete application with all supplemental documentation, commitment to substantial completion of the project within two years and project completion within three years of the award date, demonstration that the project is technically feasible, that the applicant will provide broadband service meeting the definition in this NOFA, that the applicant agrees to comply with the nondiscrimination and interconnection obligations in this NOFA, and that the applicant agrees to comply with the last mile coverage obligations in this NOFA; for BIP only, that at least 75% of the proposed funded service area is a rural area, that the project will be fully funded, and that the project is financially feasible; and for BTOP only, demonstration that the project advances at least one of BTOP's five statutory purposes, commitment to or a waiver for the cost matching requirement, demonstration that a project could not be completed in the grant period but for federal funding, and that the budget is reasonable and all costs are eligible;

iii. An executive summary of the project, including but not limited to the opportunity the proposed system seeks to address; a description of the proposed funded service area; number of households and businesses passed; number of community anchor institutions, public safety entities and critical community organizations to be passed and/or involved in the project;

proposed service offerings; how non-discrimination and interconnection requirements will be met; the type of broadband system to be deployed; qualifications of the applicant; overall infrastructure cost of the broadband system; subscriber projections; and the number of jobs the project is expected to create or save;

iv. A description of the proposed funded service area, including: (1) A map; (2) data describing the geography and demographics of the proposed funded service area, including information as to whether the proposed funded service area is unserved or underserved; (3) names of the census designated communities and identification of areas not within a census designated community within the proposed funded service area; (4) information as to whether the communities and areas identified in clause (3) are rural or non-rural, remote and unserved, underserved or served; (5) the methodology for making the above classifications; (6) whether the applicant is seeking a waiver from providing less than 100% coverage of any census block; and; (7) for middle mile projects, identification of the last mile areas to be served;

v. A description of the proposed service offerings, and the associated pricing plan, that the applicant proposes to offer, as well as the advertised prices of service offerings by competitors in the same area; a description of the applicant's nondiscrimination, interconnection, and network management plans; an explanation of why the proposed service offerings are affordable; and for BTOP only, an estimate of the cost of the project per household;

vi. The technology type; a description of the system design used to deliver the broadband service; a network diagram, which must be certified by a professional engineer if the funding request exceeds $1,000,000; whether the applicant is seeking a waiver of the Buy America provision; and whether the project allows more than one provider to serve end users;

vii. A timeline including key milestones for implementation of the project, including a construction schedule, certified by a professional engineer if the funding request exceeds $1,000,000, which identifies potential challenges and establishes the viability of the project timeline and associated milestones for build-out to the census blocks, households, businesses, community anchor institutions, and public safety entities identified in the proposal; a list of all required licenses and regulatory approvals needed for the proposed project; and how much the applicant will rely on contractors or vendors to deploy the network facilities;

viii. Resumes of key management personnel, a description of the organization's readiness to manage a broadband services network, and an organizational chart showing any parent organizations and/or subsidiaries and affiliates;

ix. A legal opinion (as set forth in the application) that: (1) Addresses the applicant's ability to enter into the award documents; (2) describes all pending litigation matters; and (3) for loan and loan/grant combinations, addresses the applicant's ability to pledge security as required by the award documents;

x. Partnerships with public, non-profit, and private sector groups and collaboration with other state and federal development programs including other Recovery Act programs;

xi. An itemized budget of the infrastructure costs of the proposed project, including if applicable, the ratio of loans to grants, and any other source of outside funding, especially any other Recovery Act funds under other federal programs, and an explanation of the reasonableness of the unit price and total number of units required for the project;

xii. Pro Forma financial analysis related to the sustainability of the project, including subscriber estimates and proposed service offerings in addition to broadband Internet access; annual financial projections including balance sheets, income statements, and cash flow statements and supporting assumptions for a five-year forecast period as applicable; and a list of committed sources of capital funding;

xiii. Historical financial statements, Certified Public Accountant (CPA) audits if applicable, for the previous two calendar years;

xiv. Certifications required in the application;

xv. For BIP applicants only:

(1) A self-scoring sheet, analyzing the objective scoring criteria set forth in this NOFA;

(2) The pricing package being offered to critical community facilities, if any; and

(3) Evidence that the applicant is a socially and economically disadvantaged small business concern (SDB) as defined under section 8(a) of the SBA.

xvi. For BTOP applicants only:

(1) A description of how the applicant will advance the objectives of the Recovery Act, as well as the specific objectives of BTOP, (a) to provide access to broadband service to consumers residing in unserved areas of the country; (b) to provide improved access to broadband service to consumers residing in underserved areas of the country; (c) to provide broadband access, education, awareness, training, equipment, and support to community anchor institutions (*e.g.,* schools, libraries, medical facilities), or organizations and agencies serving vulnerable populations (*e.g.,* low-income, unemployed, aged), or job-creating strategic facilities located in state or federally designated economic development areas; (d) to improve access to, and use of, broadband service by public safety agencies; and (e) to stimulate the demand for broadband, economic growth, and job creation;

(2) A demonstration of need for grant funding, including documentation demonstrating that a project would be unfeasible but for federal assistance;

(3) A description of how the applicant will enhance services for health care delivery, education, and children to the greatest population of users in the area;

(4) Additional verification related to the non-discrimination and interconnection obligations set forth in this NOFA;

(5) The percentage of matching funds the applicant will contribute to the project, and its percentage of the total cost, as well as the specific amounts that are in cash or in-kind;

(6) Whether the applicant receives any federal support for non-recurring costs in the proposed funded service area; and

(7) To the extent applicable, evidence of collaboration with any socially and economically disadvantaged small business concern (SDB) as defined under section 8(a) of the SBA, that may include a sub-awardee, contractor, subcontractor, or vendor, and the source and amount of any federal or state funding, including Universal Service Fund funds, that applicant has received, or requested, for the activities or projects to which the application relates.

b. Verification Filing Requirements for Step Two of the Application Process

As discussed above, those applications that are considered to be most highly qualified (*i.e.,* receiving the highest scores), will advance to the second step of the review process. Specifically, in the ''due diligence'' phase, applicants will be asked to submit additional information, as appropriate, to further substantiate the representations made in their application. Although this ''due diligence'' phase applies to all three categories of projects—Broadband

Infrastructure, Public Computer Center, and Sustainable Adoption—it is most applicable to Broadband Infrastructure Projects. This phase will be announced no earlier than September 14, 2009. The following information must then be submitted to the agencies online at *http://www.broadbandusa.gov* by October 15, 2009, or, alternatively, 30 days after the applicant has received a request from RUS or NTIA to provide such information, whichever is later.

i. A list of all its outstanding and contingent obligations, including copies of existing notes, loan and security agreements, and guarantees;

ii. A detailed description of working capital requirements and the source of these funds;

iii. A detailed description of the proposed technology that will be used to provide service at the proposed broadband speed. This description must clearly demonstrate that all households and businesses in the proposed funded service area will be offered service at the proposed broadband speed;

iv. A detailed construction build-out schedule that includes a description of the necessary work force, a timeline demonstrating project completion within the required timeframe, a depreciation schedule for the proposed facilities;

v. A completed Environmental Questionnaire, other documentation requests, and required environmental authorizations and permits, including those required by the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*) (NHPA), and the Endangered Species Act of 1973, as amended (16 U.S.C. 1534 *et seq.*) (ESA) as applicable;

vi. For purposes of the step two due diligence verification process, applicants will need to be prepared to provide any of the underlying documentation that is referenced in the application, as appropriate; and

vii. For BIP only, a description of measurable service metrics and target service level objectives (SLOs) (*e.g.,* the speed with which new service will be established, service availability, and response time for reports of system failure at a residence) that will be provided to the customer, and a description of the approach and methodology for monitoring ongoing service delivery and service quality for the services being employed.

2. Public Computer Centers Applications

Applications for Public Computer Center projects must contain the following information:

a. The identity of the applicant and general applicant and project information including:

i. A descriptive title of the project that will be made public consistent with the requirements of the Recovery Act,

ii. The Congressional Districts affected by the project,

iii. The dollar amount of the funding request;

b. Verification that the application meets certain eligibility factors, including submission of a complete application with all supplemental documentation, commitment to substantial completion of the project within two years and project completion within three years of the award date, demonstration that the project advances at least one of BTOP's five statutory purposes, commitment to or a waiver for the cost matching requirement, demonstration that a project could not be completed in the grant period but for federal funding, demonstration that the project is technically feasible, and that the budget is reasonable and all costs are eligible;

c. An executive summary of the project, including the problem or need the project addresses and the approach to addressing the need; the area to be served, population and demographics of the target area, and estimated number of potential users of the public computer center(s); qualifications of the applicant; jobs to be created or saved; and overall cost of the project;

d. A description of the project purpose, including the significance of the problem to be addressed and the degree to which the proposed solution effectively addresses the problem and could be replicated by other organizations; the degree to which the problem and proposed solution advance at least one of BTOP's five statutory purposes; and whether and how the project incorporates more than one BTOP program category or BTOP statutory purpose;

e. A description of any collaboration with Recovery Act or other state or federal development programs that leverage the impact of the proposed project;

f. A description of how the program would enhance service for health care delivery, education, or children;

g. Evidence of collaboration with any SDB as defined by section 8(a) of the SBA, that may include a sub-awardee, contractor, subcontractor, or vendor;

h. The capacity of the proposed public computer center(s) and areas and populations to be served, including whether the facility will be available to the general public or specific populations, whether the center(s) charges membership fees and if so how these charges are consistent with the public interest, any restrictions of the use of the center(s), how the center will be accessible to persons with disabilities, the locations and hours of the center(s), current and proposed number of broadband workstations, current and proposed speed of the center(s) broadband connection, the size and scope of the target population and the populations to be served by the center(s), the outreach strategy for the center(s), the equipment and software that will be provided, and the training and educational programs that will be offered;

i. A summary as to the viability of the project, including the overall technology strategy to be deployed by the project; qualifications of the organization and management team, including a description of organizational readiness and an organizational chart; a list of community organizations, partners, vendors, or contributors of in-kind resources involved in the project and whether any of those involved entities are socially or economically disadvantaged partners; a project timeline that established key milestones for implementation of the project as well as potential challenges that could pose delays; a list of needed licensing and regulatory approvals; and a legal opinion addressing the applicant's ability to enter into the award agreement;

j. Proposed budget and sustainability information from the applicant including a narrative explaining the project budget, an explanation of why the proposed costs are reasonable, demonstration that the project could not have been undertaken during the grant period but for federal assistance, organization financial statements for the last two years, explanation of how a project will become self-sustaining, description of the planned matching funds for the project or a waiver, as applicable, whether the project is receiving or has applied for federal support for non-recurring costs, disclosure of other federal or state funding, and whether the applicant is seeking a waiver of the Buy American provision; and

k. Completion of an environmental checklist and applicable certifications.

3. Sustainable Broadband Adoption Applications

Applications for Sustainable Broadband Adoption projects must contain the following information:

a. The identity of the applicant and general applicant and project information including:

i. A descriptive title of the project that will be made public consistent with the requirements of the Recovery Act,

ii. The Congressional Districts affected by the project,

iii. The dollar amount of the funding request;

b. Verification that the application meets certain eligibility factors, including submission of a complete application with all supplemental documentation, commitment to substantial completion of the project within two years and project completion within three years of the award date, demonstration that the project advances at least one of BTOP's five statutory purposes, commitment to or a waiver for the cost matching requirement, demonstration that a project could not be completed in the grant period but for federal funding, demonstration that the project is technically feasible, and that the budget is reasonable and all costs are eligible;

c. An executive summary of the project, including the problem or need the project addresses and the approach to addressing the need, and how that approach is innovative; the area to be served, population and demographics of the target area, and estimated number of potential broadband subscribers the project will reach; qualifications of the applicant; jobs to be created or saved; and overall cost of the project;

d. A description of the project purpose, including the significance of the problem to be addressed and the degree to which the proposed solution effectively addresses the problem and could be replicated by other organizations; the degree to which the problem and proposed solution advance at least one of BTOP's five statutory purposes; and whether and how the project incorporates more than one BTOP program category or BTOP statutory purpose;

e. A description of any collaboration with Recovery Act or other state or federal development programs that leverage the impact of the proposed project;

f. A description of how the program would enhance service for health care delivery, education, or children;

g. Evidence of collaboration with any SDB as defined under section 8(a) of the SBA, that may include a sub-awardee, contractor, subcontractor, or vendor;

h. A description of the project benefits, including how the approach to solve the identified problem is innovative; the number of new home, business, and institutional broadband subscribers expected to be generated; the populations to be served by the project; the total cost of the project per new subscriber; if proposing a training or educational program, how many people it will reach, the hours of training per person, the number of instructors to be employed, and planned equipment purchases and overall cost of these devices; if proposing an equipment purchase or loan program, the number of households, businesses, and institutions that will be provided equipment and the total cost to the customer; if proposing an awareness campaign, the number of people expected to be reached, the strategies to be used in the campaign, how impact of the campaign will be measured, and the organization's previous experience with this type of campaign;

i. A summary as to the viability of the project, including an explanation of the innovative operational solution proposed, how it will create sustainable adoption in the target population, and how it could be feasible in other situations; qualifications of the organization and management team, including a description of organizational readiness and an organizational chart; a list of community organizations, partners, vendors, or contributors of in-kind resources involved in the project and whether any of those involved entities are socially or economically disadvantaged partners; a project timeline that established key milestones for implementation of the project as well as potential challenges that could pose delays; a list of needed licensing and regulatory approvals; and a legal opinion addressing the applicant's ability to enter into the award agreement;

j. Proposed budget and sustainability information from the applicant including a narrative explaining the project budget, an explanation of why the proposed costs are reasonable, demonstration that the project could not have been undertaken during the grant period but for federal assistance, organization financial statements for the last two years, explanation of how the project will create sustainable increases in subscribership and how the project itself could be sustained beyond the grant period, description of the planned matching funds for the project or a waiver, as applicable, whether the project is receiving or has applied for federal support for non-recurring costs, disclosure of other federal or state funding, and whether the applicant is seeking a waiver of the Buy American provision; and

k. Completion of an environmental checklist and applicable certifications.

E. Filing Instructions

1. Electronic Applications

Electronic submissions of applications will allow for the expeditious review of an applicant's proposal consistent with the goals of the Recovery Act. As a result, all applicants requesting more than $1 million in assistance (in the form of grants, loans, or a combination of grants and loans) must file their application electronically. Applicants whose authorized representatives are individuals with disabilities, however, may submit a paper application irrespective of the funding size of their request. In addition, applicants who are requesting less than $1 million in assistance may forego the electronic filing requirement if filing electronically would impose a hardship on the applicant.

2. Paper Applications

a. Format

Applicants requesting less than $1 million in assistance (in the form of grants, loans, or a combination of grants and loans) may file their applications in a paper format if filing electronically would impose a hardship on the applicants. Applicants whose authorized representatives are individuals with disabilities may file their applications in a paper format irrespective of the funding size of their request. To the extent that applicants use electronic word processing software to create paper submissions, they should include in their filing, to the extent possible, an electronic copy of the paper application on an appropriate media such as a CD.

The application package for paper submissions must be completed in black or blue ink, signed and mailed to the addresses provided in the Mailing Addresses section of this document (section E.2.d.). The application must be typed, single-sided, single-spaced, on 8½″ x 11″ paper, excluding diagrams and charts. Use a font of no less than 12 points with margins of no less than one inch. Reviewers will be instructed to ignore any portion of the application that extends beyond the prescribed page limits provided in the application.

b. Number of Copies

Applicants filing paper copies should submit one original and one copy of the application for efficient processing.

c. Proof of Mailing

Applications must include proof of mailing consisting of one of the following:

i. A legibly dated U.S. Postal Service postmark. Please note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office.

ii. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

iii. A dated shipping label, invoice, or receipt from a commercial carrier.

Neither of the following will be accepted as proof of mailing: a private metered postmark; nor a mail receipt that is not dated by the U.S. Postal Service.

Applications with postmarked dates after August 14, 2009, will not be considered in the current grant round and will be returned to the applicant. Applications will NOT be accepted via facsimile machine transmission.

d. Mailing Addresses

Completed applications must be mailed, shipped, or sent overnight express to:

i. NTIA

Broadband Technology Opportunities Program, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., HCHB, Room 4812, Washington, DC 20230.

or hand-delivered to:

Broadband Technology Opportunities Program, National Telecommunications and Information Administration, U.S. Department of Commerce, HCHB, Room 1874, 1401 Constitution Avenue, NW., Washington, DC 20230.

Room 1874 is located at entrance #10 on 15th Street, NW., between Pennsylvania and Constitution Avenues.

United States Postal Service Priority Mail, First Class Mail, and Parcel Post packages delivered to the Department of Commerce are irradiated. Irradiation could result in damage to the contents, or delay the delivery of an application to the BTOP Program Office. Thus, applicants are encouraged to consider the impact of these procedures in selecting their chosen method for application delivery.

ii. RUS

Broadband Initiatives Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 1599, Washington, DC 20250.

or hand-delivered to:

Broadband Initiatives Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2868, Washington, DC 20250.

iii. Signatures

Applicants filing in a paper format must submit an original signed copy of their application and certifications. Applicants filing electronically may submit an electronic signature for their application by registering at *http://www.ccr.gov*.

F. Submission Dates and Times

Electronic applications must be submitted between July 14, 2009, at 8 a.m. ET and 5 p.m. ET on August 14, 2009. The electronic application system at *http://www.broadbandusa.gov* will provide a date and time stamped confirmation number that will serve as proof of submission. Paper submissions must be postmarked no later than August 14, 2009, or hand-delivered no later than 5 p.m. ET on August 14, 2009. Applications delivered by guaranteed carrier services will be considered postmarked on the date they are submitted to the carrier.

No application will be accepted after the submission date unless: 1. There was a carrier error and the carrier accepted the application for delivery prior to the submission deadline; or 2. there were significant weather delays or natural disasters as declared by federal or state authorities and the applicant submits proper documentation explaining the delay.

G. Material Representations

The application, including certifications, and all forms submitted as part of the application will be treated as a material representation of fact upon which RUS and NTIA will rely in awarding grants.

H. Material Revisions

No material revision will be permitted for any application after the submission deadline, unless such revision is requested by RUS and NTIA. RUS and NTIA, however, may request clarifications or submissions for completeness that are non-material.

VII. Application Review Information

A. Evaluation Criteria

The scoring criteria used to review and analyze BIP and BTOP applications are grouped into four categories: 1. Project Purpose; 2. Project Benefits; 3. Project Viability; and 4. Project Budget and Sustainability. Each application will be scored against the following objective criteria, and not against other applications. This section describes the evaluation criteria first for BIP Broadband Infrastructure projects, then for the three BTOP project categories.

1. BIP Broadband Infrastructure Projects

a. General

In accordance with the Recovery Act, the priority for BIP is to provide and improve broadband service to the highest proportion of rural residents who do not have adequate access to broadband service for rural development, which RUS defines to mean rural residents who reside in unserved and underserved rural areas. Additionally, the Recovery Act mandates that priority be given to projects which: i. Give end users a choice of providers; ii. serve the highest proportion of rural residents that lack access to broadband service; iii. are projects of current or former RUS borrowers (Title II borrowers); and iv. are fully funded and ready to start once Recovery Act funding is received. Lastly, coordination with other federal, state, and local programs, including Recovery Act programs, is highly encouraged as a way to more efficiently and effectively achieve program objectives.

b. Project Purpose (25 Points)

i. *Proportion of Rural Residents Served in Unserved Areas* (5 points). Points will be awarded for serving rural residents located in unserved areas. For every 10,000 unserved households that will receive broadband service, one point will be awarded up to a maximum of five points.

ii. *Rural Area Targeting* (5 points). Points will be awarded for exceeding the 75 percent rural area service requirement. For every five percent increase in the rural service area above the 75 percent rural area service requirement, one point will be awarded up to a maximum of five points.

iii. *Remote Area Targeting* (5 points). Up to five points will be awarded for proposed funded service areas that are at least 50 miles from a non-rural area. If at least one proposed funded service area is a minimum of 50 miles from a non-rural area, one point will be awarded. For each additional 50 miles that at least one proposed funded service area is located away from a non-rural area, one additional point will be awarded up to a total of five points.

iv. *Title II Borrowers* (5 points). Five points will be awarded to applications

which are submitted by entities which have borrowed under Title II of the RE Act.

v. *Recovery Act and other governmental collaboration* (5 points). Points will be awarded for cooperation with other governmental development programs as well as coordination with Recovery Act construction projects. Examples include the Department of Energy's Smart Grid, Investment Program, the Department of Housing and Urban Development's Public Housing Capital Fund, the Department of Transportation's Capital Assistance for High Speed Rail Corridors and Intercity Passenger Service program, and other investments where collaboration would lead to greater project efficiencies. In each case, the applicant must convincingly demonstrate that these leveraging efforts are substantive and meaningful. One point will be awarded for each partnered governmental or Recovery Act program that has demonstrated such a partnership is substantive and meaningful up to a maximum of five points.

c. Project Benefits (25 Points)

i. *Performance of the offered service* (10 points). For Last Mile Projects: For wireline projects that are constructed to deliver a minimum of 20 megabit per second service to the household (upstream plus downstream), ten points will be awarded. For wireless projects that are constructed to deliver a minimum of two megabits per second service to the end user (upstream plus downstream), ten points will be awarded. For projects that are a combination of wireline and wireless projects, both of the above standards must be met for the corresponding parts of the network in order to receive the ten points. For Middle Mile Projects: For middle mile projects that are constructed to deliver 100 megabits per second service to all end points in their network, ten points will be awarded.

ii. *Affordability of services offered* (5 points). RUS will evaluate the level of support that is provided and award up to five points for applications that demonstrate that the proposed rates for the broadband service are affordable for the targeted audience. The stronger the level of support that is provided, the higher the number of points that will be awarded.

iii. *Choice of provider* (5 points). Five points will be awarded to applications that propose to construct infrastructure and implement a business plan which would allow more than one provider to serve end users in the proposed funded service area.

iv. *Critical community facilities* (5 points). For applications that are proposing to offer discounted rate packages at least 25 percent lower than the advertised rate packages to all critical community facilities in the proposed funded service area, five points will be awarded.

d. Project Viability (25 Points)

i. *Applicant's organizational capability* (12 points). Up to twelve points will be awarded based on the strength of the project's management team. RUS will evaluate past performance and accomplishments and award points accordingly.

ii. *Community support* (2 points). Up to two points will be awarded if letters of support are received from all communities in the proposed funded service area from the designated community leader.

iii. *Ability to promptly start project* (10 points). Ten points will be awarded if the applicant can provide evidence that the following conditions have been satisfied:

(1) All licenses, franchises and regulatory approvals required to operate the system and provide the proposed services have been received;

(2) That the required contractors and vendors necessary to implement the project are prepared to enter into contracts as soon as funds are made available;

(3) That all required equity contributions have been transferred into the applicant's accounts; and

(4) That the project timeline and milestones are reasonable.

iv. *Disadvantaged small businesses* (1 point). One point will be awarded to applicants that meet the definition of a socially and economically disadvantaged small business concern under section 8(a) of the SBA.

e. Project Budget and Sustainability (25 Points)

i. *Reasonableness of the budget* (5 points). Up to five points will be awarded based on the clarity and reasonableness of the proposed budget.

ii. *Leverage of outside resources* (10 points). Up to ten points will be awarded based on the amount of outside resources contributed to the total financing provided under BIP:

(1) 10 points if this ratio is greater than 100%

(2) 7 points if this ratio is between 100% and 75%

(3) 5 points if this ratio is between 75% and 50%

(4) 3 points if this ratio is between 50% and 25%

(5) 1 point if this ratio is lower than 25%.

iii. *Extent of grant funding* (10 points). Up to ten points will be awarded based on the amount of grants funds requested in relation to the amount of loan funds requested (grant funds/loan funds):

(1) 0 points if grant funds are 100%

(2) 1 point if this ratio is between 100% and 75%

(3) 3 points if this ratio is between 75% and 50%

(4) 5 points if this ratio is lower than 50%

(5) 10 points if this ratio is zero.

2. BTOP Broadband Infrastructure, Public Computer Center, and Sustainable Broadband Adoption Projects

a. General

The evaluation criteria for BTOP projects will be the same across the BTOP project categories except: i. Under the Project Benefits section, different evaluation criteria and scoring methodologies are applied to each project category; ii. the Technical Feasibility criterion under the Project Viability heading is subdivided between Sustainable Broadband Adoption projects and all other BTOP project categories; and iii. the Sustainability criterion under the Budget and Sustainability heading is similarly subdivided between Sustainable Broadband Adoption projects and all other BTOP project categories. These variations are detailed in the descriptions of the evaluation criteria below.

b. Project Purpose (30 Points)

i. *Fit with statutory purposes.* Applications will be evaluated with respect to each of BTOP's statutory purposes.[39] Reviewers will consider, relative to each purpose, whether the applicant is addressing a compelling problem of the sort that the statute is intended to resolve, whether the applicant has offered an effective solution to that problem, and whether the proposed solution is of broad significance and includes developments that can be replicated to improve future projects. Additional consideration will be given to projects located partially or wholly unserved or underserved areas

[39] *See* Recovery Act § 6001(b), 123 Stat. at 512–13 (to provide broadband access to unserved areas; to provide improved broadband access to underserved areas; to provide broadband access, education, and support to community anchor institutions, or organizations and agencies serving vulnerable populations, or job-creating strategic facilities located in state- or federally designated economic development areas; to improve access to, and use of, broadband service by public safety agencies; and to stimulate the demand for broadband, economic growth, and job creation).

of a state as described by the state submission in the State Broadband Data and Development Grant Program or as otherwise determined by NTIA. Additional consideration will also be given to applicants that address more than one statutory purpose and project category (*e.g.*, Broadband Infrastructure, Public Computer Centers, or Sustainable Broadband Adoption) in a convincing manner.

ii. *Recovery Act and other governmental collaboration.* Applicants will be evaluated on their collaboration with Recovery Act or other federal or state development programs that leverage the impact of the proposed project. Examples include the Department of Energy's Smart Grid Investment Program, the Department of Housing and Urban Development's Public Housing Capital Fund, the Department of Transportation's Capital Assistance for High-Speed Rail Corridors and Intercity Passenger Service program, and other investments where collaboration would lead to greater project efficiencies. In each case, the applicant must convincingly demonstrate that these leveraging efforts are substantive and meaningful.

iii. *Enhanced service for health care delivery, education, and children.* Reviewers will assess the depth and breadth of the project's ability to enhance broadband service for health care delivery, education, and children as contemplated by the Recovery Act.[40] Projects would need to demonstrate that they go beyond providing access to broadband to include more robust educational, health care, or related broadband service delivery.

iv. *Socially and economically disadvantaged small businesses.* Reviewers will grant consideration to applicants that certify they meet the statutory definition of a socially and economically disadvantaged small business concern, or that have established agreements in principle to contract with socially and economically disadvantaged businesses that meet that definition.

c. Project Benefits (25 Points)

Reviewers will evaluate the various benefits that the proposed project will provide. This criterion will be focused primarily on measuring the benefits of the proposed project. Due to the broad scope of the three project categories and the expected diversity of proposed projects, the specific elements to be evaluated under this heading vary from one project category to another, as described below.

[40] *See id.* § 6001(h)(2)(C), 123 Stat. at 515.

i. BTOP Broadband Infrastructure Last Mile Projects

(1) *Cost-effectiveness.* Applications will be scored on the project's cost-efficiency based on the ratio of the total cost of the project to households passed.

(2) *Performance of the offered service.* Applications will be scored for the extent to which the advertised speed for the network's highest offered speed tier exceeds the minimum speed requirement for broadband service (768 kbps downstream and 200 kbps upstream). Networks will be graded on a sliding scale with higher end-user speeds receiving a higher score. Proposed networks with high latency will be viewed unfavorably. Applicants may gain additional consideration if the applicant can demonstrate a clear and affordable upgrade path for the network.

(3) *Affordability of services offered.* Projects will be evaluated on the pricing of the services offered compared to existing broadband services in the proposed funded service area. If there are no existing broadband services in the proposed funded service area, projects will be evaluated on the ability of the applicant to convincingly demonstrate that their proposed pricing is appropriate for the service area.

(4) *Nondiscrimination, interconnection, and choice of provider.* Applications will be scored on the extent to which the applicant commits to exceeding the minimum requirements for interconnection and nondiscrimination established in section V.C.2.b. of this NOFA. Additional consideration will be given for displaying the network's nondiscrimination and interconnection policies in a prominent location on the service provider's Web page, and providing notice to customers of changes to these policies. Additional consideration will be given to applicants that commit to offering wholesale access to the project facilities at reasonable rates and terms. Additional consideration will also be given to applicants that commit to binding private arbitration of disputes concerning the awardees' interconnection obligations as explained above in section V.C.2.b of this NOFA. Reviewers will also consider whether the application proposes to construct infrastructure and implement a business plan which would allow more than one provider to serve end users in the proposed funded service area.

ii. BTOP Broadband Infrastructure Middle Mile Projects

For purposes of evaluating BTOP Middle Mile projects, applicants should define the area that will directly benefit from the project, including the community anchor institutions and end users that may receive broadband service through the proposed middle mile network.

(1) *Impact on the area.* Applications will be scored on how great an impact they would have on the area. Reviewers will consider the number of end-points and points of interconnection the network will offer and the proposed connections to last mile networks, community anchor institutions, or public safety entities, as well as the projected number of new end users served by those proposed connections.

(2) *Level of need in the area.* Applications will be scored on the level of need for a middle mile network in the area. Reviewers will consider whether there are middle mile providers already present in all or part of the area, as well as the pricing and available capacity of those providers. Reviewers will also consider what proportion of the network's end-points, points of interconnection, and projected end users are located in unserved or underserved areas. In addition, reviewers will also consider applicants' explanation of why their proposed project is well-suited to address the needs of the area.

(3) *Network capacity.* Applicants will be evaluated on the capacity of the network. The network should provide capacity sufficient to serve the anticipated last mile networks, community anchor institutions, and public safety entities, and the number of end users served by them, as projected by the applicant, taking into consideration the nature of the services that these institutions and end users are likely to seek to utilize the network for. Reviewers will give additional consideration to projects that will be scalable to meet the future needs of the area.

(4) *Affordability of services offered.* Projects will be evaluated on the pricing of the services offered compared to existing broadband services in the proposed funded service area. If there are no existing broadband services in the proposed funded service area, projects will be evaluated on the ability of the applicant to convincingly demonstrate that their proposed pricing for middle mile services is appropriate for the proposed funded service area.

(5) *Nondiscrimination, interconnection, and choice of provider.* Applications will be scored on the extent to which the applicant commits to exceeding the minimum requirements for interconnection and nondiscrimination established in

section V.C.2.b. of this NOFA. Additional consideration will be given for displaying the network's nondiscrimination and interconnection policies in a prominent location on the service provider's web page, and providing notice to customers of changes to these policies. Additional consideration will be given to applicants that commit to offering wholesale access to network components and services such as wavelength or fibers at reasonable rates and terms. Additional consideration will also be given to applicants that commit to binding private arbitration of disputes concerning the awardees' interconnection obligations as explained above in section V.C.2.b of this NOFA. Reviewers will also consider whether the application proposes to construct infrastructure and implement a business plan which would allow more than one provider to serve end users in the proposed funded service area.

iii. BTOP Public Computer Center Projects

(1) *Availability to the public.* Applications will be scored on the availability of the computer center to the public. Reviewers will consider the capacity of the computer center, its hours of availability, any membership or usage fees charged, restrictions on usage, the proportionality of the computer center's capacity and hours of availability to the population the applicant proposes to serve, public outreach, and the computer center's accessibility to persons with disabilities, accounting for both the physical accessibility of the facility and the accessibility of the computer equipment and software.

(2) *Training and educational programs offered.* Applicants will be scored on the availability, accessibility, and quality of training and educational programs offered through the computer center. Reviewers will consider the degree to which the programs meet the relevant needs of the community.

(3) *Availability and qualifications of consulting and teaching staff.* Applications will be evaluated on the strength of the consulting and teaching staff at the computer center. Reviewers will consider the qualifications and training required of such staff as well as whether the number of available staff is sufficient for the capacity of the computer center.

iv. BTOP Sustainable Broadband Adoption

(1) *Number of new users.* Applications will be scored on the number of new broadband subscribers and other regular users the project will generate. Reviewers will take into consideration both the overall number of new subscribers and users and the proportion that these new subscribers and users represent of the number of non-subscribers and non-users in the relevant area.

(2) *Cost per new user.* Applications will be evaluated on the cost-effectiveness of the program. Reviewers will consider cost per projected new subscriber or other regular user, taking into account the applicant's explanation of why the approach selected is a cost-effective approach given the particular circumstances of the project.

(3) *Innovation.* Applications will be evaluated on the degree to which the project demonstrates replicable new ideas, approaches, and methods to encourage sustainable broadband adoption.

d. Project Viability (25 Points)

i. *The technical feasibility of the proposed project.* For BTOP Broadband Infrastructure and Public Computer Center projects: applications will be scored on the comprehensiveness and appropriateness of the technical solution and the clarity, level of detail, and coherence of the system designs. In order to receive a full score, applicants must demonstrate that the project includes developments that will be feasible in other situations. For Sustainable Broadband Adoption projects: reviewers will assess the mechanics and operational details of the project. Applicants will be scored on the clarity and detail of their project plan, how convincing the rationale behind the plan is, and whether they can demonstrate that the plan includes innovative solutions that would be feasible in other situations.

ii. *Applicant's organizational capability.* Reviewers will assess whether the applicant has the organizational capability necessary to undertake and complete the project. Reviewers will consider the years of experience and expertise of the project management team, and the past track record of the organization with projects of a similar size and scope, as well as the organization's capacity and readiness.

iii. *The level of community involvement in the project.* Reviewers will evaluate linkages to unaffiliated organizations in the project area (from the public, non-profit, and private sectors), particularly community anchor institutions and public safety organizations, as an ongoing and integral part of the project planning and operation. In order to receive the full score for this criterion, at least one partner should meet the definition of a socially and economically disadvantaged small business concern under section 8(a) of the SBA—these partners must be distinct from any contractor or related entity specified for the purposes of the socially disadvantaged small businesses criterion in Project Purpose. Applicants should demonstrate that each linkage is substantial and meaningful.

iv. *Ability to promptly start project.* Projects will be evaluated on whether they will be able to start promptly and be completed in an appropriate timeframe for the size and scope of the project. Reviewers will consider the planned start date of the project, the reasonableness of the project timeline and associated milestones, whether the applicant has secured all licenses, franchises, and regulatory approvals required to complete the project, and whether the required contractors and vendors necessary to implement the project are prepared to enter into contracts as soon as the funds are made available.

e. Project Budget and Sustainability (20 Points)

i. *Reasonableness of the budget.* Reviewers will evaluate the reasonableness of the budget based on its clarity, level of detail, comprehensiveness, appropriateness to the proposed technical and programmatic solutions, the reasonableness of its costs, and whether the allocation of funds is sufficient to complete the tasks outlined in the project plan.

ii. *Sustainability of the project.* For BTOP Broadband Infrastructure and Public Computer Center projects: Applicants must convincingly demonstrate the ability of the project to be sustained beyond the funding period. Reviewers will consider business plans, market projections, third-party funding commitments, and other data as may be appropriate to the nature of the applicant and the proposed project. For Sustainable Broadband Adoption projects: Reviewers will consider both whether the project will be sustained beyond the funding period and whether the increases in broadband adoption rates in the project area caused by the project will be sustained beyond the conclusion of the project.

iii. *Leverage of outside resources.* The applicant must demonstrate the ability to provide, from non-federal sources, funds required to meet or exceed the 20 percent matching funds requirement unless a waiver of that requirement has been requested. Reviewers will give

additional consideration to proposals that exceed the minimum matching requirement, provide cash matches, or receive matching funds from acceptable federal sources as described in section V.C.4.b of this NOFA. For purposes of this evaluation, applicants that have received a full or partial waiver of the cost-matching requirement will be treated as having provided a 20 percent non-cash match.

B. Notice of Proposed Funded Service Areas

RUS and NTIA will post a Public Notice of the proposed funded service areas of each Broadband Infrastructure application at *http://www.broadbandusa.gov* for a 30-day period. The Public Notice will provide existing service providers an opportunity to submit to the agencies information regarding their service offerings. If an existing service provider submits a response outside the timeframe specified in this NOFA, it will not be considered an existing service provider for determining whether the applicant's service area is eligible, but will still be considered with respect to the agencies' other applicable eligibility requirements. The information submitted by an existing service provider will be treated as proprietary and confidential to the extent permitted under applicable law.

If the information submitted by an existing service provider demonstrates that the applicant's proposed funded service area is not unserved, both RUS and NTIA reserve the right to reclassify the application and consider the proposed area as underserved if the application meets the criteria in the underserved definition. If the information submitted by an existing service provider establishes that the applicant's proposed funded service area is not underserved, both RUS and NTIA may reject the application.

VIII. Anticipated Announcement and Award Dates

A. Announcement Date

RUS and NTIA intend to announce the awards starting on or about November 7, 2009.

B. RUS Loan and Grant Document Distribution Date

RUS intends to make grant, loan, and loan/grant combination documents available to successful applicants within 30 days of the award announcement. RUS expects compliance with all documentation requirements from successful applicants, and intends to schedule the closings within 60 days of award announcement.

C. BTOP Grants

NTIA intends to make award documents available to successful applicants within 30 days of the award announcement. NTIA expects compliance with all documentation requirements from successful applicants within 60 days of award announcement.

IX. Award Administration Information

A. Award Notices

1. BIP

Successful applicants will receive award documents from RUS following award notification. Applicants may view sample documents on BIP at *http://www.broadbandusa.gov.*

2. BTOP

Applicants will be notified in writing by the DOC's Grants Officer if their applications are selected for an award. If the application is selected for funding, the DOC's Grants Officer will issue the grant award (Form CD–450), which is the authorizing financial assistance award document. By signing the Form CD–450, the awardee agrees to comply with all award provisions. NTIA will provide the Form CD–450 by mail or overnight delivery to the appropriate business office of the recipient's organization. The awardee must sign and return the Form CD–450 without modification within 30 days of receipt.

If an applicant is awarded funding, neither the DOC nor NTIA is under any obligation to provide any additional future funding in connection with that award or to make any future award(s). Amendment or renewal of an award to increase funding or to extend the period of performance is at the discretion of the DOC and of NTIA.

B. Administrative Requirements

1. BIP

a. *Pre-award Conditions.* No funds will be disbursed under this program until all other sources of funding have been obtained and any other pre-award conditions have been met. Failure to obtain one or more sources of funding committed to in the application or to fulfill any other pre-award condition within 30 days of award announcement will result in withdrawal of the award.

b. *Failure To Comply With Award Requirements.* If an awardee fails to comply with the terms of the award as specified in the award documents, RUS may exercise rights and remedies.

c. *Advance Procedures.* RUS loan and grant advances are made at the request of the awardee according to the procedures stipulated in the award documents. Loan/grant combination funds are advanced in proportion to the amount of the award made in the form of loans and grants. Remote areas project grant funds are advanced independent of the loan/grant combination funds.

d. *Contracting.* Contracting is to be done at the awardee's discretion, using private contracts or RUS's form contracts, however equal employment opportunity, civil rights, etc. requirements must still be met.

e. *Accounting, Monitoring, and Reporting Requirements.* Awardees must follow RUS's accounting, monitoring, and reporting requirements. These requirements, which are specified in the award documents, include, but are not limited to, the following:

i. Awardees must adopt a GAAP system of accounts acceptable to RUS;

ii. Awardees must submit annual audited financial statements along with a report on compliance and on internal control over financial reporting, and a management letter in accordance with the requirements of 7 CFR 1773. The CPA conducting the annual audit is selected by the awardee and must be approved by RUS as set forth in 7 CFR § 1773.4;

iii. Awardees must submit to RUS the information as specified in section IX.D.2;

iv. Awardees must comply with all reasonable RUS requests to support ongoing monitoring efforts. The awardee shall afford RUS, through its representatives and representatives of the USDA Office of Inspector General reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect the broadband system, and any other property encumbered by the mortgage or security agreement, and any or all books, records, accounts, invoices, contracts, leases, payrolls, timesheets, cancelled checks, statements, and other documents, electronic or paper of every kind belonging to or in the possession of the awardee or in any way pertaining to its property or business, including its subsidiaries, if any, and to make copies or extracts therefrom.

f. *Assistance Instruments.*

i. Terms and conditions of loan/grant combinations are set forth in the non-negotiable standard loan/grant contract, note, and/or mortgage found at *http://www.broadbandusa.gov.*

ii. Terms and conditions of loans are set forth in the non-negotiable standard loan contract, note, and/or mortgage found at *http://www.broadbandusa.gov.*

iii. Terms of the remote area end-user grant are set forth in a nonnegotiable

grant agreement found at *http://www.broadbandusa.gov.*

iv. Loan and grant documents appropriate to the project must be executed prior to any advance of funds.

v. Sample loan documents and grant agreements can be found at *http://www.broadbandusa.gov.*

g. *Loan Terms and Conditions.* For loan/grant combinations, applicants must indicate the amount of the award to be requested in the form of a loan, and the amount to be requested in the form of a grant. The grant component must not exceed the loan component. The scoring criteria reward those applicants that reduce the percentage of the funds requested in the form of a grant. Applicants may request a 100 percent loan. The following terms shall apply to the loans, as well as other terms that are specified in the loan documents:

i. *Interest rate.* Loans shall bear interest at a rate equal to the cost of borrowing to the Department of Treasury for obligations of comparable maturity. The applicable interest rate will be set at the time of each advance.

ii. *Repayment period.* Unless the applicant requests a shorter repayment period, broadband loans must be repaid with interest within a period that, rounded to the nearest whole year, is equal to the expected Composite Economic Life of the assets to be financed, as determined by RUS based upon acceptable depreciation rates.

iii. *Amortization period.* Interest begins accruing on the date of each loan advance and interest payments are due monthly. Upon completion of the build-out, or a date certain that is determined at closing, whichever occurs first, monthly principal payments will be established in an amount that amortizes the outstanding balance over the remaining term of the loan.

iv. *Fidelity bonding.* Applicants must agree to obtain a fidelity bond for 15 percent of the loan amount. The fidelity bond must be obtained as a condition of loan closing. RUS may reduce the percentage required if it determines that 15 percent is not commensurate with the risk involved.

v. *Security.* The loan portion of the award must be adequately secured, as determined by RUS.

(1) The loan and loan/grant combination must be secured by the assets purchased with the loan or loan/grant funds, as well as all other assets of the applicant and any other signer of the loan documents that are available to be pledged to RUS.

(2) RUS must be given an exclusive first lien, in form and substance satisfactory to RUS, on all of the assets purchased with the loan or loan/grant funds. RUS may share its first lien position with one or more lenders on a *pari passu* basis if security arrangements are acceptable to RUS.

(3) Unless otherwise approved by the RUS, all property purchased with award funds must be owned by the awardee.

(4) In the case of awards that include financing of facilities that do not constitute self-contained operating systems, the applicant shall furnish assurance, satisfactory to RUS, that continuous and efficient service at the broadband funding speed will be rendered.

2. BTOP

Administrative and national policy requirements for BTOP grant funding, *inter alia,* are contained in the *Pre-Award Notification Requirements for Grants and Cooperative Agreements* (DOC Pre-Award Notification), published in the **Federal Register** on February 11, 2008 (73 FR 7696), as amended. All BTOP applicants are required to comply with all applicable provisions set forth in the DOC Pre-Award Notification.

C. Award Terms and Conditions

1. Scope

Awardees, including all contractors and subcontractors, are required to comply with the obligations set forth in the Recovery Act and the requirements established herein. Any obligation that applies to the awardee shall extend for the life of the award-funded facilities.

2. Sale or Lease of Project Assets

The sale or lease of any portion of the award-funded broadband facilities during their life is prohibited, except as provided herein. The agencies may approve a sale or lease if it is: a. For adequate consideration; b. the purchaser or lessee agrees to fulfill the terms and conditions relating to the project after such sale or lease; and c. either: i. the sale or lease is set forth in the original application and is part of the applicant's proposal for funds; or ii. the agencies waive this provision for any sale or lease occurring after the tenth year from the date of issuance of the grant, loan or loan/grant award. Awardees are required to notify the agencies in the event of a proposed transfer of award-funded facilities. Nothing in this section is meant to limit Broadband Infrastructure awardees from leasing facilities to another service provider for the provision of broadband services.

3. For BTOP Only, Access to Records for Audits, Site Visits, Monitoring and Law Enforcement Purposes

The Inspector General of the DOC, or any of his or her duly authorized representatives, and NTIA representatives, or any of their duly authorized representatives, shall have access to and the right to inspect the broadband system and any other property funded by the grant, any and all books, records, accounts, invoices, contracts, leases, payrolls, time sheets, canceled checks, statements, and other documents, papers and records of the parties to a grant, including their subsidiaries, if any, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, site visits, excerpts, transcripts, copies, or other examinations as authorized by law. An audit of an award may be conducted at any time.[41]

4. Broadband Data Collection

All BTOP Broadband Infrastructure awardees that offer Internet access service to the public for a fee must agree to participate in the State Broadband Data and Development Grant Program pursuant to the BDIA and section 6001(l) of the Recovery Act. With respect to BIP awardees, RUS will provide to NTIA data supplied by awardees to support the development of the broadband mapping project conducted pursuant to section 6001(l) of the Recovery Act. This data would include:

a. The availability of broadband service within service area. For wireline-based systems, the form of the broadband (*e.g.,* DSL) and the advertised speeds up and down available within the service area and the number of residents, small businesses, large businesses, and public facilities. For wireless-based systems, the advertised and typical speeds up and down within the wireless' carriers license area, and the spectrum on which it's provided.

b. The residential average revenue per user.

c. The first point of aggregation for last mile connection points (e.g., remote terminals or cable headends).

d. Middle mile interconnection points.

e. A list of community anchor institutions to which service is provided.

[41] Note that section 1515 of the Recovery Act also authorizes the Inspector General to examine records and interview officers and employees of the grantee and other entities regarding the award of funds. *See* Recovery Act § 1515, 123 Stat. at 289.

5. Certifications

a. The applicant must certify that he or she is authorized to submit the application on behalf of the eligible entity(ies) listed on the application, that the applicant has examined the application, that all of the information in the application, including certifications and forms submitted, all of which are part of the application, are material representations of fact and true and correct to the best of his or her knowledge, that the entity(ies) that is requesting funding pursuant to the application and any subawardees will comply with the terms, conditions, purposes, and federal requirements of the program; that no kickbacks were paid to anyone; and that a false, fictitious, or fradulent statements or claims on this application is grounds for denial or termination of an award, and/or possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001 and civil violations of the False Claims Act (31 U.S.C. 3729 *et seq.*);

b. The applicant certifies that the entity(ies) he or she represents have and will comply with all applicable Federal, state, and local laws, rules, regulations, ordinances, codes, orders, and programmatic rules and requirements relating to the project.[42] The applicant acknowledges that failure to do so may result in rejection or deobligation of the award. The applicant acknowledges that failure to comply with all federal and program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities;

c. If requesting BTOP funding, the applicant certifies that the entity(ies) he or she represents has and will comply with all applicable administrative and federal statutory, regulatory, and policy requirements set forth in the DOC Pre-Award Notification; DOC Financial Assistance Standard Terms and Conditions (Mar. 8, 2009); DOC American Recovery and Reinvestment Act Award Terms (Apr. 9, 2009); and any Special Award Terms and Conditions that are included by the Grants Officer in the award.

D. Reporting Requirements

1. General Recovery Act Requirements

a. OMB Reporting Requirements Implementing the Recovery Act

Any grant, loan, or loan/grant combination awarded under this NOFA shall be subject to the applicable statutes and regulations regarding reporting on Recovery Act funds.[43] If Recovery Act funds are combined with other funds to fund or complete projects and activities, Recovery Act funds must be accounted for separately from other funds and reported to RUS or NTIA or any federal Web site established for Recovery Act reporting purposes. Moreover, recipients of funds under this NOFA must also comply with the accounting requirements as established or referred to in this NOFA.

b. Required Data Elements

The awardee and each contractor engaged by the awardee must submit the following information to the relevant agency:

i. The total amount of Recovery Act funds received;

ii. The amount of Recovery Act funds received that were expended or obligated to projects or activities;

iii. A detailed list of all projects or activities for which Recovery Act funds were expended or obligated, including: (1) The name of the project or activity; (2) a description of the project or activity; (3) an evaluation of the completion status of the project or activity; (4) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and (5) for infrastructure investments made by state and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with Recovery Act funds, and name of the person to contact at the agency if there are concerns with the infrastructure investment; and

iv. Detailed information on any subcontracts or subgrants awarded by the awardee to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, 120 Stat. 1186 (to be codified at 31 U.S.C. § 6101 note)), allowing aggregate reporting on awards below $25,000 or to individuals.[44]

Awardees that must report information according to paragraph (iv) above (re: subcontracts or subgrants) must register with the CCR database (*http://www.ccr.gov/*) or complete other registration requirements as determined by the Director of OMB.

c. Reporting Deadlines

Recovery Act reports are due to the agencies ten days after the quarter in which the award was issued ends and, unless otherwise noted, each quarter thereafter until a final report is made at the end of three years. The final report should summarize the awardee's quarterly filings and state whether the project's goals have been satisfied. Pursuant to OMB Guidelines, reports should be submitted electronically to *http://www.federalreporting.gov*. If the awardee fails to submit an acceptable quarterly report or audited financial statement within the timeframe designated in the grant or loan award, the agencies may suspend further payments until the awardee complies with the reporting requirements. Additional information regarding reporting requirements will be specified at the time the award is issued.

2. BIP-Specific Reporting Requirements

In addition to the general Recovery Act reporting requirements, BIP awardees shall also report on the information requested below.

a. Awardees must submit to RUS 30 calendar days after the end of each calendar year quarter, balance sheets, income statements, statements of cash flow, rate package summaries, and the number of customers taking broadband service on a per community basis utilizing RUS's Broadband Collection and Analysis System (BCAS). BCAS is an electronic reporting system that is accessed through the Internet.

b. Annually on January 31, starting the first January 31 after completion of the project, awardees must submit to RUS, using the electronic reporting system provided by RUS:

i. Number of households and businesses subscribing to broadband service;

ii. Number of households and businesses subscribing to broadband service that receive improved access; and

iii. Number of educational, library, health care, and public safety providers receiving either new or improved access to broadband service.

c. Awardee shall specifically state in the applicable quarter when they have received 67 percent of the award funds. Reaching this threshold will indicate that the awardee has substantially completed its project.

3. BTOP-Specific Reporting Requirements

In addition to the general Recovery Act reporting requirements, BTOP awardees must also report quarterly on the information requested below.[45] The information requested will vary depending on the type of project being funded.

[42] *See* Recovery Act § 6001(e)(4), 123 Stat. at 514.

[43] *See, e.g.,* 2 CFR pt. 176; OMB, Interim Final Guidance for Federal Financial Assistance, 74 FR 18449 (Apr. 23, 2009); Implementing Guidance for Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (OMB M–09–21 June 22, 2009).

[44] Recovery Act § 1512(c), 123 Stat. at 287.

[45] *See id.* § 6001(i)(2), 123 Stat. at 515.

a. All BTOP Awardees

All BTOP awardees must report on:

i. Their progress in achieving the project goals, objectives, and milestones as set forth in its application;

ii. Expenditure of grant funds and how much of the award remains;

iii. How much non-federal investment is being added to complete the project;

iv. Whether the awardee is on schedule to substantially complete its projects within two years of the award and complete its project within three years of the award;

v. The number and type of entities (as set forth in section 6001(b)(3) and (4) of the Recovery Act) receiving new access to broadband services; and

vi. The number and type of entities (as set forth in section 6001(b)(3) and (4) of the Recovery Act) receiving improved access to broadband services.

Awardees shall specifically state in the applicable quarter when they have met 67 percent of their milestones and received 67 percent of their award funds. Reaching these thresholds will indicate that the awardees have ''substantially completed'' their projects consistent with the Recovery Act.[46]

b. BTOP Broadband Infrastructure Awardees

Awardees receiving Last Mile or Middle Mile Broadband Infrastructure grants must report, for each specific BTOP project, on the following:

i. The terms of any interconnection agreements entered into during the reporting period;

ii. Traffic exchange relationships (*e.g.,* peering) and terms;

iii. Broadband equipment purchases;

iv. Total and peak utilization of access links;

v. Total and peak utilization on interconnection links to other networks;

vi. Internet protocol address utilization and IPv6 implementation;

vii. Any changes or updates to their network management practices;

viii. Average end-user and middle mile megabit per second increase;

ix. Availability of their broadband offering (including the technology used, location of infrastructure, area served, and the number of households passed);

x. The total number of households and businesses subscribing to broadband service;

xi. The number of households and businesses subscribing to new broadband service;

xii. The number of households and businesses subscribing to broadband service that receive improved access;

xiii. Advertised and averaged broadband speeds; and

xiv. The price of the broadband services.

c. Public Computer Center Awardees

Awardees receiving Public Computer Center grants must report on:

i. The number of work stations available to the public;

ii. The total hours of operation per week that the public computer center is open;

iii. The speed of broadband to the public computer center;

iv. The primary uses of the public computer center;

v. The average number of users per day in the public computer center;

vi. The total hours per week of training provided at the public computer center; and

vii. the number and cost of any broadband equipment deployed.

d. Sustainable Broadband Adoption Awardees

Awardees receiving Sustainable Broadband Adoption grants must report on:

i. The technology being fostered;

ii. Efforts to aggregate demand for each location, including the role of the local community;

iii. The increase in the number of households, businesses, and community anchor institutions subscribing to broadband service;

iv. The number and type of awareness campaigns provided, including the total number individuals reached; and

v. The number and cost of any broadband customer premises equipment or end-user devices deployed.

X. Other Information

A. Funding Rounds

Both agencies envision this as the first of three funding rounds. Subsequent rounds will be developed in part based on each agency's experience with this NOFA. While the fundamental nature of subsequent NOFAs is expected to remain similar, some additional targeting is anticipated. Potential applicants are urged to begin planning now in anticipation of future funding availability.

B. Discretionary Awards

The government is not obligated to make any award as a result of this announcement, and will fund only projects that are deemed likely to achieve the program's goals and for which funds are available.

C. Third Party Beneficiaries

The BTOP is a discretionary grant program that is not intended to and does not create any rights enforceable by third party beneficiaries.

D. Limitation on Expenditures

The Recovery Act imposes an additional limitation on the use of funds expended or obligated from appropriations made pursuant to its provisions. Specifically, for purposes of this NOFA, none of the funds appropriated or otherwise made available under the Recovery Act may be used by any state or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.[47]

E. Recovery Act Logo

All projects that are funded by the Recovery Act shall display signage that features the Primary Emblem throughout the construction phase. The signage should be displayed in a prominent location on site. Some exclusions may apply. The Primary Emblem should not be displayed at a size less than six inches in diameter.

F. Environmental and National Historic Preservation Requirements

Awarding agencies are required to analyze the potential environmental impacts, as required by the NEPA and the NHPA for applicant projects or proposals seeking Recovery Act funding. All applicants are required to complete the Environmental Questionnaire under the description of program activities and to submit all other required environmental documentation during step two of the application process.

It is the applicant's responsibility to obtain all necessary federal, state, and local governmental permits and approvals necessary for the proposed work to be conducted. Applicants are expected to design their projects so that they minimize the potential for adverse impacts to the environment. Applicants also will be required to cooperate with the granting agencies in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposed projects. The failure to do so may be grounds for not making an award.

Applications will be reviewed to ensure that they contain sufficient information to allow agency staff to conduct a NEPA analysis so that appropriate NEPA documentation can be submitted to the agencies, along with

[46] *Id.* § 6001(d)(3), 123 Stat. at 513.

[47] *Id.* § 1604, 123 Stat. at 303.

the recommendation for funding of the selected applications. Applicants proposing activities that cannot be covered by existing environmental compliance procedures will be informed after the technical review stage whether NEPA compliance and other environmental requirements can otherwise be expeditiously met so that a project can proceed within the timeframes anticipated under the Recovery Act.

If additional information is required after an application is accepted for funding, funds can be withheld by the agencies under a special award condition requiring the awardee to submit additional environmental compliance information sufficient for the agency to make an assessment of any impacts that a project may have on the environment.

G. Davis-Bacon Wage Requirements

Pursuant to section 1606 of the Recovery Act, any project using Recovery Act funds requires the payment of not less than the prevailing wages for ''all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government.'' [48]

H. Financial and Audit Requirements

To maximize the transparency and accountability of funds authorized under the Recovery Act, all applicants are required to comply with the applicable regulations set forth in OMB's Interim Final Guidance for Federal Financial Assistance.[49]

Recipients that expend $500,000 or more of federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the U.S. General Accountability Office, Government Auditing Standards, located at *http://www.gao.gov/govaud/ybk01.htm,* and OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, located at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* Awardees are responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

I. Deobligation

The RUS and NTIA reserve the right to deobligate awards to recipients under this NOFA that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, and award these funds competitively to new or existing applicants.

J. Confidentiality of Applicant Information

Applicants are encouraged to identify and label any confidential and proprietary information contained in their applications. The agencies will protect confidential and proprietary information from public disclosure to the fullest extent authorized by applicable law, including the Freedom of Information Act, as amended (5 U.S.C. 552), the Trade Secrets Act, as amended (18 U.S.C. 1905), and the Economic Espionage Act of 1996 (18 U.S.C. 1831 *et seq.*). Applicants should be aware, however, that the Recovery Act requires substantial transparency. For example, RUS and NTIA are required to make publicly available on the Internet a list of each entity that has applied for a grant, a description of each application, the status of each application, the name of each entity receiving funds, the purpose for which the entity is receiving the funds, each quarterly report, and other information.[50]

K. Policy on Sectarian Activities

NTIA encourages applications from faith-based organizations. On December 22, 1995, NTIA issued a *Notice* in the **Federal Register** on its policy with regard to sectarian activities. Under NTIA's policy, while religious activities cannot be the essential thrust of a grant, an application will be eligible for a grant under this program where sectarian activities are only incidental or attenuated to the overall project purpose for which funding is requested. Applicants for whom this policy may be relevant can access it through the **Federal Register** at 60 FR 66491 (Dec. 22, 1995).

L. Disposition of Unsuccessful Applications

Applications accepted for review for the Fiscal Year 2009 BIP and BTOP programs will be retained for two years, after which they will be destroyed.

M. State Certifications

With respect to funds made available under the Recovery Act to state or local governments for infrastructure investments, the governor, mayor, or other chief executive, as appropriate, must certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. This certification must include a description of the investment, the estimated total cost, and the amount of funds to be used, and must be posted on the recipient's Web site and linked to *http://www.recovery.gov.* A state or local agency may not receive infrastructure investment funding from funds made available under the Recovery Act unless this certification is made and posted.[51]

N. Waiver Authority

It is the general intent of NTIA not to waive any of the provisions set forth in this NOFA. However, under extraordinary circumstances and when it is in the best interest of the federal government, NTIA, upon its own initiative or when requested, may waive the provisions in this NOFA. Waivers may only be granted for requirements that are discretionary and not mandated by statute or other applicable law. Any request for a waiver must set forth the extraordinary circumstances for the request and be included in the application or sent to the address provided in section VI.E.

O. Compliance With Applicable Laws

Any recipient of funds under this NOFA shall be required to comply with all applicable federal and state laws, including but not limited to: i. The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.,* 7 CFR pt. 15); ii. section 504 of the Rehabilitation Act (29 U.S.C. 794 *et seq.*; 7 CFR pt. 15b); iii. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*; 45 CFR pt. 90); iv. Executive Order 11375, amending Executive Order 11246, Relating to Equal Employment Opportunity (3 CFR pt. 102). *See* 7 CFR pts. 15 and 15b and 45 CFR pt. 90, RUS Bulletin 1790–1 (''Nondiscrimination among Beneficiaries of RUS Programs''), and RUS Bulletin 20–15:320–15 (''Equal Employment Opportunity in Construction Financed with RUS Loans''). The RUS Bulletins are available at *http://www.broadbandusa.gov.*; v. The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*); vi. The Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101–19.6); and vii. The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and

[48] *Id.* § 1606, 123 Stat. at 303.

[49] *See* OMB, Interim Final Guidance for Federal Financial Assistance, 74 FR 18449 (Apr. 23, 2009).

[50] *See* Recovery Act § 6001(i)(5), 123 Stat. at 515.

[51] *See id.* §§ 1511, 1526, 123 Stat. at 287, 293.

certain related federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR 1794. A more complete list of such requirements can be found in the applicable grant agreement or loan contract.

P. Communications Laws

Awardees, and in particular, Broadband Infrastructure awardees, will be required to comply with all applicable federal and state communications laws and regulation as applicable, including, for example, the Communications Act of 1934, as amended (47 U.S.C. 151 *et seq.*), the Telecommunications Act of 1996, as amended (Pub. L. 104–104, 110 Stat. 56 (1996), and the Communications Assistance for Law Enforcement Act (47 U.S.C. 1001 *et seq.*) (CALEA). For further information, *see http://www.fcc.gov*.

Q. Buy American Notice

1. General Prohibition and Waiver

None of the funds appropriated or otherwise made available by the Recovery Act may be used for the construction, alteration, maintenance, or repair of a public building or public work (as such terms are defined in 2 CFR 176.140) unless all of the iron, steel, and manufacturing goods used in the project are produced in the United States.[52] On July 1, 2009, the Department of Agriculture and the Department of Commerce published notices in the **Federal Register** stating that the Secretary of Agriculture and Secretary of Commerce have separately reached conclusions that applying the Buy American provision for the use of certain broadband equipment in public BIP and BTOP projects would be inconsistent with the public interest.

As explained below, to the extent that an applicant wishes to use broadband equipment or goods that are not covered by the Secretaries' waivers, it may seek an additional waiver on a case-by-case basis as part of its application for Recovery Act funds.

2. OMB Buy American Notice Requirement

Pursuant to OMB guidance on the Recovery Act,[53] RUS and NTIA are required to provide the following notice:

Section 176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods (Covered Under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009

When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in the solicitation:

(a) *Definitions. Designated country iron, steel, and/or manufactured goods, foreign iron, steel, and/or manufactured good, manufactured good, public building and public work,* and *steel,* as used in this provision, are defined in 2 CFR 176.160(a).

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by 2 CFR 176.160(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are used based on unreasonable cost of comparable domestic iron, steel, or manufactured goods.

(d) *Alternate project proposals.*

(1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than designated country iron, steel, and/or manufactured goods, that are not listed by the Federal Government in this Buy American notice in the request for applications or proposals, the applicant may submit an alternate proposal based on use of equivalent domestic or designated country iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with paragraphs 2 CFR 176.160(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.160(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic or designated country iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic or designated country items.

R. Executive Order 12866

This notice has been determined to be ''economically significant'' under Executive Order 12866. The Recovery Act appropriates $4.7 billion to NTIA for broadband grants and other purposes. The Recovery Act also appropriates $2.5 billion to RUS for broadband grants and loans. Awards must be made no later than September 30, 2010. In accordance with Executive Order 12866, an economic analysis was completed outlining the costs and benefits of implementing each of these programs. The complete analyses are available from RUS and NTIA, respectively, upon request.

S. Executive Order 13132

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

T. Administrative Procedure Act Statement

This NOFA is being issued without advance rulemaking or public comment. The Administrative Procedure Act of 1946, as amended (5 U.S.C. 553) (APA), has several exemptions to rulemaking requirements. Among them is an exemption for ''good cause'' found at 5 U.S.C. 553(b)(B), which allows effective government action without rulemaking procedures where withholding the action would be ''impracticable, unnecessary, or contrary to the public interest.''

USDA and the DOC have determined, consistent with the APA that making these funds available under this NOFA for broadband development, as

[52] *Id.* § 1605, 123 Stat. at 303.

[53] *See* 2 CFR pt. 176.

mandated by the Recovery Act, is in the public interest. Given the emergency nature of the Recovery Act and the extremely short time period within which all funds must be obligated, withholding this NOFA to provide for public notice and comment would unduly delay the provision of benefits associated with these broadband initiatives and be contrary to the public interest.

For the same reasons, the agencies find good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553(d)(3) or any other law, the analytical requirements of the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

U. Congressional Review Act

NTIA has submitted this NOFA to the Congress and the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.* It has been determined that this NOFA is a ''major action'' within the meaning of the Act because it will result in an annual effect on the economy of $100,000,000 or more. This NOFA sets out the administrative procedures for making grants, loans, and loan/grant combinations totaling $3 billion to implement a nationwide broadband initiative to expand the reach and quality of broadband services in the United States.

With funds made available through the Recovery Act, BIP will provide $2.5 billion of budget authority for RUS to extend grants, loans, and loan/grant combinations to facilitate broadband deployment in rural areas. At the same time, BTOP will provide $4.7 billion through NTIA to provide broadband grants throughout the United States for unserved and underserved communities, to increase public computer center capacity, and to encourage sustainable adoption of broadband services. The Recovery Act provides that BTOP awards must be made no later than September 30, 2010. Moreover, projects funded under these programs must be substantially completed no later than two years following the date of issuance of the award. A 60-day delay in implementing this NOFA would hamper RUS and NTIA's missions to expeditiously provide assistance to eligible entities to begin and complete projects within the statutory requirements of the Recovery Act.

Thus, RUS and NTIA find good cause under 5 U.S.C. 808(2) that prior notice and public procedure are impracticable, unnecessary, and contrary to the public interest. To the extent that RUS and NTIA provided a 60-day delay in effectiveness pursuant to the Congressional Review Act, the agencies would not be able to execute the statutory duties required by the Recovery Act in a timely manner. This finding is consistent with the objectives of the Recovery Act, which specifically provides clear preferences for rapid agency action and quick-start activities designed to spur job creation and economic benefit. Accordingly, this NOFA shall take effect upon publication in the **Federal Register.**

V. Paperwork Reduction Act

1. Reporting and Registration Requirement Under Section 1512 of the Recovery Act

a. This award requires the recipient to complete projects or activities which are funded under the Recovery Act and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

b. The first report is due no later than ten calendar days after the initial calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act, or by October 10, 2009. Thereafter, reports shall be submitted no later than the tenth day after the end of each calendar quarter.

c. Recipients and their first-tier recipients must maintain current registrations in the CCR (*http://www.ccr.gov*) at all times during which they have active federal awards funded with Recovery Act funds. A DUNS number is one of the requirements for registration in the CCR.

d. The recipient shall report the information described in section 1512(c) using the reporting instructions and data elements that will be provided online at *http://www.FederalReporting.gov,* unless the information is pre-populated.

2. Agencies' Additional Paperwork Reduction Act Analysis

Copies of all forms, regulations, and instructions referenced in this NOFA may be obtained from RUS or NTIA. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

The collection of information is vital to RUS and NTIA to ensure compliance with the provisions of this Notice and to fulfill the requirements of the Recovery Act. In summary, the collection of information is necessary in order to implement this program.

The following estimates are based on the average over the first three years the program is in place.

BIP Infrastructure:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 116 hours per response.

Respondents: Business or other for profits; Not-for-profit institutions; and State, local, and Tribal.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 3.28.

Estimated Number of Responses: 1,639.

Estimated Total Annual Burden (hours) on Respondents: 189,837.

BTOP Infrastructure:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 117 hours per response.

Respondents: 1,500.

Estimated Number of Respondents: 1,500.

Estimated Number of Responses per Respondent: 2.11.

Estimated Number of Responses: 3,164.

Estimated Total Annual Burden (hours) on Respondents: 371,187.

Public Computer Center:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 47.6 hours per response.

Respondents: 2,500.

Estimated Number of Respondents: 2,500.

Estimated Number of Responses per Respondent: 1.1.

Estimated Number of Responses: 2,750.

Estimated Total Annual Burden (hours) on Respondents: 130,750.

Sustainable Adoption:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 23.9 hours per response.

Respondents: 2,500.

Estimated Number of Respondents: 2,500.

Estimated Number of Responses per Respondent: 1.1.

Estimated Number of Responses: 2,750.

Estimated Total Annual Burden (hours) on Respondents: 65,750.

Copies of this information collection can be obtained from Michele Brooks,

Rural Utilities Service, at (202) 690–1078 and Gwellnar Banks, DOC/OS, at (202) 482–3781.

Comments. Comments are invited regarding: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RUS or NTIA, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments for BIP may be sent to Michele Brooks, Rural Utilities Service, USDA, Rural Development, Stop 1530, 1400 Independence Ave., SW., Washington, DC 20250–1530 and for BTOP to Gwellnar Banks, 1401 Constitution Avenue, NW., Washington, DC 20230. All responses to this Notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

The grant application forms for BTOP Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption projects and the subsequent step two filing are being reviewed and will be approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995. OMB control numbers will be assigned and published in separate **Federal Register** notices. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

W. Recovery Act

Additional information about the Recovery Act is available at *http://www.Recovery.gov*.

X. Authorized Signatories

Only authorized grant and loan officers can bind the Government to the expenditure of funds.

Appendix to Notice of Funds Availability—Broadband Initiatives Program and Broadband Technology Opportunities Program

Policy Justification

Definition of ''Broadband''

BTOP contains five core purposes, all of which relate to deployment of, access to, or support for ''broadband service.'' [1] The Recovery Act does not expressly define the term ''broadband,'' instead it tasks NTIA with defining what constitutes a ''broadband service'' eligible for BTOP support. The Recovery Act expands RUS's existing authority to make loans and provides new authority to make grants to facilitate broadband deployment in rural areas. Thus, the term ''broadband'' figures prominently in both agencies' statutory purposes and requires that RUS and NTIA agree to a common understanding of the term.

Most commenters suggest a minimum transmission speed, ranging from 200 kilobits per second (kbps) [2] to over 100 megabits per second (mbps).[3] A substantial contingent encourage NTIA to adopt a minimum speed of 768 kbps downstream, equivalent to the ''Tier 1'' threshold in the current FCC broadband data collection process.[4] Many commenters encourage additional consideration for applicants promising speeds greater than the minimum.[5] Some commenters prefer that NTIA evaluate speed against the project's overall benefits,[6] establish different speeds for rural and urban areas,[7] or establish different speeds for different price points.[8] Some wireless providers argue for different speed thresholds for wireless and fixed services.[9] Other commenters favor a definition of broadband based upon the applications that would be supported.[10] A number of commenters favor symmetrical speeds,[11] but many providers claim that asymmetrical technologies are often more cost effective and efficient.[12] Several commenters encourage NTIA to consider latency in addition to bandwidth when evaluating proposals.[13] Several also encourage NTIA to consider not only current demand, but also the needs of future consumers.[14]

RUS and NTIA conclude that ''broadband service'' should be defined as the provision of two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and 200 kbps upstream to end users, or providing sufficient capacity in a Middle Mile project to support the provision of broadband service to end users.

RUS and NTIA favor this broadband speed threshold because it leverages the FCC's expertise, utilizes an established standard, facilitates the use of many

[1] *See* Recovery Act § 6001(b), 123 Stat. at 512.

[2] *See* Harris Corp. at 8–9 (Apr. 13, 2009); Independent Telephone & Telecommunications Alliance (ITTA) at 4 (Apr. 13, 2009).

[3] *See* Virginia Internet Service Providers Alliance at 5 (Apr. 10, 2009).

[4] *See, e.g.,* Farmers Mutual Telephone Company (Farmers Mutual) at 12 (Apr. 13, 2009); Motorola, Inc. at 9 (Apr. 13, 2009); Gardonville Cooperative Telephone Association (Gardonville Coop.) at 12 (Apr. 13, 2009); Northern Valley Communications (Northern Valley) at 10 (Apr. 13, 2009); AT&T at 10–11 (Apr. 13, 2009); Progress & Freedom Foundation at 5 (Apr. 10, 2009); Telecommunications Industry Association (TIA) at 13 (Apr. 10, 2009); Free Press at 13 (Apr. 13, 2009) (proposing a reduction in points for ''networks that are highly asymmetric''); WildBlue Communications at 4–5 (Apr. 13, 2009); Harris Corp. at 8–9; Alcatel-Lucent Corp. (Alcatel-Lucent) at 27 (Apr. 13, 2009); Western Telecommunications Alliance at 4–5 (Apr. 10, 2009); Cricket Communications (Cricket) at 8 (Apr. 13, 2009).

[5] *See, e.g.,* AT&T at 10–11.

[6] *See, e.g.,* Native American Telecom at 5 (Apr. 13, 2009); Alaska Communications Systems at 10 (Apr. 13, 2009).

[7] *See, e.g.,* Joe Cremin of Starwire Technologies in webform (Apr. 8, 2009).

[8] *See, e.g.,* Rural Telecommunications Congress at 9 (Apr. 13, 2009).

[9] *See, e.g.,* Wireless Communications Association International, Inc. (WCA) at 3 (Apr. 9, 2009); Utopian Wireless Corp. at 3 (Apr. 13, 2009); Alvarion, Inc. at 9 (Apr. 14, 2009).

[10] *See, e.g.,* Buck Graham of Occam Networks (Graham) in webform (recommending 5 Mbps bi-directional) (Mar. 18, 2009); EvenLink, LLC at 3 (Apr. 13, 2009) (advocating a standard of 5 mbps bi-directional, but suggesting a lower-speed definition for rural areas); William Wells Jr. of True Broadband Networks (Wells) (Mar. 17, 2009) (advocating a standard of 10 mbps bi-directional to ''allow real-time bi-directional transmission of simultaneous voice, video and data services'').

[11] *See, e.g.,* Link Shadley at 1 (Mar. 20, 2009); Stratum Broadband at 32 (Mar. 31, 2009); Univ. of Nebraska at 6 (Apr. 10, 2009); Graham at webform; Wells at webform; U.S. TelePacific *et al.* at 3–4, 6 (Apr. 13, 2009) (discussing business users' need for symmetrical speeds for video teleconferencing, multiline VOIP, web hosting, and large email files).

[12] *See, e.g.,* ITTA at 35–36 (arguing that an asymmetrical threshold would be ''consistent with the preferences expressed by consumers and providers alike through their behavior in the market''); WCA at 12 (''requiring symmetrical speeds for all product markets would disserve consumers and would not be technologically neutral''); Starwire at webform; General Communication, Inc. (GCI) at 14–15 (Apr. 13, 2009); NetAccess System Technologies (NetAccess) at 9 (Apr. 10, 2009).

[13] *See, e.g.,* Regulatory Commission of Alaska at 12 (Apr. 13, 2009); Michael Blair of Blair Technologies at webform; Univ. of Nebraska at 2 (stating that grant selection ''[c]riteria should include speed, price/Mbps, latency, reliability, interoperability, coverage, sustainability, current capacity and growth capacity''); Libbey Scheible of INOSS, Inc. (INOSS) at 6–7, 10 (suggesting a minimum latency of 20 milliseconds) (Apr. 10, 2009); ADTRAN at Appendix 1 (Apr. 13, 2009).

[14] *See, e.g.,* Montana Independent Telecom Systems at 3 (referring to ''the anticipated requirements for tomorrow's applications and consumers'') (Apr. 13, 2009); Fiber Tower Corp. at 11–12 (Apr. 13, 2009).

currently common broadband applications (*e.g.,* web browsing, VOIP, and one-way video), allows for consideration of cost-effective solutions for difficult-to-serve areas, and is the most technology-neutral option (because it encompasses all major wired and wireless technologies). For these same reasons, RUS and NTIA decline to impose a latency requirement or technology-specific definitions. RUS and NTIA intend to provide additional consideration to applications exceeding the minimum speed threshold or offering superior upgradeability. This approach offers the greatest flexibility for the agencies and simplicity for applicants, while still expressing a preference for higher-capacity projects. An area that has access to service at 768 kbps may still qualify as ''underserved,'' and an area that has only high-latency satellite service will still qualify as ''unserved.''

Definition of ''Unserved''

One of the five core purposes of BTOP is ''to provide access to broadband service to consumers residing in unserved areas of the United States.'' [15] The Recovery Act does not expressly define the term ''unserved,'' instead it tasks NTIA with developing a definition that targets specific geographic areas and advances the program's purposes. Grants under RUS's Broadband Initiatives Program (BIP) are to be used to provide funds to applications proposing to exclusively serve remote, ''unserved'' rural areas.

The majority of commenters favor defining ''unserved area'' as a whole area lacking access to a certain quality of Internet service,[16] or lacking access to technologies other than dial-up and satellite service.[17] Some commenters, however, offer definitions based on a percentage of the population lacking such access.[18] Some suggest that an area should be considered unserved if no mobile wireless broadband service is available.[19] Finally, still others encourage the adoption of a definition of ''unserved area'' that encompasses communities where broadband infrastructure is available, but where barriers such as affordability effectively prevent residents from receiving broadband service.[20]

RUS and NTIA conclude that an appropriate definition of ''unserved area'' is a proposed funded service area (*i.e.,* one or more contiguous census blocks, as discussed below) where at least 90 percent of households lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband transmission speed of 768 kbps downstream and 200 kbps upstream. A household has access to such broadband service if it can readily subscribe to that service upon request.

Defining an unserved area by reference to the definition of broadband that RUS and NTIA adopt will ensure consistency between the needs in areas targeted for infrastructure funding and the improved access that will be provided by infrastructure projects that receive grants. RUS and NTIA believe that a definition requiring that 100 percent of households lack access to broadband service could prove overly restrictive and risk inadvertently excluding populations that should properly fall within the ''unserved'' definition. For example, an area should not be considered served merely because one or two households in that area have access to broadband service. Establishing a 90 percent threshold acknowledges that a *de minimis* level of broadband service may exist in portions of the area, while also seeking to minimize the risk of unintentionally excluding an entire area from funding under the BTOP program.

RUS and NTIA do not include existing satellite service in defining whether a given area is unserved, even though such service may meet the threshold speed level to qualify as broadband service under the definition adopted in this NOFA. Because the general reach of satellite service can extend to the entire country, it is excluded as a factor in the unserved definition to avoid a finding that no area in the United States would be considered unserved. Such a finding would render the term meaningless.

Definition of ''Underserved''

Another of BTOP's five core purposes is to ''provide improved access to broadband service to consumers residing in underserved areas of the United States.'' [21] The term ''underserved'' is not a common term in telecommunications, although it is commonly applied in other fields, such as healthcare, education, social services and retail, to denote populations lacking access to critical services. As with the ''unserved'' definition, the Recovery Act does not define ''underserved,'' instead it tasks NTIA with developing a definition that targets specific geographic areas and advances the program's purposes. Under RUS's BIP program, loan and loan/grant combination funds are to be used to provide funding to applications proposing to serve non-remote and ''underserved'' rural areas.

The majority of commenters favor definitions based on one or more of the following factors: availability of broadband service at a certain threshold speed,[22] affordability,[23] number of broadband service providers,[24] and

[15] Recovery Act § 6001(b)(1), 123 Stat. at 512.

[16] *See, e.g.,* Farmers Mutual at 12 (less than 768 kbps bi-directional peak load); American Fiber Systems at 4 (Apr. 13, 2009) (10 mbps or less from 2 or fewer providers); ATSI Communications, Inc. at 11 (Apr. 13, 2009) (no provider of duplex broadband at more than 256 kpbs in either direction).

[17] *See, e.g.,* Alaska Federation of Natives at 8 (Apr. 13, 2009); Michigan Public Service Commission (Michigan PSC) at 19 (Apr. 13, 2009); Communications Workers of America (CWA) at 21–22 (Apr. 13, 2009); Univ. of Nebraska at 1; NetAccess at 9.

[18] *See, e.g.,* XO Communications, LLC and Nextlink Wireless, Inc. (XO and Nextlink) at 7 (Apr. 13, 2009) (90% of consumers to be served lack access to a provider of Current Generation Broadband Transmission Service, to be defined separately for wireline/fixed access and mobile wireless); Premium Choice Broadband at 3 (less than 25% availability of 768 kbps); Fiber-to-the-Home Council (FTTH Council) at 9 (Apr. 13, 2009) (20% lack access to broadband).

[19] *See, e.g.,* WCA at 10.

[20] *See, e.g.,* City and County of San Francisco (San Francisco) at 25 (Apr. 13, 2009) (''If broadband service is not affordable, it effectively is not available.''); Institute for Local Self-Reliance at 8 (Apr. 13, 2009).

[21] Recovery Act § 6001(b)(2), 123 Stat. at 512.

[22] *See, e.g.,* American Fiber Systems at 4 (defining ''underserved area'' as a ''geographical area where 90% or less of the population currently has access to a service at a speed less than 100 megabits from a single provider''); Gardonville Coop. at 12 (defining ''underserved area'' as an area ''currently only able to receive broadband service at a speed of 768 Kbps to less than 12 Mbps, bi-directional, during peak-hour load''); WCA at 4 (suggesting that a market is underserved if it ''does not have access to mobile wireless broadband capable of delivering at least 3 mbps downlink and 768 kbps uplink speeds''); Nebraska Rural Independent Companies at 9 (Apr. 13, 2009) (defining ''underserved area'' as ''any geographical area * * * where only broadband service with download speeds between 56 Kbps and 768 Kbps exist today''); National Cable & Telecommunications Association (NCTA) at 23 (Apr. 13, 2009) (''An 'underserved area' should be defined as an area where no households have access to at least one provider of Internet access with current generation broadband transmission speeds, *e.g.,* maximum transmission speeds of at least 3 Mbps downstream and 768 kbps upstream. Satellite broadband service, which already is available throughout most of the country, should not be considered in applying this definition.'').

[23] *See, e.g.,* National Association of Telecommunications Officers and Advisors (NATOA) at 34 (''Unaffordable broadband services are unavailable.''); Cricket at 3 (''For millions of Americans * * * both wireline and wireless service options may be available just outside their door, but they nevertheless remain hopelessly out of reach at current prices or terms of service.''); Consortium for School Networking et al. at 6 (Apr. 13, 2009).

[24] *See, e.g.,* JAB Wireless, Inc. at 2 (Apr. 9, 2009) (''An underserved area should be defined as an area where a resident does not have a choice of at least 2 broadband service providers providing minimum speeds of 3 Meg down.''); segTEL at 7–8 (Apr. 13, 2009); U.S. Telepacific *et al.* at 5.

subscribership or adoption rates.[25] Some commenters also suggest definitions that would include areas where major community institutions lack sufficient broadband access.[26] Several others also encourage the agencies to consider the particular needs of public safety.[27] Many commenters propose multi-pronged definitions that include multiple ways an area could qualify as underserved [28] while others argue that the agencies should adopt a presumption that certain types of areas are underserved.[29]

Several commenters urge the adoption of a separate definition of ''underserved'' for broadband adoption programs, focusing on the characteristics of the population to be served rather than on the characteristics of a geographic area.[30] Many commenters draw attention to types of users they believe should be considered underserved.[31]

RUS and NTIA conclude that the extent to which a proposed funded service area is underserved will be evaluated using several criteria that are grouped to reflect the two distinct components of the Broadband Infrastructure category of eligible projects—Last Mile and Middle Mile (as defined in this NOFA)—and take account of both advertised broadband speeds and availability of broadband service. Specifically, a proposed funded service area (*i.e.,* one or more contiguous census blocks) may qualify as underserved for Last Mile projects if at least one of the following factors is met, though the presumption will be that more than one factor is present: i) no more than 50 percent of the households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed of 768 kbps downstream and 200 kbps upstream; ii) no fixed or mobile broadband service provider advertises broadband transmission speeds of at least three megabits per second (''mbps'') downstream in the proposed funded service area; or iii) the rate of broadband subscribership for the proposed funded service area is 40 percent of households or less. A proposed funded service area may qualify as underserved for Middle Mile projects if one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for Last Mile projects.

RUS and NTIA recognize that in some areas of the country, particularly in rural areas, many of the underserved criteria for Last Mile projects will apply. The underserved definition includes a broadband speed criterion to recognize that a proposed funded service area can have the minimum level of broadband service available (defined as 768 kbps downstream and 200 kbps upstream), but still be considered ''underserved.'' NTIA and RUS do not want to exclude proposals to improve the broadband speeds available in a proposed funded service area simply because the threshold broadband speed is already available.

RUS and NTIA decline to define ''underserved'' according to particular pricing plans, median income, or demographic characteristics because the adopted definition uses the criteria of low levels of broadband subscribership as a proxy for these factors. Studies suggest a strong, direct correlation between income levels and broadband subscribership; thus, lower broadband subscribership rates will tend to reflect lower income households. Low broadband subscribership rates also tend to be seen among seniors, minorities, and other vulnerable or disadvantaged population groups.

NTIA will use the definition of ''underserved'' only for purposes of evaluating Broadband Infrastructure proposals under BTOP. For Public Computer Center and Sustainable Broadband Adoption proposals, NTIA will evaluate the characteristics of the population to be served, rather than the Internet services available, in the geographic areas where the programs are located. Service to vulnerable (rather than ''underserved'') populations will be a critical factor in evaluating such proposals. NTIA, therefore, interprets comments advocating inclusion of certain categories of users as ''underserved'' for the purposes of such programs as arguments for recognition of these categories as ''vulnerable populations.'' [32]

Utilizing Census Blocks To Define Proposed Funded Service Areas

The geographic area used to assess the degree of broadband coverage is a key element in defining the terms ''unserved'' and ''underserved'' found in the BTOP provisions discussed in the preceding sections. Additionally, the Recovery Act allows RUS to fund a

[25] *See, e.g.,* Wisconsin Department of Commerce at 2 (Apr. 8, 2009) (''An 'underserved area' should be defined as an applicant area in which at least 50% of households do not subscribe to a cable or DSL broadband service provider, regardless of whether or not broadband service is available, or an applicant area in which at least 50% of households have access to no more than one broadband internet service provider.''); New Jersey Division of Rate Counsel at 2 (Apr. 8, 2009); One Economy Corporation at 4 (Apr. 13, 2009); Association of Public Television Stations at 9 (Apr. 13, 2009); San Francisco at 23–24.

[26] *See, e.g.,* FTTH Council at 11 (''Underserved area means * * * a geographic area described by Census Tracts where more than 25% of the Community Anchor Institutions to be served by the project currently lack access to a provider of Advanced Broadband Wireline Service); eCLIC, the Emergency Communications Leadership and Innovation Center at 5 (Apr. 8, 2009) (''Underserved' would be any area lacking a digital hub and/or broadband infrastructure connecting LANs inside the rooms and grounds of schools, libraries, public safety and governmental institutions.''); AT&T at 12.

[27] *See, e.g.,* Intrado Inc. and Intrado Communications Inc. at 5–6; National Emergency Number Association at 17 (Apr. 13, 2009).

[28] *See, e.g.,* XO and Nextlink at 8 (''Underserved Area means: (1)(i) a geographic area that is not an unserved area where at least 90% of the customers to be served by the project lack access to more than one provider of Current Generation Broadband Transmission Service (which is to be determined separately for wireline/fixed wireless or mobile wireless providers) or (ii) a geographic area that is not an unserved area where at least 90% of the customers to be served by the project lack access to a provider of Advanced Broadband Transmission Service (which is to be determined separately for wireline/fixed wireless or mobile wireless providers); (2) a geographic area where at least 90% of the Community Anchor Institutions to be served by the project lack access to a provider of wireline/fixed wireless Advanced Broadband Transmission Service; or (3) any census tract which is located in (i) an empowerment zone or enterprise community designated under section 1391, (ii) the District of Columbia Enterprise Zone established under section 1400, (iii) a renewal community designated under section 1400E, or (iv) a low-income community designated under section 45D.'').

[29] *See, e.g.,* Matthew R. Rantanen, Director of Technology, Southern California Tribal Chairmen's Association in webform (Apr. 13, 2009) (tribal lands); Pulse Broadband LLC at 4–5 (Apr. 13, 2009) (rural areas); Broadpoint, Inc. at 4 (Apr. 13, 2009) (the Gulf of Mexico).

[30] *See, e.g.,* ZeroDivide at 13 (Apr. 13, 2009) (citing ''barriers to adoption including, race, ethnicity, language, physical capacity, economic conditions, and geography'' and ''low-income population as determined by state or federal guidelines, such as residents of low-income housing, area with a high rate of participation in free and reduced price lunch/breakfast program''); Michigan PSC at 19. But see, e.g., Free Press at 6 (''Using the income of an area as the basis for an 'underserved' definition is common in markets such as health care but is perhaps less fitting for infrastructure-based services such as broadband.'').

[31] *See, e.g.,* City of Milwaukee in web form (Apr. 13, 2009) (citing ''computer literacy, internet literacy, ethnic and language diversity''); Carl and Ruth Shapiro Family National Center for Accessible Media at WGBH (NCAM) and Inclusive Technologies at 5–6 (Apr. 13, 2009) (''People with disabilities MUST be included in the definition of the underserved and unserved population and inclusion of their needs should be explicitly stated in all RFPs issued by NTIA.''); Covad Communications Co. at 4 (Apr. 10, 2009) (urging NTIA to deem all small businesses underserved); NCTA at 23 (''[B]efore funding construction in underserved areas, NTIA and RUS should provide funding for programs that assist underserved populations (low-income, seniors) to acquire and make use of broadband service.'').

[32] *See, e.g.,* Barling Bay, LLC and Caption Colorado at 13–14 (Apr. 13, 2009) (arguing for recognition of deaf and hard of hearing students and rural students in poor school districts as unserved or underserved for purposes of broadband adoption programs).

broadband project with Recovery Act funds only if ''at least 75 percent of the area to be served [is] in a rural area without sufficient access to high speed broadband service to facilitate rural economic development, as determined by the Secretary of Agriculture.'' [33] As a result, RUS must also define the relevant ''area'' to which it would apply the criteria for sufficiency of access to broadband service.

Most commenters suggest defining ''area'' according to government-recognized boundaries. For example, multiple commenters suggest the use of census tracts,[34] pointing out that the FCC already collects service data at the census tract level [35] and that census tracts are relatively small.[36] Rural Cellular Association also points out that government-defined boundaries are technologically neutral because they do not correspond to the existing service areas for any particular technology.[37] Multiple commenters also state a preference for census blocks, or the smallest geographic designation possible, so that proposals for service to all truly underserved geographic locations qualify for BTOP funding.[38]

In contrast, some commenters encourage the agencies to allow applicants to define their own service areas to be evaluated against the criteria established for ''unserved'' or ''underserved'' areas.[39] Many of these commenters express concern that requiring pre-defined geographic units to qualify as ''unserved'' or ''underserved'' areas will exclude regions within those geographic units that actually lack access to broadband service.[40]

RUS and NTIA conclude that applicants should be allowed to define their own proposed funded service areas, which are composed of one or more contiguous census blocks. RUS and NTIA believe that employing census blocks, a standardized, technologically neutral geographic unit, will facilitate the comparison of data from applicants proposing to serve overlapping regions and will facilitate compliance with the statutory prohibition against providing BTOP and BIP funding for the same project in the same area.[41] RUS and NTIA have attempted to accommodate commenters' concerns about the inadvertent exclusion of areas in need of broadband service by adopting a very granular definition of proposed funded service area and defining ''unserved'' and ''underserved,'' and ''without sufficient access to high speed broadband service to facilitate rural economic development'' in terms of the percentages of a proposed funded service area meeting the definitional criteria.

An applicant must identify the census block(s) selected for the project and provide documentation supporting the applicant's determination that the proposed funded service area is either unserved or underserved. There is a presumption that the applicant will provide service to the entire territory of each census block included in the proposed funded service area, unless the applicant files a waiver and provides a reasoned explanation as to why providing coverage for the entire census block is infeasible. Applicants may be permitted to serve less than the entire census block under certain conditions. For example, an applicant might seek a waiver if the census block exceeds 100 square miles or more or is larger than the applicant's authorized operating territory, *e.g.,* it splits a rural incumbent local exchange carrier's (ILEC) study area or exceeds the boundaries of a wireless carrier's licensed territory.

Interconnection and Non-Discrimination Requirements

The Recovery Act requires NTIA to establish ''non-discrimination and network interconnection obligations that shall be contractual conditions of grants * * * including, at a minimum, adherence to the principles contained in the [FCC's] broadband policy statement.'' [42] The Recovery Act does not require RUS to impose these obligations on its grantees or borrowers.

Major incumbent service providers, rural carriers, and their trade associations urge that the interconnection and non-discrimination obligations be limited to the FCC Internet Policy Statement.[43] These operators emphasize that imposing new requirements in the BTOP process would cause uncertainty and deter applicants from applying for grants. Major equipment manufacturers share this view.[44] Cellular operators and CTIA assert that wireless networks need the ability to prioritize traffic due to limited capacity.[45] Content owners argue that non-discrimination obligations should not preclude copyright enforcement.[46] On the other side, public interest groups [47] and potential new entrants [48] advocate additional obligations, generally some combination of interconnection language from Title II of the Communications Act and non-discrimination requirements precluding degradation or inferior treatment of applications, content, and services. Many states [49] and most of the cities filing comments [50] urge the inclusion of some open access or non-discrimination obligations.

RUS and NTIA require applicants to commit to five obligations. These requirements, discussed in more depth below, are subject to the needs of law enforcement and reasonable network management practices.

(1) *Adhere to the principles contained in the FCC's Broadband Policy Statement (FCC 05–151 adopted Aug. 5, 2005).*

This requirement is specified in the Recovery Act.[51]

(2) *Not favor any lawful Internet applications or content over others.*

This requirement ensures neutral traffic routing. Without a non-discrimination condition, network

[33] Recovery Act div. A, tit. I, 123 Stat. at 118.

[34] *See, e.g.,* FTTH Council at 10–11.

[35] *See, e.g.,* American Cable Association at 6 (Apr. 14, 2009); Rural Cellular Association at 42 (Apr. 13, 2009); XO and Nextlink at 6, n. 14.

[36] *See, e.g.,* American Cable Association at 6; Rural Cellular Association at 42.

[37] Rural Cellular Association at 42.

[38] *See, e.g.,* Wireless Internet Service Providers Association (WISPA) at 8 (Apr. 10, 2009) (supporting census blocks as the basic geographical unit and stating, ''No 'unserved' or 'underserved' community should be disqualified because it is too small.''); Frontier Communications at 12 (Apr. 13, 2009) (''An 'area' should be determined at as small a geographic level as possible. Using entire census communities or census blocks will disadvantage many unserved areas that are adjacent to served areas.''). *See also* Smith Bagley, Inc. at 3–4 (Apr. 13, 2009) (suggesting that NTIA require applicants to submit a spreadsheet of census blocks with estimates of unserved and underserved households and businesses).

[39] *See, e.g.,* ITTA at 2–3 (''Each applicant should be able to define its proposed service area, including aggregating both adjacent and non-contiguous clusters of unserved homes.''); Embarq at 18 (Apr. 13, 2009); CWA at 22.

[40] *See, e.g.,* Windstream Communications, Inc., (Windstream) at 28 (Apr. 14, 2009) (''Pockets of unserved and underserved customers are unlikely to fall neatly within existing, arbitrary geographic units, such as ZIP codes or census blocks.'').

[41] *See* Recovery Act div. A, tit. I, 123 Stat. at 119.

[42] Recovery Act § 6001(j), 123 Stat. at 512.

[43] *See, e.g.,* Verizon at 13 (Apr. 13, 2009); AT&T at 14–16; OPASTCO at 11–12 (Apr. 13, 2009); National Exchange Carrier Assoc. (NECA) at 6 (Apr. 13, 2009).

[44] *See, e.g.,* Motorola at 13–15; Cisco at 9 (Apr. 13, 2009).

[45] *See, e.g.,* CTIA at 8 (Apr. 13, 2009).

[46] *See, e.g.,* MPAA, RIAA *et al.* at 3 (Apr. 13, 2009).

[47] *See, e.g.,* Free Press at 18; Open Internet Coalition at 2 (Mar. 10, 2009); Center for Democracy & Technology at 3–5 (Apr. 13, 2009); EDUCAUSE at 4–5 (Apr. 13, 2009).

[48] *See* Clearwire Corp. at 14–15 (Apr. 10, 2009); Earthlink and NewEdge at 4–5 (Apr. 13, 2009).

[49] *See, e.g.,* Michigan PSC at 8; State of Arizona at 11 (Apr. 13, 2009).

[50] *See, e.g.,* City of Palo Alto at 19–20 (Apr. 13, 2009).

[51] Recovery Act § 6001(j), 123 Stat. at 515.

operators could give preferential treatment to affiliated services, or charge some application and content providers for ''fast lanes'' that would put others at a competitive disadvantage. The standard used here is a more general version of the one the FCC imposed in the AT&T/BellSouth merger conditions, which specified no differential treatment of packets based on source, destination, or ownership.[52] Awardees may employ generally accepted technical measures to provide acceptable service levels to all customers, such as caching and application-neutral bandwidth allocation, as well as measures to address spam, denial of service attacks, illegal content, and other harmful activities. They also may comply with applicable statutes such as the Communications Assistance to Law Enforcement Act (CALEA).[53]

Furthermore, this requirement applies only to Internet applications and content, that is, those that traverse the public Internet. Awardees may offer managed services such as telemedicine, public safety communications, and distance learning, which use private connections or virtual private networks, rather than the public Internet. This approach ensures that awardees do not distort the Internet's neutral environment for applications and content, while giving them the flexibility to design their networks in a technically efficient manner and the ability to provide services that may require enhanced quality of service or separate connections for privacy and security reasons.

(3) *Display network management policies in a prominent location on the service provider's Web page and provide notice to customers of changes to these policies (awardees must describe any business practices or technical mechanisms they employ, other than standard best efforts Internet delivery, to allocate capacity; differentiate among applications, providers, or sources; limit usage; and manage or block access to illegal or harmful content).*

This public notice requirement is intended to provide full disclosure of these network management practices to users and potential users to enable them to make informed decisions regarding how their usage may be impacted by current policies and any modifications that are subsequently made.

(4) *Connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network.*

An entirely private closed network would make the interconnection and non-discrimination obligations moot, since the project would not offer access to Internet applications and content.

(5) *Offer interconnection, where technically feasible, on reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic.*

The Recovery Act mandates conditions for ''network interconnection,'' [54] which the FCC Policy Statement and non-discrimination conditions alone do not address. Moreover, an interconnection condition promotes competition in end-user service provision, consistent with the Recovery Act's directives. Specifically, the fourth prong of the FCC Policy Statement states that users are entitled to a choice of service providers.[55] The Recovery Act incorporates this element by reference, because it requires applicants to meet the Policy Statement's principles as a minimum condition. The Recovery Act also requires RUS to give priority to projects offering a choice of end-user service providers,[56] which is only possible if funded projects offer interconnection. As a general policy matter, interconnection allows synergies where others can benefit from subsidized infrastructure. Wholesale service may also generate additional revenue for recipients, and increase capital efficiency by maximizing utilization of network capacity. Where not inconsistent with other Recovery Act goals, RUS and NTIA will seek the greatest possible expansion of broadband from its investment.

An awardee may satisfy the requirement for interconnection by negotiating in good faith with all bona fide requesting parties that wish to connect to the public Internet using the awardee's network or to exchange traffic. Interconnection must take place where technically feasible and without exceeding current or anticipated capacity limitations. The awardee and requesting party may negotiate terms such as business arrangements, capacity limits, financial terms, and technical conditions for interconnection. If the awardee and requesting party cannot reach agreement, they may voluntarily seek an interpretation by the FCC of any FCC rules implicated in the dispute. If an agreement cannot be reached within 90 days, the party requesting interconnection may *notify* RUS or NTIA in writing of the failure to reach satisfactory terms with the awardee. The 90-day limit is to encourage the parties to resolve differences through negotiation.

This approach encourages interconnection without requiring micromanagement of private negotiations. Appropriate interconnection terms will vary depending on the type of project, the technologies involved, the type of provider requesting interconnection, and the dynamics of the local market. There is no need to enforce uniform terms or pricing standards, so long as parties negotiate in good faith to reach mutually-beneficial business agreements. A more formal interconnection regime would require enforcement resources beyond the scope of BTOP.

Entities that successfully reach an agreement to interconnect with a system funded under BIP may not use that interconnection agreement to provide services that duplicate services provided by projects funded by outstanding telecommunications loans made under the Rural Electrification Act. Further, interconnection may not result in a BIP-funded facility being used for ineligible purposes under the Recovery Act. These limitations are needed to comply with pre-existing loan agreements and Recovery Act language for RUS, but do not apply to BTOP.

With respect to non-discrimination, those who believe an awardee has failed to meet the non-discrimination obligations should first seek action at the FCC of any FCC rules implicated in the dispute. If the FCC chooses to take no action, those seeking recourse may notify RUS and NTIA in writing about the alleged failure to adhere to commitments of the award.

Overall, these five requirements ensure that public funds will support the public goal of open networks. The standards chosen echo established FCC rules, but avoid detailed regulation and allow for flexibility when network management requires differential treatment or exclusivity. The standards chosen are technologically neutral and appropriate for the widest possible range of applications, because the definition of reasonable network management may differ based on the

[52] *See* In the Matter of AT&T Inc. and BellSouth Corporation, WC Docket No. 06–74, *Memorandum Opinion and Order,* FCC 06–189, App. F at 154 (Mar. 26, 2007), *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-189A1.pdf.*

[53] *See* 47 U.S.C. 1001 *et seq.*

[54] Recovery Act § 6001(j), 123 Stat. at 512.

[55] Internet Policy Statement, FCC 05–15, adopted Aug. 5, 2005.

[56] Recovery Act div. A, tit. I, 123 Stat. at 118. This language does not appear in the BTOP section of the Recovery Act, but is consistent with the network interconnection and non-discrimination obligations specified there.

network technology used and other dimensions of the project. Applicants are required to disclose interconnection, nondiscrimination, and network management plans with their applications, and provide regular network reporting, to facilitate compliance and better understanding of appropriate network management techniques. As noted above, applicants are required to provide clear and prominent public disclosure of network management policies to customers. Additional scoring points will be awarded for clear and prominent public disclosure of interconnection and nondiscrimination policies to customers.

These conditions will apply for the life of the awardee's facilities used in the project and not to any existing network arrangements. The conditions apply to any contractors or subcontractors of such awardees employed to deploy or operate the network facilities for the infrastructure project. To the extent that the FCC takes action in this area, such as by modifying its Internet Policy Statement or by adopting additional or different rules or policies, awardees will become subject to FCC rules and policies in lieu of the conditions set forth only to the extent that the FCC rules or policies effectively supersede the conditions set forth above. Recipients that fail to accept or comply with the terms listed above may be considered in default or breach of their loan or grant agreements. RUS and NTIA may exercise all available remedies to cure the default.

Eligibility

Section 6001(e)(1) of the Recovery Act expressly identifies the types of entities that are eligible for BTOP grants and authorizes the Assistant Secretary to find by rule that it may be in the public interest for any other entity, including a broadband service or infrastructure provider, to be eligible. Section 6001(e)(1)(C) also requires that ''[i]n establishing such rule, the Assistant Secretary shall to the extent practicable promote the purposes of [BTOP] in a technologically neutral manner.'' The Recovery Act does not explicitly identify the entities that are eligible for RUS broadband funding.

The comments of service providers of all types,[57] equipment suppliers,[58] and various other entities [59] state that private, for-profit companies should generally be eligible for BTOP funding. Some service providers propose automatic eligibility for service providers who already hold a license or franchise or who already provide broadband service.[60] Several non-profits, government entities, and small providers argue that no for-profit entity should be eligible without a public interest showing, either individualized [61] or based on its agreement to adhere to additional conditions,[62] or otherwise favor only limited for-profit eligibility.[63]

Through this NOFA, the Assistant Secretary of Commerce for Communications and Information has found it to be in the public interest to permit for-profit corporations and non-profit entities (not otherwise encompassed by section 6001(e)(1)(A)) that are willing to promote the goals of the Recovery Act and comply with the statutory requirements of BTOP to be eligible for a grant. By adopting this broad approach, the Assistant Secretary intends to invite a diverse group of applicants to participate in BTOP, which reflects his desire to expand broadband capabilities in the United States in a technology-neutral manner. This approach is consistent with Congressional intent in this regard.[64] This finding is reasonable because of the positive impact that the inclusion of for-profit corporations will have on the administrative and programmatic requirements of this program. Many for-profit corporations have expertise in deployment and sustainable operation of telecommunications facilities,[65] which may lead to the creation of more efficient and sophisticated broadband networks that consumers will be able to access in a shorter period of time. In some cases, for-profit corporations also may have the resources to deploy new infrastructure more quickly or efficiently than other types of entities.[66] Moreover, for-profit corporations provide economic growth and job creation, which is consistent with many of the key purposes of the Recovery Act.[67]

Dated: July 1, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

Thomas C. Power,

Chief of Staff, National Telecommunications and Information Administration.

[FR Doc. E9–16268 Filed 7–8–09; 8:45 am]

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[57] *See, e.g.,* Qwest Communications (Qwest) at 9–13 (Apr. 13, 2009); NCTA at 6; Bresnan Communications *et al.*, at 5 (Apr. 13, 2009).

[58] *See, e.g.,* Alcatel-Lucent at 15.

[59] *See, e.g.,* CWA at 6; EDUCAUSE at 4; Georgia Technology Authority at 4 (Apr. 13, 2009); State of Alabama at 7 (Apr. 13, 2009); State of Wyoming at 2 (Apr. 10, 2009).

[60] *See, e.g.,* Windstream at 8–9; American Cable Association at 5–6.

[61] *See, e.g.,* Kentucky Municipal Utilities Association at 7–8 (Apr. 13, 2009); National Rural Electrical Cooperative Association at 8–9 (Apr. 13, 2009); NATOA at 8–11.

[62] *See, e.g.,* The Benton Foundation at 14–19 (Mar. 20, 2009).

[63] For example, several commenters proposed that private firms should receive grants only in areas where government or non-profit entities do not apply. *See, e.g.,* SEDA Council of Governments at 1 (Mar. 24, 2009); NATOA at 9. Some small rural telephone companies favored limiting eligibility for large providers. *See, e.g.,* National Telecommunications Cooperative Association at 3–4 (Apr. 13, 2009).

[64] *See* Conf. Rep. at 775 (stating that ''as many entities as possible [should] be eligible to apply for a competitive grant, including wireless carriers, wireline carriers, backhaul providers, satellite carriers, private-public partnerships, and tower companies'').

[65] *See* Qwest at 10–12; NCTA at 6; Windstream at 9.

[66] *See* Qwest at 10–14; Windstream at 9.

[67] *See* State of Alabama at 7.

Federal Register

Thursday,
July 9, 2009

Part IV

The President

Proclamation 8395—National Summer Learning Day, 2009

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Presidential Documents

Title 3—

The President

Proclamation 8395 of July 6, 2009

National Summer Learning Day, 2009

By the President of the United States of America

A Proclamation

Like an athlete out of practice, a child who takes long breaks from learning can face academic setbacks. This problem is especially prominent during the summer, when students may lose more than two months of progress. Children must remain engaged to maintain and build upon their current academic achievement.

Learning loss can be especially pronounced among low-income children. Recent research suggests that unequal access to summer learning opportunities helps explain the achievement gap between low-income and affluent students. This gap ultimately means that low-income students may be less likely to graduate from high school or enroll in college.

High-quality summer learning programs help children catch up, keep up, and work ahead. These activities provide students with hours of focused time for hands-on learning and creative projects. Participation can result in gains in writing, reading, and math skills. Through the arts, sports, and other extracurricular activities, summer learning opportunities also promote innovation and physical fitness. These health benefits are especially important because childhood obesity is at an all-time high and children typically gain weight two to three times faster during the summer.

Sustained public service can also dramatically impact summer learning loss. Students can challenge themselves and others through mentoring, environmental projects, and other meaningful volunteer work. Youth and their communities both benefit from these activities. Local opportunities for service can be found at: Serve.gov.

Families and community members play the most important role in the lives of their children. Demands at work and home mean that many parents have less time to spend with their children, but this time, care, and instruction is critical to children's academic success. Especially during the summer, parents should try to find time to read interactively with children. When possible, families should visit public libraries, tour museums and science centers, and explore the great outdoors. Parents can also encourage youth to keep a journal and to practice math skills through cooking and games.

Even though summer has arrived, student learning needs do not take a vacation. On Summer Learning Day, we highlight the need for more young people to be challenged during their time off from school. We also express support for local programs, communities, and families that help children grow through learning initiatives. Working together, we can help students remain engaged and return to school with lithe and limber minds.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 9, 2009, as National Summer Learning Day. I call upon all Americans to support students as they participate in summer learning. I encourage students, parents, educators, and the non-profit community to engage in summer learning activities so that youth return to school poised for academic advancement.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of July, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

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H.R. 1777/P.L. 111–39

To make technical corrections to the Higher Education Act of 1965, and for other purposes. (July 1, 2009; 123 Stat. 1934)

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To award a Congressional Gold Medal to the Women Airforce Service Pilots ("WASP"). (July 1, 2009; 123 Stat. 1958)

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