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Presidential Documents

Title 3—

The President

Executive Order 13526 of December 29, 2009—Classified National Security Information

Correction

In Presidential document E9–31418 beginning on page 707 in the issue of Tuesday, January 5, 2010, make the following correction:

On page 731, the date line below the President's signature should read ''December 29, 2009.''

[FR Doc. C1–2009–31418
Filed 1–6–10; 2:00 pm]
Billing Code 1505–01–D

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Presidential Documents

Title 3—

The President

Memorandum of December 15, 2009

Directing Certain Actions with Respect to Acquisition and Use of Thomson Correctional Center to Facilitate Closure of Detention Facilities at Guantanamo Bay Naval Base

Memorandum for the Secretary of Defense [and] the Attorney General

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force (Public Law 107–40, 115 Stat. 224), and in order to facilitate the closure of detention facilities at the Guantanamo Bay Naval Base, I hereby direct that the following actions be taken as expeditiously as possible with respect to the facility known as the Thomson Correctional Center (TCC) in Thomson, Illinois:

1. The Attorney General shall acquire and activate the TCC as a United States Penitentiary, which the Attorney General has determined would reduce the Bureau of Prisons' shortage of high security, maximum custody cell space and could be used for other appropriate inmate or detainee management purposes. The Attorney General shall also provide to the Department of Defense a sufficient portion of the TCC to serve as a detention facility to be operated by the Department of Defense in order to accommodate the relocation of detainees by the Secretary of Defense in accordance with paragraph 2 of this memorandum.

2. The Secretary of Defense, working in consultation with the Attorney General, shall prepare the TCC for secure housing of detainees currently held at the Guantanamo Bay Naval Base who have been or will be designated for relocation, and shall relocate such detainees to the TCC, consistent with laws related to Guantanamo detainees and the findings in, and interagency Review established by, Executive Order 13492 of January 22, 2009.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, December 15, 2009

[FR Doc. 2010–227
Filed 1–7–10; 8:45 am]
Billing code 5001–06–M

Rules and Regulations

Federal Register

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0328; Directorate Identifier 2008–NE–44–AD; Amendment 39–16161; AD 2010–01–04]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF34–1A, CF34–3A, and CF34–3B Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for GE CF34–1A, CF34–3A, and CF34–3B series turbofan engines. That AD currently requires removing from service certain part number (P/N) and serial number (S/N) fan blades within compliance times specified in the AD, inspecting the fan blade abradable rub strip on certain engines for wear, inspecting the fan blades on certain engines for cracks, inspecting the aft actuator head hose fitting for correct position, and, if necessary, repositioning the hose fitting. This ad supersedure requires the same actions but corrects the effectivity for certain fan blades requiring corrective actions and changes the effective date of the current AD. This AD supersedure results from the FAA discovering that the existing AD has an incorrect effectivity for certain fan blades requiring corrective actions, and from a report of an under-cowl fire and a failed fan blade. We are issuing this AD to prevent failure of certain P/N and S/N fan blades and aft actuator head hoses, which could result in an under-cowl fire and subsequent damage to the airplane.

DATES: This AD becomes effective January 25, 2010. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of January 4, 2010.

We must receive any comments on this AD by March 9, 2010.

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

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

Contact General Electric Company, GE–Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, telephone (513) 552–3272; fax (513) 552–3329; e-mail: *geae.aoc@ge.com* for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: John Frost, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *john.frost@faa.gov;* telephone (781) 238–7756; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA amends 14 CFR part 39 by superseding AD 2009–24–11, Amendment 39–16103 (74 FR 62481, November 30, 2009). That AD requires removing from service certain P/N and S/N fan blades within compliance times specified in the AD, inspecting the fan blade abradable rub strip on certain engines for wear, inspecting the fan blades on certain engines for cracks, inspecting the aft actuator head hose fitting for correct position, and, if necessary, repositioning the hose fitting. That AD was the result of a report of an under-cowl fire and a failed fan blade. That condition, if not corrected, could result in an under-cowl fire and subsequent damage to the airplane.

Actions Since AD 2009–24–11 Was Issued

Since AD 2009–24–11 was issued, we discovered that when we recodified the compliance section as part of our response to a comment received on the proposed AD, we inadvertently left out of the AD certain fan blade effectivity information from paragraphs (f) and (g) and (j). Paragraphs (f) and (g) are missing information on fan blades, P/Ns 6018T30P14 or 4923T56G08, that have any fan blade S/Ns listed in Appendix A of General Electric Aircraft Engines (GEAE) Service Bulletin (SB) No. CF34–AL S/B 72–0245, Revision 01, dated July 30, 2008. Also, paragraph (j) is missing information on fan blades, P/N 6018T30P14 or P/N 4923T56G08, that have any fan blade S/Ns listed in Appendix A of GEAE SB No. CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008. This AD supersedure adds the missing information to the compliance section and changes the effective date of the original AD to the same effective date as this AD, to prevent possible grounding of airplanes.

Relevant Service Information

We have reviewed and approved the technical contents of the following GE Aircraft Engines SBs:

- CF34–AL S/B 73–0046, Revision 02, dated August 27, 2008, and CF34–BJ S/B 73–0062, Revision 02, dated August 27, 2008, that provide instructions for inspecting the orientation of the aft actuator hose assembly and the main fuel control.
- CF34–AL S/B 72–0245, Revision 01, dated July 3, 2008, CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, and CF34–BJ S/B 72–0230, Revision 01, dated July 30, 2008, that provide instructions for replacing certain existing blades, P/Ns 6018T30P14 and 4923T56G08, that have a S/N listed in Appendix A of those SBs.
- CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, and CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008, that provide instructions for inspecting the fan case abradable rub strip and fan blade tangs.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other GE CF34–1A, CF34–3A, and CF34–3B series turbofan engines of the same type design. We are issuing this AD supersedure to prevent failure of certain P/N and S/N fan blades and aft actuator head hoses, which could result in an under-cowl fire and subsequent damage to the airplane. This AD

requires removing from service certain P/N and S/N fan blades within compliance times specified in the AD, inspecting the fan blade abradable rub strip on certain engines for wear, inspecting the fan blades on certain engines for cracks, inspecting the aft actuator head hose fitting for correct position, and, if necessary, repositioning the hose fitting. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2008–0328; Directorate Identifier 2008–NE–44–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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

Examining the AD Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 that 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–16103 (74 FR 62481, November 30, 2009), and by adding a new airworthiness directive, Amendment 39–16161, to read as follows:

2010–01–04 General Electric Company: Amendment 39–16161. Docket No. FAA–2008–0328; Directorate Identifier 2008–NE–44–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 25, 2010.

Affected ADs

(b) This AD supersedes AD 2009–24–11, Amendment 39–16103.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–1A, CF34–3A, CF34–3A1, CF34–3A2, CF34–3B, and CF34–3B1 turbofan engines. These engines are installed on, but not limited to, Bombardier Canadair Models CL–600–2A12, CL–600–2B16, and CL–600–2B19 airplanes.

Unsafe Condition

(d) This AD results from the FAA discovering that the existing AD has an incorrect effectivity for certain fan blades requiring corrective actions, and from a report of an under-cowl fire and a failed fan blade. We are issuing this AD to prevent failure of certain part number (P/N) and serial number (S/N) fan blades and aft actuator head hoses, which could result in an under-cowl fire and subsequent damage to the airplane.

Compliance

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

CF34–3A1 and CF34–3B1 Engines

(f) For CF34–3A1 engines that meet all of the following criteria, perform the actions specified in paragraph (i) of this AD:

(1) Fan drive shaft, P/N 6036T78P02, installed; and

(2) Airworthiness limitation section fan drive shaft life limit of 22,000 cycles-since-new (CSN); and

(3) Installed fan blades, P/Ns 6018T30P14 or 4923T56G08, that have any fan blade S/Ns listed in Appendix A of General Electric Aircraft Engines (GEAE) SB No. CF34–AL S/B 72–0245, Revision 01, dated July 30, 2008.

(g) For CF34–3A1 engines that meet all of the following criteria, perform the actions specified in paragraph (i) of this AD:

(1) Fan drive shaft, P/N 6036T78P02, installed; and

(2) Airworthiness limitation section fan drive shaft life limit of 15,000 CSN; and

(3) In compliance with GEAE SB No. CF34–AL S/B 72–0147, dated May 21, 2003, Revision 01, dated October 17, 2003, Revision 02, dated August 5, 2004, or Revision 3, dated August 28, 2003; and

(4) Installed fan blades, P/Ns 6018T30P14 or 4923T56G08, that have any fan blade S/Ns listed in Appendix A of GEAE SB No. CF34–AL S/B 72–0245, Revision 01, dated July 30, 2008.

(h) For CF34–3B1 engines that meet all of the following criteria, perform the actions specified in paragraph (i) of this AD:

(1) Installed fan blades, P/Ns 6018T30P14 or 4923T56G08; and

(2) With any fan blade S/Ns listed in Appendix A of GEAE SB No. CF34–AL S/B 72–0245, Revision 01, dated July 30, 2008.

(i) Do the following for the engines meeting the criteria in paragraph (f), (g), or (h) of this AD, as applicable:

(1) Remove listed fan blades from service within 4,000 cycles-in-service (CIS) after the effective date of this AD or by December 31, 2010, whichever occurs first.

Initial Visual Inspection of the Fan Blade Abradable Rub Strip for Wear

(2) For fan blades with 1,200 or more CSN on the effective date of this AD, perform an initial visual inspection of the fan blade abradable rub strip for wear within 20 CIS after the effective date of this AD. Use paragraphs 3.A.(1) through 3.A.(2) of the Accomplishment Instructions of GEAE SB No. CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, to perform the inspection.

(3) For fan blades with fewer than 1,200 CSN on the effective date of this AD, perform an initial visual inspection of the fan blade abradable rub strip for wear within 1,220 CSN. Use paragraphs 3.A.(1) through 3.A.(2) of the Accomplishment Instructions of GEAE SB No. CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, to perform the inspection.

(4) If you find a continuous 360 degree rub indication, before further flight, visually inspect the fan blades using paragraphs 3.A.(2)(a) through 3.A.(2)(b) of the Accomplishment Instructions of GEAE SB No. CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008.

(5) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Repetitive Visual Inspection of the Fan Blade Abradable Rub Strip for Wear

(6) Within 75 cycles-since-last inspection (CSLI) or 100 hours-since-last-inspection (HSLI), whichever occurs later, perform a visual inspection of the fan blade abradable rub strip for wear. Use paragraphs 3.A.(1) through 3.A.(2) of the Accomplishment Instructions of GEAE SB No. CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, to perform the inspection.

(i) If you find a continuous 360 degree rub indication, before further flight, visually inspect the fan blades using paragraphs 3.A.(2)(a) through 3.A.(2)(b) of the Accomplishment Instructions of GEAE SB No. CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008.

(ii) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Inspection of the Aft Actuator Head Hose Fitting on CF34–3A1 and CF34–3B1 Engines

(7) Within 750 hours time-in-service (TIS) after the effective date of this AD, visually inspect and, if necessary, reposition the aft actuator head hose fitting. Use paragraph 3.A of the Accomplishment Instructions of GEAE SB No. CF34–AL S/B 73–0046, Revision 02, dated August 27, 2008, to perform the inspection.

CF34–1A, CF34–3A, CF34–3A2, CF34–3B, and CF34–3A1 Engines

(j) For CF34–3A1 engines that meet all of the following criteria, perform the actions specified in paragraph (l) of this AD:

(1) Fan drive shaft, P/N 6036T78P02, installed; and

(2) Airworthiness limitation section fan drive shaft life limit of 15,000 CSN that are not in compliance with GEAE SB No. CF34–AL S/B 72–0147, dated May 21, 2003, Revision 01, dated October 17, 2003, Revision 02, dated August 5, 2004, or Revision 03, dated August 28, 2003; and

(3) With fan blades, P/Ns 6018T30P14 or 4923T56G08, that have any fan blade S/Ns listed in Appendix A of GEAE SB No. CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008.

(k) For CF34–1A, CF34–3A, CF34–3A2, and CF34–3B engines that meet all of the following criteria, perform the actions specified in paragraph (l) of this AD:

(1) Installed fan blades, P/N 6018T30P14 or P/N 4923T56G08; and

(2) Installed fan blade S/Ns listed in Appendix A of GEAE SB No. CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008:

(l) Do the following for the engines meeting the criteria in paragraph (j) or (k) of this AD as applicable:

(1) Remove listed fan blades, P/N 6018T30P14, from service within 2,400 CSN.

(2) Remove listed fan blades, P/N 4923T56G08, from service within 1,200 CIS since the bushing repair of the fan blade hole.

Initial Eddy Current Inspection of the Fan Blades

(3) For fan blades, P/N 6018T30P14, with more than 850 CSN, perform an initial eddy current inspection (ECI) of the fan blades for cracks within 350 CIS after the effective date of this AD. Use paragraphs 3.A. or 3.B. of the Accomplishment Instructions of GEAE SB No. CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, to perform the inspection.

(4) For fan blades, P/N 6018T30P14, with 850 or fewer CSN on the effective date of this AD, perform an initial ECI of the fan blades for cracks within 1,200 CSN. Use paragraphs 3.A. or 3.B. of the Accomplishment Instructions of GEAE SB No. CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, to perform the inspection.

(5) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Repetitive ECI of the Fan Blades

(6) For fan blades, P/N 6018T30P14, within 600 CSLI, perform an ECI of the fan blades for cracks. Use paragraphs 3.A. or 3.B. of the Accomplishment Instructions of GEAE SB No. CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, to perform the inspection.

(7) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Initial Visual Inspection of the Fan Blade Abradable Rub Strip for Wear

(8) For engines with fan blades, P/N 6018T30P14, installed that have any fan blade S/Ns listed in Appendix A of GEAE SB No. CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, with 1,200 or more CSN on the effective date of this AD, and that haven't had an ECI of the fan blades for cracks, do the following:

(i) Perform an initial inspection of the fan blade abradable rub strip for wear within 20 CIS after the effective date of this AD. Use paragraph 3.A.(1) of the Accomplishment Instructions of GEAE SB No. CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008, to perform the inspection.

(ii) If you find a continuous 360 degree rub indication, before further flight, perform a visual inspection of the fan blades for cracks. Use paragraphs 3.A(2)(a) or 3.A(2)(b) of the Accomplishment Instructions of GEAE SB No. CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008, to perform the inspection.

(iii) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Repetitive Inspection of the Fan Blade Abradable Rub Strip for Wear

(9) For engines with fan blades, P/N 6018T30P14, installed, if you have performed an ECI of the fan blade, you don't need to inspect the fan blade abradable rub strip for wear.

(10) For engines with fan blades, P/N 6018T30P14, installed, within 75 CSLI or 100 HSLI, whichever occurs later, do the following:

(i) Perform a visual inspection of the fan blade abradable rub strip for wear. Use paragraph 3.A.(1) of the Accomplishment Instructions of GEAE SB No. CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008, to perform the inspection.

(ii) If you find a continuous 360 degree rub indication, before further flight, visually inspect the fan blades using paragraphs 3.A.(2)(a) through 3.A.(2)(b) of the Accomplishment Instructions of GEAE SB No. CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008.

(iii) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

Inspection of the Aft Actuator Head Hose Fitting on CF34–3A1 and CF34–3B Engines

(11) For CF34–3A1 engines, within 300 hours TIS after the effective date of this AD, visually inspect and, if necessary, reposition the aft actuator head hose fitting. Use paragraph 3.A of the Accomplishment Instructions of GEAE SB No. CF34–BJ S/B

73–0062, Revision 02, dated August 27, 2008, to perform the inspection.

(12) For CF34–3B engines, within 400 hours TIS after the effective date of this AD, visually inspect and, if necessary, reposition the aft actuator head hose fitting. Use paragraph 3.A of the Accomplishment Instructions of GEAE SB No. CF34–BJ S/B 73–0062, Revision 02, dated August 27, 2008, to perform the inspection.

Credit for Previous Actions

(m) Inspections previously performed using the following GEAE SBs meet the requirements specified in the indicated paragraphs:

(1) CF34–AL S/B 72–0250, dated August 15, 2008, meet the requirements specified in paragraphs (i)(2) through (i)(4) of this AD.

(2) CF34–AL S/B 73–0046, Revision 01, dated July 1, 2008, or earlier issue, meet the requirements specified in paragraph (i)(7) of this AD.

(3) CF34–BJ S/B 72–0229, dated April 10, 2008, meet the requirements specified in paragraphs (l)(3) and (l)(4) of this AD.

(4) CF34–BJ S/B 72–0231, Revision 01, dated October 1, 2008, or earlier issue, meet the requirements specified in paragraphs (l)(10)(i) and (l)(10)(ii) of this AD.

(5) CF34–BJ S/B 73–0062, Revision 01, dated July 1, 2008, or earlier issue, meet the requirements specified in paragraphs (l)(11) and (l)(12) of this AD.

Installation Prohibitions

(n) After the effective date of this AD:

(1) Do not install any fan blade into any CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section fan drive shaft life limit of 22,000 CSN if that fan blade:

(i) Was installed in a CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section fan drive shaft life limit of 15,000 CSN; and

(ii) Is listed in Appendix A of GEAE SB No. CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008; or

(iii) Is listed in Appendix A of GEAE SB No. CF34–BJ S/B 72–0230, Revision 01, dated July 30, 2008.

(2) Do not install any fan blade into any CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section fan drive shaft life limit of 15,000 CSN if that fan blade:

(i) Was installed in any CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section fan drive shaft life limit of 22,000 CSN; and

(ii) Is listed in Appendix A of GEAE SB No. CF34–AL S/B 72–0245, Revision 01, dated July 3, 2008.

Alternative Methods of Compliance

(o) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(p) Contact John Frost, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *john.frost@faa.gov;* telephone (781) 238–7756; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(q) You must use the GE Aircraft Engines service information specified in the following Table 1 to do the actions required by this AD.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin No.	Page	Revision	Date
CF34–AL S/B 73–0046. Total Pages: 8	All	02	August 27, 2008.
CF34–BJ S/B 73–0062. Total Pages: 8	All	02	August 27, 2008.
CF34–BJ S/B 72–0229. Total Pages: 158	All	01	July 30, 2008.
CF34–BJ S/B 72–0230. Total Pages: 153	All	01	July 30, 2008.
CF34–BJ S/B 72–0231. Total Pages: 8	All	02	November 26, 2008.
CF34–AL S/B 72–0245. Total Pages: 153	All	01	July 3, 2008.
CF34–AL S/B 72–0250. Total Pages: 9	All	01	November 26, 2008.

(1) The Director of the Federal Register previously approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51, as of January 4, 2010.

(2) For service information identified in this AD, contact General Electric Company, GE–Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, telephone (513) 552–3272; fax (513) 552–3329; e-mail: *geae.aoc@ge.com*.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; 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/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on December 29, 2009.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–31274 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 738

[Docket No. 0907241162–91276–01]

RIN 0694–AE62

Amendments to the Export Administration Regulations (EAR) Based Upon the Accession of Albania and Croatia to Formal Membership in the North Atlantic Treaty Organization (NATO)

Correction

In rule document E9–30484 beginning on page 68142 in the issue of Wednesday, December 23, 2009, make the following correction:

Supplement No. 1 to Part 738 [Corrected]

On page 68145, in Supplement No. 1 to Part 738, the table is reprinted to read as set forth below:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical & biological weapons			Nuclear non-proliferation		National Security		Missile Tech	Regional Stability		Firearms convention	Crime control			Anti-terrorism	
	CB	CB	CB	NP	NP	NS	NS	MT	RS	RS	FC	CC	CC	CC	AT	AT
	1	2	3	1	2	1	2	1	1	2	1	1	2	3	1	2
*			*			*		*		*		*			*	
Albania [2 3] ...	X	X		X		X	X	X	X							
*			*			*		*		*		*			*	
Croatia [3]	X			X	.....	X		X	X							
*			*			*		*		*		*			*	

[2] *See* §742.4(a) for special provisions that apply to exports and reexports to these countries of certain thermal imaging cameras.
[3] *See* §742.6(a)(3) for special provisions that apply to military commodities that are subject to ECCN OA919.

[FR Doc. C1–2009–30484 Filed 1–7–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

[Docket No. FDA–2009–N–0665]

Certain Other Dosage Form New Animal Drugs; Sevoflurane

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Halocarbon Products Corp. The ANADA provides for the use of sevoflurane inhalant anesthetic in dogs.

DATES: This rule is effective January 8, 2010.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Halocarbon Products Corp., 887 Kinderkamack Rd., River Edge, NJ 07661, filed ANADA 200–467 that provides for use of Sevoflurane, an inhalant anesthetic, in dogs. Halocarbon Products Corp.'s Sevoflurane is approved as a generic copy of SEVOFLO (sevoflurane), sponsored by Abbott Laboratories, under NADA 141–103. The ANADA is approved as of November 27, 2009, and the regulations are amended in § 529.2150 to reflect the approval.

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

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

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

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

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

§ 529.2150 [Amended]

2. In paragraph (b) of § 529.2150, remove "Nos. 000074 and 060307" and in its place add "Nos. 000074, 012164, and 060307".

Dated: January 4, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–47 Filed 1–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907241164–91415–02]

RIN 0648–AY09

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States

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

ACTION: Final rule.

SUMMARY: NMFS is modifying the Northeast (NE) Region experimental fishing regulations to authorize the NMFS NE Regional Administrator (RA), or the RA's designee, to issue a Letter of Authorization (LOA) to eligible researchers on board federally permitted fishing vessels that plan to temporarily possess fish in a manner not compliant with applicable fishing regulations for the purpose of collecting scientific data on catch.

DATES: This final rule is effective on February 8, 2010.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) are available upon request from Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Cooperative Research Liaison, phone (978) 281–9326, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: This final rule revises portions of the NE Region experimental fishing regulations to authorize the NMFS NE Regional Administrator (RA), or the RA's designee, to issue a Letter of Authorization (LOA) to eligible researchers on board federally permitted fishing vessels that plan to temporarily possess fish in a manner not compliant with applicable fishing regulations for the purpose of collecting scientific data on catch (temporary possession LOA).

NE Region fishing regulations at 50 CFR part 648 implement management measures for fisheries operating under 15 fishery management plans (FMPs). These regulations include minimum fish sizes, fish possession limits, and various spatial and temporal fish possession restrictions such as quota and area closures. Federally permitted fishing vessels that carry research personnel during commercial fishing trips for the purpose of collecting catch data before discarding restricted fish are currently required to obtain an EFP in order to conduct their sampling work. The requirement to obtain an EFP prior to conducting these types of sampling activities on commercial fishing vessels has raised several issues and concerns within the scientific community, the Regional Fishery Management Councils, and among NMFS Regional Office and Science Center staff. Due to the time necessary to request and obtain an EFP, these temporary possession EFPs can inhibit the ability of fishery researchers to opportunistically accompany commercial fishing vessels for the purpose of data collection. This has resulted in the delay and lost opportunity to conduct important fishery research, which negatively affects cooperative research efforts and increases the cost of data collection. In addition, the administrative burden on NMFS from processing and overseeing these routine EFPs is substantial.

To mitigate these concerns, this final rule authorizes the RA, or the RA's designee, to issue an LOA to eligible researchers on board federally permitted fishing vessels that plan to temporarily possess for the purpose of collecting scientific data on fish that could otherwise not be retained under applicable fishing regulations. The RA will determine whether the applicant and participating vessels meet the eligibility criteria prior to issuing or denying a temporary possession LOA application.

NMFS will maintain discretion over the vessels and researchers that are issued temporary exemption LOAs. To ensure effective oversight, eligible vessels will need to meet the requirements described below, and EFP oversight policies will apply to all vessels issued a temporary possession LOA. Any additional exemptions beyond temporary possession would need to be obtained through the standard EFP process.

Only personnel from the following bodies will be eligible for a temporary possession LOA: Foreign government agency; U.S. Government agency; U.S. state or territorial agency; university (or other educational institution accredited by a recognized national or international accreditation body); international treaty organization; or scientific institution.

To obtain a temporary possession LOA, an eligible applicant will be required to submit a complete application, similar to an EFP application, which contains the following information: The date of the application; the applicant's name, mailing address, and telephone number; a statement of the purposes and goals for which the LOA is needed; the name(s) and affiliation of the fishery research technicians that will be collecting the data; a statement demonstrating the qualifications of the research technician that will be collecting the data; the species (target and incidental) expected to be harvested under the LOA; the disposition of all regulated species harvested under the LOA; the approximate time(s) and place(s) fishing will take place; the type, size, and amount of gear to be used; and the signature of the applicant. In addition, for each vessel to be covered by the LOA, as soon as the information is available and before operations begin, the applicant will be required to supply the vessel operator name, the vessel's Federal fishing permit number, and the vessel registration or documentation number.

Comments and Responses

Comment 1: There was one comment submitted in response to this proposed rulemaking that expressed support for reducing the administrative burden of EFPs on cooperative research projects in general.

Response: NMFS concurs that this rule will reduce the administrative burden of EFPs on cooperative research program.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator determined that this rule is consistent with the Fishery Management Plans (FMPs) of the NE Region, other provisions of the Magnuson-Stevens Act, and other applicable law, and is necessary to discharge the general responsibility to carry out said FMPs.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 4, 2010

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority:

■ 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.12, paragraph (d) is added to read as follows:

§ 648.12 Experimental fishing.

* * * * *

(d) *Temporary possession letter of authorization (LOA)*: The Regional Administrator (RA), or the RA's designee, may issue an LOA to eligible researchers on board federally permitted fishing vessels on which species of fish that otherwise could not be legally retained would be possessed temporarily for the purpose of collecting catch data. Under this authorization, such species of fish could be retained temporarily for data collection purposes, but shall be discarded as soon as practicable following data collection.

(1) *Eligible activities*. An LOA may be issued by the RA, or the RA's designee, to temporarily exempt a vessel, on which a qualified fishery research technician is collecting catch data, from the following types of fishery regulations: Minimum fish size restrictions; fish possession limits; species quota closures; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions.

(2) *Eligibility criteria*. Only personnel from the following bodies are eligible for a temporary possession LOA: Foreign government agency; U.S. Government agency; U.S. state or territorial agency; university (or other educational institution accredited by a recognized national or international accreditation body); international treaty organization; or scientific institution.

(3) *Application requirements*. To obtain a temporary possession LOA, an eligible applicant, as defined under paragraph (d)(2) of this section, is required to submit a complete application, which must contain the following information: The date of the application; the applicant's name, mailing address, and telephone number; a statement of the purposes and goals for which the LOA is needed; the name(s) and affiliation of the fishery research technicians will collect the data; a statement demonstrating the qualifications of the research technician that will collect the data; the species (target and incidental) expected to be harvested under the LOA; the proposed disposition of all regulated species harvested under the LOA; the approximate time(s) and place(s) fishing will take place; the type, size, and amount of gear to be used; and the signature of the applicant. In addition, for each vessel to be covered by the LOA, as soon as the information is available and before operations begin, the applicant is required to supply to NMFS the vessel operator name, the vessel's Federal fishing permit number, and the vessel registration or documentation number.

[FR Doc. 2010–142 Filed 1–7–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 080225267–91393–03]

RIN 0648–AW49

International Fisheries Regulations; Fisheries in the Western Pacific; Pelagic Fisheries; Hawaii-based Shallow-set Longline Fishery; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulations that were published in the **Federal Register** on December 10, 2009, and are effective January 11, 2010. This change ensures that the process is preserved for closing the Hawaii-based shallow-set longline fishery as a result of the fishery reaching interaction limits for sea turtles.

DATES: Effective January 11, 2010.

FOR FURTHER INFORMATION CONTACT: Adam Bailey, NMFS Pacific Islands Region, 808–944–2248.

SUPPLEMENTARY INFORMATION: The final rule published on December 10, 2009, and effective January 11, 2010 (74 FR 65480), revised annual interaction limits for sea turtles, among other actions.

The amendatory instructions that are the subject of this correction refer to § 665.33 in Title 50 of the CFR. In the amendatory instructions in the published final rule (74 FR 65480), instruction 7 revised 50 CFR 665.33(b), relating to the annual limits on sea turtle interactions. The instruction inadvertently omitted paragraph designation "(b)(1)" relating specifically to the interaction limits. Because of the error, paragraph (b)(2), relating to the process for closing the fishery if a sea turtle interaction limit is reached, would be inadvertently deleted when this rule is made effective on January 11, 2010, if not corrected.

This correction makes one change to the amendatory instructions to accurately reflect effective CFR parts as of January 11, 2010. In the amendatory instruction for § 665.33, the phrase, "...and revise paragraphs (b) and (f) to read as follows:", is revised to read "...and revise paragraphs (b)(1) and (f) to read as follows:".

Correction

Accordingly, in the final rule (FR Doc. No. E9-29444) published on December 10, 2009 (74 FR 65480), on page 65480, column 1, amendatory instruction number 7 is revised to read as follows:

§ 665.33 [Amended]

7. In § 665.33, remove and reserve paragraphs (a), (c), and (e), and revise paragraphs (b)(1) and (f) to read as follows:

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

Dated: January 5, 2010.

James W. Balsiger,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–138 Filed 1–7–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 5
Friday, January 8, 2010

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2008–0252; FRL–8804–3]

RIN 2070–AB27

Proposed Significant New Use Rules on Certain Chemical Substances; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA issued a proposed rule in the **Federal Register** of November 6, 2009, concerning proposed significant new use rules for certain chemical substances. EPA has received a request to extend the comment period. This document reopens the comment period for 30 days.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0252, must be received on or before February 8, 2010.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of November 6, 2009.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Jim Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; e-mail address: *alwood.jim@epa.gov*.

SUPPLEMENTARY INFORMATION: This document reopens the public comment period established in the **Federal Register** of November 6, 2009 (74 FR 57430) (FRL–8436–8). In that document, EPA proposed significant new use rules for certain chemical substances. EPA received a request to extend the comment period. EPA is hereby reopening the comment period for 30 days.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the November 6, 2009 **Federal Register** document. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting, and recordkeeping requirements.

Dated: December 17, 2009.

Barbara A. Cunningham,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2010–115 Filed 1–7–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0912081428–91437–01]

RIN 0648–AY44

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Control Date for *Loligo* and *Illex* Squid

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

ACTION: Advance notice of proposed rulemaking (ANPR); notice to reaffirm the control date for the *Loligo* squid (*Loligo*) and *Illex* squid (*Illex*) fisheries.

SUMMARY: NMFS announces a future proposed rulemaking for the Atlantic mackerel, squid, and butterfish (MSB) fisheries. This rulemaking could institute catch share programs in the *Loligo* and *Illex* fisheries to manage future access in these fisheries in order to control capacity. NMFS also reaffirms the most recent control date of May 20, 2003, for the *Loligo* and *Illex* fisheries, which may be used for establishing eligibility criteria for determining levels of future access to the squid fisheries. This announcement alerts interested parties of potential eligibility criteria for future access so as to discourage speculative entry into the squid fisheries while the Mid-Atlantic Fishery Management Council (Council) considers if and how access to the squid fisheries should be controlled with catch share programs.

DATES: Public comments on the ANPR must be received no later than 5 p.m., eastern standard time, on February 8, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AY44, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov*;
- Fax to Daniel T. Furlong, 302–674–5399; or
- Mail or hand deliver to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904–6790. Mark the outside of the envelope "Comments on Squid Catch Share Programs."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978- 281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION: *Loligo* and *Illex* support important commercial fisheries along the Atlantic coast of the United States. The Council has

considered additional capacity controls in the *Loligo* and *Illex* fisheries since 2003. On May 20, 2003 (68 FR 27516), NMFS published, at the request of the Council, an ANPR indicating that the Council intended to consider alternative allocation schemes to further control capacity in the *Loligo* and *Illex* fisheries. Accordingly, May 20, 2003, was termed a "control date," and notice was provided that the control date may be used for establishing eligibility criteria for determining levels of future access to the *Loligo* and *Illex* fisheries subject to Federal authority.

At its August 2009 meeting, the Council voted to reaffirm the May 20, 2003, control date for the *Loligo* fishery and to initiate an amendment to the MSB Fishery Management Plan (FMP), which would consider catch shares for the *Loligo* and *Illex* fisheries. The term "catch share" describes a fishery management program that allocates a portion of the total fishery catch to individuals, cooperatives, communities, or other entities. Such programs also specify the rules of operation for the program. At its October 2009 meeting, the Council clarified that its vote to reaffirm the May 20, 2003, control date also applied to the *Illex* fishery. This notice reaffirms the Council's intent to consider use of the May 20, 2003, *Loligo* and *Illex* control date in the upcoming amendment to the MSB FMP. Reaffirming the squid control date is intended to strongly discourage speculative entry into the squid fisheries while catch share measures are developed and considered by the Council. The Council could use the squid control date to reduce potential excess capacity and/or latent capacity by distinguishing established participants from speculative entrants to the fishery. Additional and/or other qualifying criteria may also be applied. Consideration of a control date does not commit the Council or NMFS to develop any particular management system or criteria for participation in the squid fisheries. The Council may choose a different control date, or may choose a management program that does not use such a date. This notification also reminds the public that interested participants should locate and preserve records that substantiate and verify their participation in the *Loligo* and *Illex* fisheries in Federal waters.

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

Dated: January 4, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–143 Filed 1–7–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 5
Friday, January 8, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 4, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Marketing Order Online System (MOLS) Survey.

OMB Control Number: 0581–NEW.

Summary of Collection: Under Section 608(e) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), certain imported fruit, vegetable and specialty crop commodities must meet the same quality standards applied to domestically-produced commodities when regulated by Federal marketing orders. Reports are required under import regulations 7 CFR part 944.350 (fruits); 980.501 (vegetables) and 999.500 (specialty crops). Using the Marketing Order Online System (MOLS), importers and receivers can search, review and submit the required form FV–6 "Importer's Exempt Commodity Form" prior to importation. AMS has developed a customer satisfaction survey, form FV–660, to gather specific information from respondents currently utilizing the MOLS.

Need and Use of the Information: The survey will collect information on a voluntary basis, and the identities will be kept confidential. The type of information being requested on the survey includes, among other information, customer expectations of the overall quality, performance, attractiveness and features of the online system, customer experience in requesting a new certificate, editing a pending certificate, ease in accessing, entering data or submitting the information online and experience or problems when printing. A cover memo will accompany the survey explaining the purpose and providing information to access the survey through an Internet link. Results of the survey will allow AMS to better serve the fruit, vegetable and specialty crop importing and handling community.

Description of Respondents: Business or other for-profit.

Number of Respondents: 200.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 50.

Charlene Parker,
Departmental Information Collection Clearance Officer.

[FR Doc. 2010–46 Filed 1–7–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lower Orogrande Project, Clearwater National Forest, Clearwater County, ID

AGENCY: Forest Service, USDA.

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

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of improvements on watershed, vegetation, and wildlife habitat in the Lower Orogrande project area on the North Fork Ranger District of the Clearwater National Forest. The Lower Orogrande project area is located entirely within the Orogrande Creek watershed, which contains the Tamarack Creek, Jazz Creek, and Pine Creek sub watersheds as part of the headwaters of the North Fork Clearwater River Subbasin.

DATES: Comments on this project must be received, in writing, within 30 days following the publication of this notice in the **Federal Register**. A 45-day public comment period will follow the release of the draft environmental impact statement that is expected in October 2010. The final environmental impact statement is expected in May 2011.

ADDRESSES: Written comments and suggestions concerning the scope of this project should be sent to Douglas Gober (*dgober@fs.fed.us*), District Ranger, North Fork Ranger District, 12730 Highway 12, Orofino, ID 83844.

FOR FURTHER INFORMATION CONTACT: George Harbaugh (*gharbaugh@fs.fed.us*), Project Leader, Lochsa Ranger District. *Phone:* (208) 935–4260.

SUPPLEMENTARY INFORMATION: The Lower Orogrande project area contains approximately 21,560 acres of National Forest lands. The legal location is mostly in portions of Townships 37 and 38 North and Ranges 7 and 8 East, Boise Meridian, Clearwater County, Idaho. The proposed actions would occur on National Forest lands and are all outside

the boundaries of any inventoried roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Clearwater National Forest Plan or by any past of present legislative wilderness proposals.

Purpose and Need for Action is to: (1) Reduce stream sediment (*i.e.* reduce road densities and control erosion sources on roads to be retained, especially in RHCAs) and remove barriers to fish passage and other aquatic organisms to allow for unrestricted access to historic habitats; (2) restore white pine and larch (regeneration harvest), improve stand vigor (commercial thinning), and start the trend to improve species diversity and balance vegetative successional stages across the landscape to create stand conditions that are resilient and allow for rapid recovery after disturbances; and (3) promote a trend in the balance of successional stages toward the historical range and promote a trend towards increased wildlife security.

The Proposed Action would address improvements to the area's watershed, vegetation, and wildlife habitat. Watershed improvements include: (1) Decommissioning 6 miles of system roads and 65 miles of non-system roads; (2) improving and/or reconstructing up to 5 miles of existing roads to fix erosion problems; and (3) replacing 40 undersized culverts.

Up to 30 miles of existing roads would need improvement or reconstruction, up to 60 miles of existing roads would need reconditioning; all for logging access. No new road construction is anticipated at this time. Opportunities for precommercial thinning will be identified later in the process.

Improvements to wildlife habitat would include (1) conducting vegetation treatments to promote better successional stage balance. This action would correspond directly to the proposed commercial thinning and regeneration harvest activities; (2) restricting road access (closed to all vehicles year round) on 14.5 miles of existing roads to improve elk security. Proposed access restrictions are a result of a Road and Trail Analysis being completed for this project; and (3) designating additional stands for management as mature and old growth forest habitats.

Possible Alternatives the Forest Service will analyze include a "no action" alternative in which none of the proposed activities would be implemented. Additional alternatives that meet the project purpose and need may be considered in response to issues raised by the public during scoping.

The Responsible Official is the Forest Supervisor of the Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544. The Responsible Official will decide if the proposed project will be implemented and will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations. The responsibility for preparing the DEIS and FEIS has been delegated to Douglas Gober, District Ranger, North Fork Ranger District, 12730 Highway 12, Orofino, ID 83844.

The Scoping Process for the EIS is being intiated with this notice, and written comments regarding the analysis should be received within 30 days following the publication of this notice in the **Federal Register**. Additional scoping will follow the release of the DEIS, expected in October 2010.

Preliminary Issues identified that could be affected by proposed activities include: Air quality, economic feasibility, fish habitat, heritage resources, old growth habitat, soil productivity, spread of noxious weeds, threatened/endangered/sensitive and management indicator species of wildlife and plants, tribal treaty rights, water quality, and wildlife habitat.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Clearwater National Forest publishes a legal notice in the Lewiston Morning Tribune (Lewiston, Idaho), the Forest's paper of record. A notice of availability will also be published in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: January 4, 2010.

Rick Brazell,

Forest Supervisor.

[FR Doc. 2010–109 Filed 1–7–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2009–0037]

Codex Alimentarius Commission: Meeting of the Codex Committee on Milk and Milk Products

AGENCY: Office for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office for Food Safety, and the Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), are sponsoring a public meeting on January 13, 2010. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 9th Session of the Codex Committee on Milk and Milk Products (CCMMP) of the Codex

Alimentarius Commission (Codex), which will be held in Auckland, New Zealand, February 1–5, 2010. The Deputy Under Secretary for Food Safety and the AMS recognize the importance of providing interested parties the opportunity to obtain background information on the 9th Session of the CCMMP and to address items on the agenda.

DATES: The public meeting is scheduled for Wednesday, January 13, 2010, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: The public meeting will be held in Room 3074, South Agriculture Building, USDA, 14th Street and Independence Avenue, SW., Washington, DC 20250. Documents related to the 9th Session of the CCMMP will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The U.S. Delegate to the 9th Session of the CCMMP, Duane R. Spomer, AMS, invites interested U.S. parties to submit their comments electronically to the following e-mail address: *Susan.Sausville@ams.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Susan M. Sausville, Chief, AMS, Dairy Standardization; Telephone: (202) 720–9382; Fax: (202) 720–2643; e-mail: *Susan.Sausville@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCMMP was established to elaborate codes and standards for milk and milk products. The CCMMP is hosted by the Government of New Zealand.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 9th Session of the CCMMP will be discussed during the public meeting:

1. Matters Referred by the Codex and other Codex committees and task forces.

2. Draft Amendment to the *Codex Standard for Fermented Milks* (CODEX STAN 243–2003) pertaining to drinks based on fermented milk.

3. Report of the working group on the proposed draft standard for processed cheese.

4. Maximum levels for annatto extracts in Codex standards for milk and milk products.

5. Report of the International Dairy Federation and the International Organization for Standardization Working Group on Methods of Analysis and Sampling for Milk and Milk Products.

6. Inconsistent presentation of food additive provisions in Codex standards for milk and milk products.

7. Consistency of the *Model Export Certificate for Milk and Milk Products* with the *Generic Model Official Certificate (Annex to the Guidelines for Design, Production, Issuance and Use of Generic Official Certificates.*)

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access these documents (see **ADDRESSES**)

Public Meeting

At the January 13, 2010 public meeting, draft United States positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Susan Sausville (see **ADDRESSES**.) Written comments should state that they relate to activities of the 9th Session of the CCMMP.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2009_Notices_Index/.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on January 5, 2010.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2010–218 Filed 1–6–10; 4:15 pm]

BILLING CODE 3410–DM–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Senior Executive Service Performance Review Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice.

SUMMARY: This notice announces a change in the membership of the Senior Executive Service Performance Review Board for the Chemical Safety and Hazard Investigation Board (CSB).

DATES: Effective January 8, 2010.

FOR FURTHER INFORMATION CONTACT: Christopher Kirkpatrick, Office of General Counsel, (202) 261–7600.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, a performance review board (PRB). The PRB reviews initial performance ratings of members of the Senior Executive Service (SES) and makes recommendations as to final annual performance ratings for senior executives. Because the CSB is a small independent Federal agency, the SES members of the CSB's PRB are drawn from other Federal agencies.

The Chairperson of the CSB has appointed the following individual to the CSB Senior Executive Service Performance Review Board:

PRB Member—Gary L. Halbert, General Counsel, National Transportation Safety Board.

Mr. Halbert replaces Curtis Bowling (Director of Environmental Readiness and Safety, Office of the Secretary of Defense/Chairman, Department of

Defense Explosives Safety Board). The service of Mr. Bowling on the PRB has come to a close. His appointment was originally announced in the **Federal Register** of November 15, 2007 (72 FR 64192).

William B. Wark (CSB Board Member) continues to serve as the Chair of the PRB, as announced in the **Federal Register** of November 15, 2007 (72 FR 64192). David Capozzi (Executive Director, United States Access Board) continues to serve as a Member of the PRB, as announced in the **Federal Register** of December 5, 2008 (73 FR 74138).

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Dated: January 4, 2010.

Christopher J. Kirkpatrick,

Attorney-Advisor.

[FR Doc. 2010–104 Filed 1–7–10; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT56

Marine Mammals; File No. 14486

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center (ASLC), 301 Railway Avenue, PO Box 1329, Seward, Alaska 99664–1329 (Dr. Ian Dutton, Responsible Party), has applied in due form for a permit to receive, import, and export marine mammal specimens for scientific research purposes.

DATES: Written, telefaxed, or e-mail comments must be received on or before February 8, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14486 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. 14486 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The primary objective of this application is to support multiple ongoing research programs at the ASLC, including studies of population ecology, diet and nutrition, reproductive physiology, toxicology and health of marine mammals. The ASLC requests the annual collection, receipt, import and export of unlimited samples from 4000 individual cetaceans and 5,000 individual pinnipeds under NMFS jurisdiction for continued research on these species. Samples would be collected under existing permits in the countries of origin, would be the product of a legal subsistence hunt, incidental by-catch, routine husbandry/medical examinations of public display animals in the U.S., or opportunistic carcass collection, or would be samples taken under other permitted research activities. No takes of live animals, direct or indirect, are requested in this application. ASLC requests the permit be issued for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 4, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–139 Filed 1–7–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

AGENCY: Department of Commerce.

ACTION: Notice.

Mission Statement

Medical Trade Mission to India: March 8–13, 2010.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a Medical Trade Mission to New Delhi, Chennai and Mumbai, India, March 8–13, 2010. The Medical Trade Mission to India will include representatives of U.S. medical/healthcare industry manufacturers (equipment and devices including laboratory, emergency, diagnostic, physiotherapy, and orthopedic equipment, and healthcare information technology) and service providers. The mission will introduce U.S. suppliers to prospective end-users and partners whose needs and capabilities are targeted to each U.S. participant's business objectives. The delegates will meet with Indian government officials to obtain first-hand information about regulations, policies and procedures and will visit healthcare facilities. The Commercial Service in India (CS India) will organize appointments and briefings in New Delhi, Chennai and Mumbai, India's major healthcare industry hubs. U.S. participants will have the opportunity to interact with U.S. Embassy and Consulate officials and CS India healthcare specialists to discuss industry developments, opportunities, and marketing strategies.

Medical Fair India, one of the largest medical tradeshows in India, coincides in time and location with the last stop of the Trade Mission. Trade Mission participants, therefore, can exhibit at the

tradeshow, in the U.S. Pavilion, as part of their program. Companies wishing to exhibit in the U.S. pavilion at the Medical Fair can register through the CS India office to receive a discount.

Commercial Setting

The Indian healthcare industry is experiencing a rapid transformation and is emerging as a promising market for U.S. suppliers of high-end products. The Indian healthcare market, currently at $35 billion annually, is expected to reach more than $75 billion annually by 2012. The growth in affluence of more than 300 million middle-income consumers is creating demand for higher standards of healthcare. The changing demographic profile and the rise of lifestyle-related diseases have altered the health seeking behavior of the consumer. While private insurance covers only 10% of the populations, coverage is growing at 40% per year.

The medical infrastructure in India is insufficient for the population, with demand for hospitals and beds far exceeding supply. The problem is acute in rural India, which accounts for over half of India's population, while about 80 percent of available hospital beds are located in the urban centers. Both government and private operators have major expansion plans to meet demand and increase quality. Healthcare in India is provided through primary care facilities and secondary and tertiary care hospitals. While the public sector provides primary and secondary care, tertiary care hospitals are owned and managed by both government and private sector. Over the next 5–6 years, 150–200 tertiary hospital projects are expected to be constructed, including hospitals of varying capacities. Most Indian healthcare facilities use imported medical equipment for diagnosis, treatment and surgery with over 35% of the imports coming from the U.S. New specialty and super-specialty hospitals depend on the import of high-end medical equipment for over 65 percent of their needs, and this sector is growing at a rate of 15 percent annually.

Medical tourism is one of the major external drivers of growth in India's healthcare sector. India treated 450,000 foreign patients in 2007 and the expected increase in this sector is contributing to improved quality controls. India's National Accreditation Board for Hospitals (NABH) operates accreditation programs for healthcare organizations. Some private hospitals are also applying for certification from international accreditation organizations such as the Joint Commission International (JCI). Accreditation by NABH and JCI has ensured better standards of healthcare in hospitals.

Mission Goals

The goal of the Medical Trade Mission to India is to (1) familiarize the U.S. companies with the current healthcare situation as well as the developments taking place; (2) introduce U.S. companies to appropriate government officials in India to learn about various regulatory procedures and policies; and (3) introduce companies to potential end-users, representatives and partners.

Mission Scenario

The first stop on the mission itinerary is New Delhi, the capital. In meetings with representatives of the Ministry of Health, Drug Controller General Office, and Department of Pharmaceuticals, the U.S. mission members will learn about policies, regulations and opportunities in the country's healthcare industry, such as expansion plans of the Fortis and Max hospital groups.

Chennai and Mumbai are the second and third stops of the mission, located in southern and western India respectively. Several corporate hospital chains have their headquarters in these cities. These include the Apollo Group in Chennai, and Wockhard and the Tata Institute of Fundamental Research in Mumbai.

The three cities on the mission itinerary are the regional hubs for the Indian medical/healthcare industry. End-users often prefer to be serviced by regional distributors/agents based in these cities, rather than country-wide distributors. In all three cities the delegates will attend U.S. Embassy or Consulate industry briefings and take part in networking events and business matchmaking appointments.

Participation in the mission will include the following:

- Pre-travel briefings/webinars on subjects including business practices in India and specifics on the medical/healthcare industry;
- Embassy/Consulate briefings on the business climate, political scenario, and medical/healthcare industry in New Delhi, Chennai and Mumbai;
- Pre-scheduled meetings with potential partners, distributors, end-users, or local industry contacts in New Delhi, Chennai and Mumbai;
- Meetings with Indian Government officials;
- Tour of public and private hospitals and interaction with senior hospital staff;
- Networking receptions in three cities of the trade mission;
- Built-up 9sq meter exhibitor booth * in the U.S. Pavilion at Medical Fair India, Mumbai. (*Option two only.*)

* Contact us for price of booth.

Proposed Mission Timetable

Mission participants will be encouraged to arrive Saturday, March 6, 2010 to allow time to adjust to their new surroundings before the mission program begins on Monday, March 8.

Monday, March 8	New Delhi Embassy briefing by U.S. Departments of Commerce and State Meetings with Government of India ministries. One-on-one business appointments. Evening: Networking reception.
Tuesday, March 9	New Delhi/Chennai Industry briefing. One-on-one business appointments. Hospital or other site visit. Check-out of the hotel. Evening flight to Chennai.
Wednesday, March 10	Chennai Breakfast briefing by the U.S. Commercial Service at hotel. Hospital visit and meeting with senior management, including the procurement executives. One-on-one business appointments. Evening: Networking reception.
Thursday, March 11	Chennai/Mumbai One-on-one business appointments. Check-out of the hotel. Afternoon flight to Mumbai.
Friday, March 12	Mumbai

Saturday, March 13	Breakfast briefing by the U.S. Commercial Service at hotel. One-on-one business appointments or exhibition at Medical Fair India. Evening: Networking reception. Mumbai Hospital chain visit and meeting with senior management. Or Medical Fair India 2010. Evening: Check-out of the hotel or remain in Mumbai for Medical Fair India. Depart for Mumbai International airport for onward travel.

Participation Requirements

All parties interested in participating in the Medical Trade Mission to India must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission is open on a first come first served basis to 15 qualified U.S. companies. Additional applications will be considered as time and space permits.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fees reflect two options:

Option 1: March 8–13, 2010. Participation in the Trade Mission in all three cities: New Delhi, Chennai, and Mumbai. The participation fee will be $4,600 for large firms and $3,900 for a small or medium-sized enterprise (SME) [1], this includes one principal representative. The fee for each additional firm representative (large firm or SME) is $500.

Option 2: March 8–11, 2010 participate in the Trade Mission in two cities: New Delhi and Chennai and March 12–14, exhibit at the Medical Fair India 2010 in Mumbai. The participation fee for New Delhi-Chennai and exhibiting in the Fair in Mumbai $6,800 ($3,600 Trade Mission fee + $3,200 for 9 square meter booth space [2]) for large firms and $ 6,100 ($2,900 Trade Mission fee + $3,200 for 9 square meter booth space) for an SME, which includes one principal representative. The fee for each additional firm representative (large firm or SME) is $250.

Expenses for lodging, some meals, incidentals, and travel (except for transportation to and from meetings) will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of a company's products or services to the mission's goals.
- Applicant's potential for business in India, including likelihood of exports resulting from the trade mission.
- Consistency of the applicant's goals and objectives with the stated scope of the trade mission.

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including posting in the Federal Register, the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*), and other Internet Web sites; press releases to general and trade media; direct mail; notices by industry trade associations and other multiplier groups; and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than January 31, 2010.

Contacts

U.S. Commercial Service Healthcare Team: Ms. Jetta DeNend, International Trade Specialist, U.S. Commercial Service, 33 Whitehall St. 22nd Floor, New York, NY 10004, Ph: 212–809–2644/Fax: 212–809–268, E-mail: *Jetta.DeNend@mail.doc.gov.*

U.S. Commercial Service in India: Mr. Srimoti Mukherji, U.S. Commercial Service, New Delhi, Ph: 91–11–23472000, ext 2226, Fax: 91–11–2331 5172, *Srimoti.Mukherji@mail.doc.gov*.

Lisa Huot,

Global Trade Programs, Commercial Service Trade Missions Program.

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[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting_opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see *http://www.export.gov/newsletter/march2008/initiatives.html*).

[2] Minimum booth space is 9 square meters. Companies can take larger space for which cost will be calculated accordingly.

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–820)

Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Antidumping Duty Administrative Review, and Intent to Rescind in Part

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

SUMMARY: In response to requests from petitioners,[1] the Department of Commerce ("the Department") is conducting an administrative review of the antidumping order on certain hot–rolled carbon steel flat products from India ("Indian Hot–Rolled") manufactured by Essar Steel Limited ("Essar"), Ispat Industries Limited ("Ispat"), JSW Steel Limited ("JSW"), and Tata Steel Limited ("Tata"). The period of review ("POR") covers December 1, 2007, through November 30, 2008. We preliminarily determine to calculate an antidumping duty margin based upon the application of adverse facts available ("AFA") with respect to Essar's sales. We also preliminarily determine that Ispat, JSW and Tata had no entries of subject merchandise subject to review under this antidumping order during

[1] The petitioners are the United States Steel Corporation Steel, Nucor Corporation, and ArcelorMittal USA Inc. (collectively "petitioners").

the POR. 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 all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

EFFECTIVE DATE: January 8, 2010.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or James Terpstra, AD/CVD Operations Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1168 and (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2001, the Department published in the **Federal Register** the antidumping duty order on Indian Hot–Rolled. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products from India*, 66 FR 60194 (December 3, 2001) ("*Amended Final Determination*"). On December 1, 2008, the Department published in the **Federal Register** a notice titled "Opportunity to Request Administrative Review" of the antidumping duty order on Indian Hot–Rolled. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 72764 (December 1, 2008). On December 31, 2008, petitioners requested an administrative review in the antidumping duty order on Indian Hot–Rolled, for subject merchandise produced or exported by Ispat, JSW, Tata, and Essar. On February 2, 2009, the Department published a notice of initiation of antidumping duty administrative review of Indian Hot–Rolled for the period December 1, 2007, through November 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 5821 (February 2, 2009) ("*Initiation Notice*"). On February 6, 2009, Ispat, Essar, and JSW each informed the Department that they did not have shipments of the subject merchandise to the United States during the POR. On February 19, 2009, the Department released to the parties U.S. Customs and Border Protection ("CBP") data showing a single entry of subject merchandise into the United States.[2] On February 25, 2009, Tata informed the Department that it made no shipments of subject merchandise that were entered into the United States during the POR, and that the entry shown in the CBP data was not produced by Tata, but was in fact produced and sold by another Indian manufacturer. On March 4, 2009, Essar filed a response to the CBP data and Tata's February 25, 2009, submission, stating that Essar made a sale during the POR, but Essar believed that this was a domestic sale, rather than a sale to the United States. On March 17, 2009, the Department issued an antidumping questionnaire to Tata. On March 19, 2009, Tata submitted its response to the Department and included as an attachment several e–mails regarding the sale in question to demonstrate that Essar was the exporter of the single shipment. Tata argued that Essar had actual knowledge at the time that it made the sale in India to Tata Steel's affiliate, Tata Ryerson, that the merchandise was to be exported to the United States. Therefore, Tata argued that Essar is the appropriate exporter for this shipment, and that the Department should rescind the instant review of Tata. *See* Tata's March 19, 2009, submission at 2. In its April 3, 2009, submission, Essar reiterated that because it treated the subject sale as a domestic sale, it had no shipments to the United States during the POR and it should not be a respondent in this proceeding. *See* Essar's April 3, 2009, submission at 5.

On May 8, 2009, the Department sent a letter to Essar, stating that, after review of record information from CBP, and the submissions of both Essar and Tata, the Department determined that Essar had knowledge that the merchandise it sold was destined for the United States before the terms of sale were finalized. Because the Department considered the shipment of subject merchandise to be made by Essar, it notified Essar that it would be required to respond to the Department's antidumping questionnaire. *See* Letter from James Terpstra, Program Manager, AD/CVD, Office 3, Import Administration to Essar, dated May 8, 2009.

Contrary to the Department's instructions, Essar did not respond to the Department's questionnaire. Instead, by letter dated June 15, 2009, Essar informed the Department that it would not be able to actively participate in this administrative review, except with respect to briefing and any hearing that might be requested. Essar reiterated its position that it was not the appropriate respondent and requested that the Department rescind this review with respect to Essar.

On September 10, 2009, the Department extended the time period for issuing the preliminary results of the administrative review from September 2, 2009, to December 31, 2009. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 46569 (September 2, 2009).

Period of Review

The POR covered by this review is December 1, 2007, through November 30, 2008.

Scope of the Order

The merchandise subject to this order is certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum–degassed, fully stabilized (commonly referred to as interstitial–free ("IF")) steels, high–strength low–alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low–carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The

[2] *See* Memorandum to File, Re: "Certain Hot-Rolled Carbon Steel Flat Products from India," Subject: "Customs and Border Protection Data for Selection of Respondents for Individual Review," from Dennis McClure, International Trade Compliance Analyst, through James Terpstra, Program Manager, and Melissa Skinner, Office Director, Office 3, AD/CVD Operations, dated February 19, 2009 ("Hot-Rolled Memo").

substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot–rolled carbon steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials ("ASTM") specifications A543, A387, A514, A517, A506)).
- Society of Automotive Engineers ("SAE")/American Iron & Steel Institute ("AISI") grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- United States Steel ("USS") Abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel covered by this order, including: vacuum–degassed fully stabilized; high–strength low–alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Intent to Rescind and Preliminary Partial Rescission of Administrative Review with Respect to Ispat, JSW, and Tata

Ispat and JSW have each submitted timely–filed certifications indicating that they had no shipments of subject merchandise to the United States during the POR. *See* Hot–Rolled Memo. The Department confirmed Ispat and JSW's assertions with the CBP data. With respect to the one entry of subject merchandise into the United States during the POR, the Department determined that the entry was produced and sold by Essar because Essar had knowledge that merchandise it was selling was destined for the United States before the terms of sale were finalized. In making this determination, the Department concluded, based upon record evidence that the sale was not made by Tata. As a result, we preliminarily find that, during the POR, Ispat, JSW, and Tata did not have entries of subject merchandise into the United States subject to this antidumping review. Therefore, pursuant to 19 CFR § 351.213(d)(3), and consistent with our practice, we preliminarily determine to rescind this review with respect to Ispat, JSW and Tata. We invite comments from interested parties on this intent to rescind.

Use of Adverse Facts Available

Section 776(a) of the Act provides that, the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous

administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action, reprinted in H.R. Doc. No. 103–216, at 870 (1994) ("*SAA*"). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

Application of Adverse Facts Available

On May 8, 2009, the Department sent a letter to Essar, stating that record evidence indicated that Essar had knowledge that the merchandise it sold to Tata Ryerson was destined for the United States before the terms of sale were finalized. Accordingly, the Department required Essar to respond to the Department's antidumping questionnaire in accordance with the Department's practice. Under section 772(a) of the Act, the basis for export price is the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of the destination, is the appropriate party to be reviewed. The Department's test for determining knowledge is whether the relevant party knew or should have known that the merchandise was for export to the United States. *See* SAA. The record evidence in this review shows that Essar learned of the U.S. destination of the merchandise on the same day that it offered an initial sales quote for coiled steel to Tata Ryerson, and that Essar knew that Tata Ryerson would slit the coil and ship it the United States. Therefore, the Department determined that Essar sold the subject merchandise to Tata Ryerson and at the time of the sale, had knowledge or should have known its merchandise was ultimately destined for the United States.

Instead of responding to the Department's questionnaire, Essar stated that it would not respond. Specifically, Essar stated that "it will not be able to actively participate in this administrative review, except with respect to briefing and any hearing in this review." *See* Essar's June 15, 2009, letter to the Department at 2. Therefore, the Department preliminarily determines that necessary information is not available on the record to serve as the basis for the calculation of Essar's margin. *See* section 776(a)(1) of the Act. We also determine that Essar withheld requested information and, as a result, has significantly impeded this proceeding. *See* section 776(a)(2)(A) and (C) of the Act; *see Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review*, 74 FR 17149 (April 14, 2009), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice From Brazil*, 71 FR 2183 (January 13, 2006), and the accompanying Issues and Decision Memorandum at Comment 18; and *Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002) ("*Wire Rod from Brazil*").

Because Essar did not submit the questionnaire response requested by the Department, and notified the Department that it would not participate in this administrative review, there is no information provided by Essar that would enable the Department to calculate a margin for Essar. Thus, section 782(d) of the Act does not apply in this case.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); and *Wire Rod from Brazil* 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870. Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) ("*Nippon*"). In this case, the Department finds that Essar did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act, because it could have responded to the Department's requests for information, but decided not to do so. In fact, Essar made no attempt to provide the Department with any information after it was informed by the Department that it would be a mandatory respondent in this review. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to Essar. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as AFA, information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce future cooperation, the Department preliminarily determines to assign Essar an AFA rate of 28.25 percent. This rate is Essar's cash deposit rate from the investigation and represents the highest calculated margin from the investigation in this case as adjusted to account for countervailing duties imposed to offset export subsidies. The Department determines that the selected margin will prevent Essar from benefitting from its failure to cooperate with the Department's requests for information. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From India*, 66 FR 60194 (December 3, 2001). Additionally, we find that this rate is reasonably high enough to encourage participation in future segments of the proceeding.

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise. *See* 19 CFR 351.308(c) and (d); *see also* the SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *Id.*

Unlike other types of information such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for an antidumping margin is the investigation and prior administrative determinations. If the Department chooses as facts available a calculated dumping margin from the investigation or a prior segment of the proceeding, it is not necessary to question the reliability of the margin. *See Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52012 (September 8, 2008) ("*Carbazole Violet Pigment 23 from India*"); *see also Antifriction Bearings and Parts Thereof from France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, Notice of Intent to Rescind Administrative Reviews, and Notice of Intent to Revoke Order in Part*, 69 FR 5949, 5953 (February 9, 2004), unchanged in *Antifriction Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574, 55576–77 (September 15, 2004).

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited or judicially invalidated. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (CAFC 1997).

In this case, there are no circumstances present to indicate that the selected margin is not appropriate as facts available. We have decided to use the highest cash deposit rate calculated for Essar from any prior segment of these proceedings as AFA. The Department considers this dumping margin relevant for use as AFA for this review because this margin is calculated based on Essar's own information in the original investigation.[3] Moreover, there is no information on the record of this review that demonstrates that 28.25 percent is not an appropriate AFA rate for Essar. The Department finds that the use of the rate of 28.25 percent as an AFA rate is sufficiently high to ensure that Essar does not benefit from failing to cooperate in our review by refusing to respond to our questionnaire. *See Certain Cut–to-Length Carbon–Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part*, 73 FR 15132, 15133 (March 21, 2008); *see also Carbazole Violet Pigment 23 from India*. Thus, the Department considers the 28.25 percent rate corroborated "to the extent practicable" in accordance with the Act.

Adjustment for Export Subsidies

As noted above, in the original investigation, we subtracted the portion of the countervailing duty rate attributable to export subsidies (8.03 percent) from the antidumping margin (36.53 percent) in order to calculate the cash–deposit rate of 28.25 percent. Because the AFA rate we selected for this review is the adjusted cash–deposit rate we calculated for Essar in the investigation, we are making no further adjustments under section 772(c)(1)(C) of the Act.

Preliminary Results of the Review

As a result of this review, we preliminarily find that the following dumping margin exists for the period December 1, 2007, through November 30, 2008.

Producer/Manufacturer	Rate Adjusted for Export Subsidies
Essar	28.25

Disclosure

The Department will disclose 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).

Comments

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(1)(ii). 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 requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. *See* 19 CFR 351.309(c)(2). Additionally, parties are requested to provide their case brief and rebuttal briefs in electronic format (*e.g.*, Microsoft Word, pdf, etc.). 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. 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 Rate

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all

[3] This rate is adjusted to 28.25 percent to account for the export subsidy rate found in the countervailing duty investigation.

appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the publication of the final results of this review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review. 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 these reviews and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) ("*Assessment Policy Notice*"). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediary involved in the transaction. *See* Assessment Policy Notice for a full discussion of this clarification.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of hot–rolled carbon steel flat products from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the company listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original less–than-fair–value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV conducted by the Department, the cash deposit rate will be 23.87 percent, the all–others rate established in the LTFV. *See Amended Final Determination*. These cash 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 and countervailing 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 and countervailing duties occurred and the subsequent assessment of double antidumping and countervailing duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: December 30, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–128 Filed 01–07–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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: Interested persons are invited to submit comments on or before March 9, 2010.

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, 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: January 5, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: National Title I Study of Implementation and Outcomes: Early Childhood Language Development (ECLD).

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 16.

Burden Hours: 36.

Abstract: The study is being conducted as part of the National Assessment of Title I, mandated by Title I, Part E, Section 1501 of the Elementary and Secondary Education Act. The data obtained by this information collection will provide a sampling frame of eligible schools for the National Title I Study of Implementation and Outcomes: Early Childhood Language Development (ECLD). Once school districts have been indentified to participate in the study, they will be asked to complete a short form providing information about Title I schools in their district. This information includes the percent of student in a selected school that are

eligible for free-or-reduced-price lunch, percent of third graders who are classified as reading proficient on State assessments in 2009–10, grade levels in selected schools, and number of students in each grade. Based on the information provided, up to ten schools per district will be randomly selected to participate in the full-scale study. The U.S. Department of Education has Mathematica Policy Research to conduct this study.

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 4195. 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. 2010–136 Filed 1–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Readiness and Emergency Management for Schools; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184E.

Dates:

Applications Available: January 8, 2010.

Deadline for Transmittal of Applications: February 26, 2010.

Deadline for Intergovernmental Review: April 27, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Past emergencies, such as the events of September 11, 2001, Hurricanes Katrina and Rita, and emergencies related to other natural and man-made hazards, reinforce the need for schools and communities to plan for traditional crises and emergencies, as well as other catastrophic events. The Readiness and Emergency Management for Schools (REMS) grant program provides funds to local educational agencies (LEAs) to establish an emergency management process that focuses on reviewing and strengthening emergency management plans, within the framework of the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery). The program also provides resources to LEAs to provide training for staff on emergency management procedures and requires that LEAs develop comprehensive all-hazards emergency management plans in collaboration with community partners including local law enforcement; public safety, public health, and mental health agencies; and local government.

Priorities: These priorities are from the notice of final priorities and requirements for this program, published in the **Federal Register** on March 11, 2009 (74 CFR 10656).

Absolute Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

LEA Projects Designed To Develop and Enhance Local Emergency Management Capacity.

Under this priority, we support LEA projects designed to create, strengthen, or improve emergency management plans at the LEA and school-building levels and build the capacity of LEA staff so that the LEA can continue the implementation of key emergency management functions after the period of Federal funding. Projects must include a plan to create, strengthen, or improve emergency management plans, at the LEA and school-building levels, and within the framework of the four phases of emergency management: Prevention-Mitigation, Preparedness, Response, and Recovery. Projects must also include: (1) Training for school personnel in emergency management procedures; (2) coordination, and the use of partnerships, with local law enforcement, public safety or emergency management, public health, and mental health agencies, and local government to assist in the development of emergency management plans at the LEA and school-building levels; (3) a plan to sustain the local partnerships after the period of Federal assistance; (4) a plan for communicating school emergency management policies and reunification procedures for parents and guardians and their children following an emergency; and (5) a written plan for improving LEA capacity to sustain the emergency management process through ongoing training and the continual review of policies and procedures.

Competitive Preference Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets the competitive preference priority.

This priority is:

Priority for Applicants That Have Not Previously Received a Grant Under The REMS Program (CFDA 84.184E).

Under this priority, we give competitive preference to applications from LEAs that have not previously received a grant under this program (CFDA 84.184E). Applicants, including educational service agencies (ESAs), that have received funding under this program directly, or as the lead agency or as a partner in a consortium application under this program, will not meet this priority. Under a consortium application, all members of the LEA consortium must meet this criterion to meet this priority.

Final Requirements: These requirements are from the notice of final priorities and requirements for this program, published in the **Federal Register** on March 11, 2009 (74 FR 10656). The following requirements apply to all applications submitted under this competition:

1. *Partner Agreements.* To be considered for a grant award, an applicant must include in its application an agreement that details the participation of each of the following five community-based partners: The law enforcement agency, the public safety or emergency management agency, the public health agency, the mental health agency, and the head of the applicant's local government (for example the mayor, city manager, or county executive). The agreement must include a description of each partner's roles and responsibilities in improving and strengthening emergency management plans at the LEA and school-building levels, a description of each partner's commitment to the continuation and continuous improvement of emergency management plans at the LEA and school-building levels, and the signature of an authorized representative of the LEA and each partner acknowledging the agreement. For consortium applications, each LEA to be served by

the grant must submit a complete set of partner agreements with the signature of an authorized representative of the LEA and each corresponding partner acknowledging the agreement.

If one or more of the five partners listed in this requirement is not present in the applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. To be considered eligible for funding, however, an application must include a signed agreement between the LEA, a law enforcement partner, and at least one of the other required partners (public safety or emergency management agency, public health agency, mental health agency, or the head of the local government).

Applications that fail to include the required agreement, including information on partners' roles and responsibilities and on their commitment to continuation and continuous improvement (with signatures and explanations for missing signatures as specified above), will not be read.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the LEA.

2. *Coordination with State or Local Homeland Security Plan.* All emergency management plans receiving funding under this program must be coordinated with the Homeland Security Plan of the State or locality in which the LEA is located. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, applicants must include in their applications an assurance that the LEA will coordinate with and follow the requirements of their State or local Homeland Security Plan for emergency services and initiatives.

3. *Infectious Disease Plan.* To be considered for a grant award, applicants must agree to develop a written plan designed to prepare the LEA for a possible infectious disease outbreak, such as pandemic influenza. Plans must address the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery) and include a plan for disease surveillance (systematic collection and analysis of data that lead to action being taken to prevent and control a disease), school closure decision making, business continuity (processes and procedures established to ensure that essential functions can continue during and after a disaster), and continuation of educational services.

4. *Food Defense Plan.* To be considered for a grant award, applicants must agree to develop a written food defense plan that includes the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery) and is designed to safeguard the LEA's food supply, including all food storage and preparation facilities and delivery areas within the LEA.

5. *Individuals with Disabilities.* Applicants must agree to develop plans that take into consideration the communication, medical, and evacuation needs of individuals with disabilities within the schools in the LEA.

6. *Implementation of the National Incident Management System (NIMS).* Applicants must agree to implement their grant in a manner consistent with the implementation of the NIMS in their communities. Applicants must include in their applications an assurance that they have met, or will complete, all current NIMS requirements by the end of the grant period.

Because DHS' determination of NIMS requirements may change from year to year, applicants must refer to the most recent list of NIMS requirements published by DHS when submitting their applications. Information about the FY 2009 NIMS requirements for tribal governments and local jurisdictions, including LEAs, may be found at: *http://www.fema.gov/pdf/emergency/nims/FY2009_NIMS_Implementation_Chart.pdf.*

Note: An LEA's NIMS compliance must be achieved in close coordination with the local government and with recognition of the first responder capabilities held by the LEA and the local government. As LEAs are not traditional response organizations, first responder services will typically be provided to LEAs by local fire and rescue departments, emergency medical service providers, and law enforcement agencies. This traditional relationship must be acknowledged in achieving NIMS compliance in an integrated NIMS compliance plan for the local government and the LEA. LEA participation in the NIMS preparedness program of the local government is essential in ensuring that first responder services are delivered to schools in a timely and effective manner.

Additional information about NIMS implementation is available at: *http://www.fema.gov/emergency/nims.*

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The regulations in 34 CFR part 299. (c) The notice of final priorities and requirements, published in the **Federal Register** on March 11, 2009 (74 CFR 10656). (d) The notice of final eligibility requirement for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 CFR 70369).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $29,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2010 and in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $150,000–$600,000.

Estimated Average Size of Awards: $150,000 for a small-size LEA (1–20 education facilities); $300,000 for a medium-size LEA (21–75 education facilities); and $600,000 for a large-size LEA (76 or more education facilities).

Estimated Number of Awards: 96.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months. Budgets should be developed for a single award with a project period of up to 24 months. No continuation awards will be provided.

III. Eligibility Information

1. *Eligible Applicants:* LEAs, including charter schools that are considered LEAs under State law, that do not currently have an active grant under the REMS program (CFDA 84.184E). For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extension of those periods that extend the grantee's authority to obligate funds. This eligibility requirement is from the notice of final eligibility requirement published in the **Federal Register** on December 4, 2006 (71 FR 70369).

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:*

a. *Equitable Participation by Private School Children and Teachers* in Grant Program Activities.

Section 9501 of the ESEA, requires that State educational agencies (SEAs), LEAs, or other entities receiving funds under the Safe and Drug-Free Schools and Communities Act provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant

recipient. In order to ensure that grant program activities address the needs of private school children, LEAs must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other education personnel to participate in grant program activities.

In order to ensure equitable participation of private school children, teachers, and other educational personnel, an LEA must consult with private school officials on such issues as: Hazards and vulnerabilities unique to private schools in the LEA's service area, training needs, and existing emergency management plans and resources already available at private schools.

b. *Maintenance of Effort.*

Section 9521 of the ESEA permits LEAs to receive a grant only if the SEA finds that the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet. To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:* Applications Available: January 8, 2010. *Deadline for Transmittal of Applications:* February 26, 2010.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. *Deadline for Intergovernmental Review:* April 27, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-

Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.184E), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.184E), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. For this competition, you must also submit an interim report 12 months after the award date. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measure:* We have identified the following key Government Performance and Results Act of 1993 (GPRA) performance measure for assessing the effectiveness of the REMS grant program: The average number of National Incident Management System (NIMS) course completions by key personnel at the start of the grant compared to the average number of NIMS course completions by key personnel at the end of the grant.

This GPRA measure constitutes the Department's indicator of success for this program. Applicants for a grant under this program are advised to give careful consideration to this measure in designing their proposed project, including considering how data for the measure will be collected. Grantees will be required to collect and report, in their interim and final performance reports, baseline data and data on their progress with regard to this measure.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sara Strizzi, U.S. Department of Education, 1244 Speer Boulevard, Suite 201, Denver, CO 80204–3514. *Telephone:* (303) 346–0924 or by *e-mail: sara.strizzi@ed.gov*.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document

and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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*.

Dated: January 4, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 2010–130 Filed 1–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grants for the Integration of Schools and Mental Health Systems; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215M.

Dates:

Applications Available: January 8, 2010.

Deadline for Transmittal of Applications: February 22, 2010.

Deadline for Intergovernmental Review: April 23, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Grants for the Integration of Schools and Mental Health Systems program is to increase student access to high-quality mental health care by developing innovative approaches that link school systems with the local mental health system.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 5541 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7269).

Absolute Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Increasing student access to quality mental health care by developing innovative approaches to link local school systems with the local mental health system. A program funded under this absolute priority must include all of the following activities:

(1) Enhancing, improving, or developing collaborative efforts between school-based service systems and mental health service systems to provide, enhance, or improve prevention, diagnosis, and treatment services to students.

(2) Enhancing the availability of crisis intervention services, appropriate referrals for students potentially in need of mental health services, and ongoing mental health services.

(3) Providing training for the school personnel and mental health professionals who will participate in the program.

(4) Providing technical assistance and consultation to school systems and mental health agencies and families participating in the program.

(5) Providing linguistically appropriate and culturally competent services.

(6) Evaluating the effectiveness of the program in increasing student access to quality mental health services, and making recommendations to the Secretary about sustainability of the program.

Under this competition we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute priority over other applications.

This priority is:

Low-Achieving Schools.

Projects that are designed to dramatically improve student achievement in schools identified for corrective action or restructuring under Title I of the ESEA or in high schools with graduation rates of less than 60 percent through either comprehensive interventions or targeted approaches to reform.

Additional Requirements: The following requirements are from the notice of final requirements for this program, published in the **Federal Register** on May 30, 2006 (71 FR 30778).

Requirement 1—Coordination of Activities

Recipients of a grant under the Grants for the Integration of Schools and Mental Health Systems program are required to coordinate project activities with projects funded under the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration's Mental Health Transformation State Infrastructure Grants (MHTSIG) program (CFDA 93.243), if a grantee's State receives a MHTSIG award. If a recipient of a grant under the Grants for the Integration of Schools and Mental Health Systems program has received or receives a grant under the Department of Education's Readiness and Emergency Management for Schools (REMS) program (CFDA 84.184E), formerly known as the Emergency Response and Crisis Management program, the recipient must coordinate mental health service activities under this grant with those planned under its REMS grant. Projects funded by this program must complement, rather than duplicate, existing or ongoing efforts.

Requirement 2—Safe Schools/Healthy Students Recipients Excluded From Receiving Awards

Former or current recipients under the Safe Schools/Healthy Students program (CFDA 84.184L) are not eligible to receive a Grant for the Integration of Schools and Mental Health Systems. Recipients of Safe Schools/Healthy Students awards are responsible for completing a scope of work under that program that is very similar to the activities required under the Grants for the Integration of Schools and Mental Health Systems program. By restricting the applicant pool to eliminate former or current grantees under the Safe Schools/Healthy Students program, we will be able to focus Federal funds on entities that have not yet received Federal support to develop and implement strong linkages with other entities in their communities for the provision of mental health services to students.

Applicants may compete for both the Grants for the Integration of Schools and Mental Health Systems and Safe Schools/Healthy Students programs in the same year; if applicants are deemed eligible for funding in both grant competitions, the applicant will receive the larger and more comprehensive of the awards.

Requirement 3—Preliminary Interagency Agreement

Applicants for an award under the Grants for the Integration of Schools and Mental Health Systems program must develop and submit with their applications a preliminary interagency agreement (IAA). The IAA must contain the signatures of an authorized representative of at least (1) one or more State or local educational agencies or Indian Tribes; (2) one or more juvenile justice authorities; and (3) one or more State or local public mental health agencies. This preliminary IAA would confirm the commitment of these partners to complete the work under the proposed project, if funded. If the applicant is funded, recipients will complete a final IAA as required by section 5541(e) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The final IAA must be completed and submitted to us, signed by all parties, no later than 12 months after the award date.

Applications that do not include the proposed preliminary IAA with all of the required signatures will be rejected and not be considered for funding.

Requirement 4—Inclusion of Parental Consent Considerations in Final IAA

The final Interagency Agreement (IAA) must include a description of policies and procedures that would ensure appropriate parental or caregiver consent for any planned services, pursuant to State or local laws or other requirements.

Requirement 5—Provision of Direct Services

Grant funds under this program must not be used to provide direct services to students.

Program Authority: 20 U.S.C. 7269.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final requirements for this program, published in the **Federal Register** on May 30, 2006 (71 FR 30778).

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $5,913,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2010 and in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $150,000–$400,000.

Estimated Average Size of Awards: $347,800.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months. Budgets should be developed for a single award with a project period of up to 24 months. No continuation awards will be provided.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs), local educational agencies (LEAs), including charter schools that are considered LEAs under State law, and Indian Tribes. Additional eligibility requirements are listed elsewhere in this notice under *Additional Requirements* in section I. of this notice.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements in accordance with section 5541(i) of the ESEA.

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/mentalhealth/applicant.html*. To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.215M.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: January 8, 2010.

Deadline for Transmittal of Applications: February 22, 2010.

Applications for grants under this program may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 23, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Grant funds under this program must not be used to provide direct services to students or families. Funding restrictions for this competition can be found in the notice of final requirements published in the **Federal Register** on May 30, 2006 (71 FR 30778). We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you

must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215M), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424

the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are the equitable distribution of grants among the geographical regions of the United States and among urban, suburban, and rural populations.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must also submit an interim progress report twelve months after the award date. This report should provide the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Grants for the Integration of Schools and Mental Health Systems program:

a. The percentage of schools served by the grant that have comprehensive, detailed linkage protocols in place; and

b. The percentage of school personnel served by the grant who are trained to make appropriate referrals to mental health services.

These two measures constitute the Department's measures of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these two measures in conceptualizing the approach and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their interim and final performance reports about progress toward these measures. The Secretary will also use this information to respond to the evaluation requirements concerning this program established in section 5541(f) of the ESEA. For specific requirements on grantee reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sarah Allen, U.S. Department of Education, 400 Maryland Avenue, SW., room 10079, Potomac Center Plaza (PCP), Washington, DC 20202–6450. Telephone: (202) 245–7875 or by e-mail: *sarah.allen@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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.*

Dated: January 4, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 2010–140 Filed 1–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: European Union-United States Atlantis Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116J.

Dates:

Applications Available: January 8, 2010.

Deadline for Transmittal of Applications: April 8, 2010.

Deadline for Intergovernmental Review: June 10, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the program is to provide grants to eligible applicants to improve postsecondary education.

Priorities: This competition includes one absolute priority and one invitational priority.

Absolute Priority: This priority is from the notice of final priorities for this program, published in the **Federal Register** on December 11, 2009 (74 FR 65764). For FY 2010, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this absolute priority.

This priority is:

European Union (EU)-United States (U.S.) Atlantis Program—(84.116J).

This priority supports the formation of educational consortia between the EU and U.S. institutions. To meet this priority, the applicant must propose a project that encourages cooperation in the coordination of curricula; the exchange of students, if pertinent to grant activities; and the opening of educational opportunities between the U.S. and EU Member States. In order to be eligible for an award under this priority, the applicant in the U.S. must be a U.S. institution and the applicant in the EU must be an EU institution.

EU institutions participating in any consortium proposal under this priority may apply to the Directorate-General for Education and Culture (DG EAC), European Commission, for funding

under a separate but parallel EU competition.

Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that support exchanges between EU institutions and U.S. minority-serving institutions to increase the participation of underrepresented minorities in the program.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $47,424,000 for the FIPSE programs, of which we intend to allocate $2,000,000 for new awards for the EU-U.S. Atlantis program in FY 2010. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $35,000–$108,000 for the first year only.

Estimated Average Size of Awards: $35,000 for the first year of two-year Policy Oriented Measures grants that support public policy research on transatlantic topics; $45,000 for the first year of four-year Mobility grants that support curriculum development and academic term exchanges; and $102,000 for the first year of five-year Transatlantic Degree grants that support the development and implementation of dual degrees. You can find a detailed description of each of these three types of grants in the program guidelines and budget instructions in the application package for this competition.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://e-grants.ed.gov.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.116J.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Word Limit and Application Format: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 6,000 words. The page format for the application must comply with the following standards:

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The 6,000-word limit applies only to the application narrative. It does not apply to the Application for Federal Assistance form (SF 424); the supplemental information form required by the Department of Education; the budget summary form (ED Form 524); and the assurances, certifications, and survey forms. In addition, the 6,000-word limit does not apply to the one-page abstract, appendices, the short bios, letters of commitment, line item budget, or a table of contents. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if you exceed the 6,000-word limit.

3. *Submission Dates and Times:*

Applications Available: January 8, 2010.

Deadline for Transmittal of Applications: April 8, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 10, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding

restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the EU-U.S. Atlantis Program—CFDA Number 84.116J must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with the word limit requirement described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Frank Frankfort, U.S. Department of Education, 1990 K Street, NW., room 6152, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You

must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.116J), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.116J), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is demonstration of a transatlantic, innovative approach to training and education.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the following two performance measures will be used by the Department in assessing the success of the FIPSE—Special Focus Competition: EU-U.S. Atlantis Program:

(1) The extent to which funded projects are being replicated (*i.e.,* adopted or adapted by others).

(2) The manner in which projects are being institutionalized and continued after funding.

If funded, you will be asked to collect and report data from your project on steps taken toward achieving the outcomes evaluated by these performance measures (*i.e.,* institutionalization and replication). Consequently, applicants are advised to include these two outcomes in conceptualizing the design, implementation, and evaluation of their proposed projects. Institutionalization and replication are important outcomes that ensure the ultimate success of international consortia funded through this program.

VII. Agency Contact

For Further Information Contact: Frank Frankfort, Fund for the Improvement of Postsecondary Education, EU–U.S. Atlantis Program, U.S. Department of Education, 1990 K Street, NW., room 6154, Washington, DC 20006–8544. Telephone: (202) 502–7513 or by e-mail: *frank.frankfort@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can 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: *www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

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

Dated: January 5, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–137 Filed 1–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Public Hearings on the Draft Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, WA

AGENCY: Department of Energy.

ACTION: Notice of Public Hearings.

SUMMARY: The Department of Energy (DOE) announces the public hearings on the *Draft Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington* (DOE/EIS–0391) (Draft TC&WM EIS or Draft EIS). This Draft EIS was prepared in accordance with the implementing regulations under the National Environmental Policy Act (NEPA). A Notice of Availability of the Draft EIS was published on October 30, 2009 (74 FR 56194), initiating a 140-day public comment period ending March 19, 2010. The State of Washington, Department of Ecology (Ecology) is a cooperating agency on this EIS.

DATES: During the public comment period for the Draft TC & WM EIS which ends March 19, 2010, DOE invites the public to submit written comments by any of the means listed under **ADDRESSES** below. In addition, oral as well as written comments may be provided at the public hearings to be held as listed under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Written comments may be submitted by regular mail, fax, or e-mail as follows. Written comments may be sent to: Mary Beth Burandt, Office of River Protection, Document Manager, P.O. Box 1178, Richland, Washington 99352, Attention: TC & WM EIS.

Written comments or requests for information can be submitted at *TC&WMEIS@saic.com,* or by faxing to 888–785–2865. The Draft EIS is available on DOE's NEPA Web site at *http://www.gc.energy.gov/nepa* and the Hanford Web site at *http://www.hanford.gov.*

Copies of this Draft EIS are available for review at: Hanford Site Public Reading Room, 2770 University Drive, CIC. Room 101L, Richland, WA 99354, 509–372–7443 and the U.S. Department of Energy, FOIA Reading Room, 1G–033, Forrestal Bldg., 1000 Independence Ave, SW., Washington, DC 20585, 202–586–5955.

FOR FURTHER INFORMATION CONTACT: For information regarding the Hanford Site or this Draft EIS, contact Ms. Burandt at the above address. The following Web sites may also be accessed for additional information on the Hanford Site: *http://www.hanford.gov/orp/ (Click on Public Involvement)* or *http://www.hanford.gov.*

General information on DOE's NEPA process is on the Department's NEPA Web site at *http://www.gc.energy.gov/nepa* or contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, e-mail *AskNEPA@hq.doe.gov,* telephone 202–586–4600; or leave a message at 800–472–2756.

For general questions and information about the Washington State Department of Ecology, contact: Annette Carlson, Nuclear Waste Program, 3100 Port of Benton Blvd., Richland, WA 99352, telephone 509–372–7897, e-mail *anca461@ecy.wa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Hanford Site is located in southeastern Washington State along the Columbia River, and is approximately 586 square miles in size. Hanford's mission included defense-related nuclear research, development, and weapons production activities from the early 1940s to approximately 1989. During that period, Hanford operated a plutonium production complex with nine nuclear reactors and associated processing facilities. These activities created a wide variety of chemical and radioactive wastes. Hanford's mission now is focused on the cleanup of those wastes and ultimate closure of Hanford.

In support of Hanford's cleanup mission DOE, with Ecology as a cooperating agency, prepared the Draft TC & WM EIS in accordance with the Council on Environmental Quality's National Environmental Policy Act (NEPA) Implementing Regulations at 40 CFR Parts 1500–1508 and the DOE NEPA Implementing Procedures at 10 CFR Part 1021. The Environmental Protection Agency issued a Notice of Availability of this Draft TC & WM EIS on October 30, 2009 (74 FR 56194), thereby initiating the public comment period for the Draft EIS.

II. Public Hearings

During an open house, the first hour of each hearing, participants may register to speak and meet informally with representatives from DOE and Ecology. During the formal portion of each hearing, DOE and Ecology will make short opening presentations on the Draft EIS and describe the format for the hearing. The remaining time will be available for the public to comment. The schedule of locations, dates, and times for all of the public hearings is provided as follows:

Richland, WA 99352, January 26, 2010, Red Lion Hotel Hanford House, 802 George Washington Way, 509–946–7611, 6 to 10 p.m.

Boise, ID 83702, February 2, 2010, Owyhee Plaza Hotel, 1109 Main St., 208–343–4611, 6 to 10 p.m.

Hood River, OR 97031, February 9, 2010, Columbia Gorge Hotel, 4000 Westcliff Drive, 541–386–5566, 6 to 10 p.m.

Portland, OR 97232, February 10, 2010, Doubletree Hotel, Portland—Lloyd Center, 1000 NE Multnomah Street, 503–281–6111, 6 to 10 p.m.

Seattle, WA, February 11, 2010, Seattle Center, 305 Harrison Street, 206–684–7200, 6 to 10 p.m.

DOE will consider and respond to all oral and written comments received at the public hearings or written comments postmarked by March 19, 2010, in preparing the Final EIS. Late comments will be considered to the extent practicable. DOE is considering some additional public hearings. Times and locations for those additional hearings will be announced in the **Federal Register** and local media.

III. Next Steps

DOE intends to issue the Final Tank Closure and Waste Management EIS by March 2011. DOE will issue a Record of Decision no sooner than 30 days after the Environmental Protection Agency publishes a Notice of Availability of the Final EIS in the **Federal Register**.

Signed in Washington, DC, January 5, 2010.

William M. Levitan,

Director, Office of Environmental Compliance, Office of Environmental Management.

[FR Doc. 2010–224 Filed 1–7–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2533–046]

Wausau Paper Printing & Writing, LLC,

Wausau Paper Mills, LLC; Notice of Application for Transfer of License and Soliciting Comments and Motions To Intervene

December 30, 2009.

On December 10, 2009, Wausau Paper Printing & Writing, LLC (transferor) and Wausau Paper Mills, LLC (transferee) filed an application for transfer of license of the Brainerd Hydroelectric Project located on the Mississippi River, in Crow Wing County, Minnesota.

The transferor and transferee seek Commission approval to transfer the license for the Brainerd Hydroelectric Project from the transferor to the transferee.

Applicant Contacts: For Transferor and Transferee: Ms. Cara Kurtenback, Director of Environmental Affairs, Wausau Paper Corp., 100 Paper Place, Mosinee, WI 54455, (715) 692–2023, e-mail: *ckurtenbach@wausaupaper.com* and Ms. Elizabeth W. Whittle, Nixon Peabody, LLP, 401 Ninth Street, NW., Suite 900, Washington, DC 20004, (202) 585–8338, e-mail: *ewhittle@nixonpeabody.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments and motions to intervene: 15 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii)(2008) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–2533–046) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–57 Filed 1–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12690–003]

Public Utility District No. 1 of Snohomish County, WA; Notice of Intent To File License Application, Filing of Draft Application, Request for Waivers of Integrated Licensing Process Regulations Necessary for Expedited Processing of a Hydrokinetic Pilot Project License Application, and Soliciting Comments

December 30, 2009.

a. *Type of Filing:* Notice of Intent to File a License Application for an Original License for a Hydrokinetic Pilot Project.

b. *Project No.:* 12690–003.

c. *Date Filed:* December 28, 2009.

d. *Submitted By:* Public Utility District No. 1 of Snohomish County, Washington (Snohomish PUD)

e. *Name of Project:* Admiralty Inlet Pilot Tidal Project.

f. *Location:* On the east side of Admiralty Inlet in Puget Sound, Washington, about 1 kilometer west of Whidbey Island, entirely within Island County, Washington. The project would not occupy any Federal lands.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Applicant Contact:* Steven J. Klein, Public Utility District of Snohomish County, Washington, P.O. Box 1107, 2320, California Street, Everett, WA 98206–1107; (425) 783–8473.

i. *FERC Contact:* David Turner (202) 502–6091.

j. *Snohomish PUD has filed with the Commission:* (1) A notice of intent (NOI) to file an application for an original license for a hydrokinetic pilot project and a draft license application with monitoring plans; (2) a request for waivers of the integrated licensing process regulations necessary for expedited processing of a hydrokinetic pilot project license application; and (3) a proposed process plan and schedule.

k. With this notice, we are soliciting comments on the pre-filing materials listed in paragraph j above, including the draft license application and monitoring plans. All comments should be sent to the address above in paragraph h. In addition, all comments (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Admiralty Inlet Pilot Tidal Project) and number (P–12690–003), and bear the heading "Comments on the proposed Admiralty Inlet Pilot Tidal Project." Any individual or entity interested in submitting comments on the pre-filing materials must do so by February 26, 2010.

Comments 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.

l. Snohomish PUD was designated as the non-federal representative for section 7 of the Endangered Species Act consultation and for section 106 consultation under the National Historic Preservation Act on November 7, 2008.

m. This notice does not constitute the Commission's approval of Snohomish PUD's request to use the Pilot Project Licensing Procedures. Upon its review of the project's overall characteristics relative to the pilot project criteria, the draft license application contents, and any comments filed, the Commission will determine whether there is adequate information to conclude the pre-filing process.

n. The proposed Admiralty Inlet Pilot Tidal Project would consist of (1) two 10-meter, 500-kilowatt (kW) Open-Centre Turbines supplied by OpenHydro Group Ltd., mounted on completely submerged gravity foundations; (2) two 250-meter service cables connected at a subsea junction box or spliced to a 0.5-kilometer subsea transmission cable, connecting to a cable termination vault about 50 meters from shore; (3) two 81-meter-long buried conduits containing the two DC transmission lines from the turbines and connecting to a power conditioning and control building; (4) a 140-meter-long buried cable from the control building to the grid; and (5) appurtenant facilities for operation and maintenance. The estimated annual generation of the project is 383,000 kilowatt-hours.

o. A copy of the draft license application and all pre-filing materials are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the

last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659.

p. Pre-filing process schedule. The pre-filing process will be conducted pursuant to the following tentative schedule. Snohomish PUD plans to complete studies in 2010 to provide further support for the environmental analysis. Revisions to the schedule below may be made based on staff's review of the draft application and any comments received.

Milestone	Date
Comments on pre-filing materials due.	February 26, 2010.
Issuance of meeting notice (if needed).	March 15, 2010.
Public meeting/technical conference (if needed).	April 14, 2010.
Issuance of notice concluding pre-filing process and ILP waiver request determination.	March 28, 2010 (if no meeting is needed). April 29, 2010 (if meeting is needed).

q. Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–64 Filed 1–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–111]

Alabama Power Company; Notice of Availability of Final Environmental Assessment

December 31, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new major license for the Coosa River Hydroelectric Project (Coosa River Project), which includes the Weiss, H. Neely Henry, Logan Martin, Lay, and Bouldin developments; the Mitchell Hydroelectric Project (P–82); and the Jordan Hydroelectric Project (P–618). Alabama Power Company has requested that Project Nos. 2146, 82, and 618 be consolidated into one project. We are processing these three projects under Project No. 2146–111. This final environmental assessment (EA) is a cooperative undertaking between the U.S. Army Corps of Engineers and the Commission.

The Coosa River Project is located on the Coosa River, in the States of Alabama and Georgia. The Logan Martin development affects less than 1 acre of Federal lands, the Lay development affects 133.5 acres of Federal lands, the Mitchell Project affects 127.3 acres of Federal lands, and the Jordan Project affects 10.1 acres of Federal lands. Staff has prepared a final EA for the project.

The final EA contains staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the final EA 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.

For further information, please contact Janet Hutzel at (202) 502–8675 or at *janet.hutzel@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–65 Filed 1–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF10–1–000]

Western Area Power Administration; Notice of Filing

December 30, 2009.

Take notice that on December 16, 2009, the Deputy Secretary of the Department of Energy submitted Rate Order No. WAPA–146, confirmed and approved on an interim basis, effective on January 1, 2010, Rate Schedule L–F9 for firm electric service from the Loveland Area Projects, and under the authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 00–037.00, submitted Rate Schedule L–F9 for confirmation and approval on a final basis effective January 1, 2010, and ending December 31, 2014.

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 pm Eastern Time on January 15, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–58 Filed 1–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF10–2–000]

Western Area Power Administration; Notice of Filing

December 30, 2009.

Take notice that on December 16, 2009, the Deputy Secretary of the

Department of Energy submitted Rate Order No. WAPA–147, confirmed and approved on an interim basis, effective on January 1, 2010, Rate Schedule P–SED–F11 for firm power service from the Pick-Sloan Missouri Basin Program—Eastern Division (PSMBP—ED) and Rate Schedule P–SED–FP–11 for firm peaking power from the P–SMBP—ED, and under the authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 00–037.00, submitted Rate Schedules P–SED–F11 and P–SED–FP11 for confirmation and approval on a final basis effective January 1, 2010, and ending December 31, 2014.

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 January 15, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–59 Filed 1–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–27–000]

Christian County Generation, LLC; Notice of Filing

December 30, 2009.

Take notice that on December 23, 2009, Christian County Generation, LLC pursuant to section 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2009), filed a petition for declaratory order requesting the Commission to confirm the reasonableness of their proposed 11.5 percent return on equity and hypothetical capital structure of 55 percent debt and 45 percent equity in connection with a levelized or deferred capital recovery method under formula rates to be filed at a later date for power sales from their proposed new Taylorville Energy Center.

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 January 22, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–61 Filed 1–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–17–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Filing

December 31, 2009.

Take notice that on November 12, 2009, Transcontinental Gas Pipe Line Company, LLC (Transco), tendered for filing an application for an order permitting and approving the partial abandonment of firm transportation service provided to the City of Danville, Virginia under Transco's Rate Schedule FT.

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 January 8, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–66 Filed 1–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–29–000]

Terra-Gen Dixie Valley, LLC; TGP Dixie Development Company, LLC; New York Canyon, LLC; Notice of Filing

December 30, 2009.

Take notice that on December 24, 2009, Terra-Gen Dixie Valley, LLC, TGP Dixie Development Company, LLC and New York Canyon, LLC ("Petitioners"), pursuant to section 207 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2009), filed a petition for declaratory order requesting that the Commission confirm Petitioners firm transmission rights to 360 MW of capacity in the Dixie Valley 212-mile long 230 kV radial generator tie-line to interconnect Petitioners' existing and planned geothermal projects to the integrated transmission system.

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 January 25, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–62 Filed 1–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF10–3–000]

Western Area Power Administration; Notice of Filing

December 30, 2009.

Take notice that on December 23, 2009, the Deputy Secretary of the Department of Energy submitted Rate Order Nos. WAPA–144 and WAPA–148, confirmed and approved on an interim basis, effective on January 1, 2010, Rate Schedules UGP–NT1, UGP–FPT1, UGP–NFPT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, and UGP–AS7 for transmission and ancillary services from the Pick-Sloan Missouri Basin Program—Eastern Division and Rate Schedule UGP–TSP1 for Transmission Service Penalty Rate for Unreserved Use for the Pick-Sloan Missouri Basin Program—Eastern Division, and under the authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 00–037.00, submitted Rate Schedules UGP–NT1, UGP–FPT1, UGP–NFPT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–AS7, and UGP–TSP1 for confirmation and approval on a final basis effective January 1, 2010, and ending December 31, 2014.

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 January 22, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–60 Filed 1–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–385–000]

Castle Energy Services, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 30, 2009.

This is a supplemental notice in the above-referenced proceeding of Castle Energy Services LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to

intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 19, 2010.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–63 Filed 1–7–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9101–5]

Access to Confidential Business Information by Industrial Economics, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Access to Data and Request for Comments.

SUMMARY: EPA will authorize its contractor, Industrial Economics, Incorporated (IEc) to access Confidential Business Information (CBI) which has been submitted to EPA under the authority of all sections of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA has issued regulations that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions.

DATES: Access to confidential data submitted to EPA will occur no sooner than January 19, 2010.

FOR FURTHER INFORMATION CONTACT: LaShan Haynes, Document Control Officer, Office of Resource Conservation and Recovery, (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, 703–605–0516.

SUPPLEMENTARY INFORMATION:

1. Access to Confidential Business Information

Under EPA Contracts No. EP–W–6–065 and EP07H000213, Industrial Economics, Incorporated (IEc) will assist the Office of Enforcement and Compliance Assurance, Office of Civil Enforcement, Special Litigation and Projects Division with economic analysis training and expert testimony in support of EPA's enforcement actions. OECA is involved directly and indirectly in bringing enforcement actions against violators of environmental regulations. These cases typically, involve one or more of the following statutes: CAA, CWA, RCRA, TSCA, FIFRA, EPCRA and the SDWA. Some of the data collected from industry are claimed by industry to contain trade secrets or CBI. In accordance with the provisions of 40 CFR part 2, subpart B, ORCR has established policies and procedures for handling information collected from industry, under the authority of RCRA, including RCRA Confidential Business Information Security Manuals. Industrial Economics, Incorporated (IEc), shall protect from unauthorized disclosure all information designated as confidential and shall abide by all RCRA CBI requirements, including procedures outlined in the RCRA CBI Security Manual. The U.S. Environmental Protection Agency has issued regulations (40 CFR part 2, subpart B) that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions. Industrial Economics, Incorporated (IEc) will be authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual."

EPA is issuing this notice to inform all submitters of information under all sections of RCRA that EPA will provide Industrial Economics, Incorporated access to the CBI records located in the RCRA Confidential Business Information Center. Access to RCRA CBI under this contract will take place at EPA Headquarters only. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information.

Dated: December 14, 2009.

Matthew Hale,

Director, Office of Resource Conservation & Recovery.

[FR Doc. 2010–152 Filed 1–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0417; FRL–9101–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Surface Coating of Plastic Parts for Business Machines, EPA ICR Number 1093.09, OMB Control Number 2060–0162

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 February 8, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0417, 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 2801T, 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: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; *telephone number:* (919) 541–0296; *fax number:* (919) 541–3207; *e-mail address: schaefer.john@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 July 8, 2009 (74 *FR* 32580), 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–2009–0417, which is available for public viewing online at *http://www.regulations.gov*, 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 Surface Coating of Plastic Parts for Business Machines

ICR Numbers: EPA ICR Number 1093.09, OMB Control Number 2060–0162.

ICR Status: This ICR is scheduled to expire on January 31, 2010. 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 Surface Coating of Plastic Parts for Business Machines were promulgated on January 29, 1988. These standards apply to each spray booth that applies prime coats, color coats, texture coats or touch-up coats in industrial surface coating operations that apply coatings to plastic parts for use in the manufacture of business machines.

Affected sources are required to complete initial notifications, performance tests, and periodic reports. Owners or operators are also required to 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. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 35 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: Business machine manufacturers.

Estimated Number of Respondents: 10.

Frequency of Response: Initially, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 978.

Estimated Total Annual Cost: $92,296 in labor costs and $0 in capital/startup costs or operation and maintenance (O&M) costs.

Changes in the Estimates: There is a decrease estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease was due to a change in the adjustments to the estimates to correct a mathematical error.

Dated: December 24, 2009.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2010–148 Filed 1–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0418; FRL–9101–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Secondary Lead Smelters (Renewal); EPA ICR Number 1128.09, OMB Control Number 2060–0080

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 February 8, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0418, to (1) EPA online using *http://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: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@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 July 8, 2009 (74 *FR* 32580), 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–2009–0418, which is available for public viewing online at *http://www.regulations.gov*, 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 Secondary Lead Smelters (Renewal)

ICR Numbers: EPA ICR Number 1128.09, OMB Control Number 2060–0080.

ICR Status: This ICR is scheduled to expire on January 31, 2010. 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: This Information Collection Request (ICR) renewal is being submitted for the NSPS for Secondary Lead Smelters (40 CFR part 60, subpart L), which was promulgated on March 8, 1974. This standard applies to owners and operators of secondary lead smelters facilities. Owners and operators of secondary lead smelters subject to NSPS must notify EPA of construction, reconstruction, anticipated and actual startup dates, and results of performance tests. Records of performance test results, shutdowns, and malfunctions must be maintained. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 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: Secondary lead smelters.

Estimated Number of Respondents: 25.

Frequency of Response: Initially and on occasion.

Estimated Total Annual Hour Burden: 38.

Estimated Total Annual Cost: $3,538 in labor costs and no capital/startup costs or operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: December 24, 2009.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2010–151 Filed 1–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0525; FRL–9101–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Fuels and Fuel Additives: Health-Effects Research Requirements for Manufacturers (Renewal); EPA ICR No. 1696.06, OMB Control No. 2060–0297

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that 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 information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 8, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0525, to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, *Mailcode:* 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to:

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: James W. Caldwell, Office of Transportation and Air Quality, Mail code: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9303; *fax number:* (202) 343–2802; e-mail address: *caldwell.jim@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 September 9, 2009 (74 FR 46422), 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 No. EPA–HQ–OAR–2006–0525, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 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 Air and Radiation Docket is 202–566–1742.

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: Fuels and Fuel Additives: Health-Effects Research Requirements for Manufacturers (Renewal).

ICR numbers: EPA ICR No. 1696.06, OMB Control No. 2060–0297.

ICR Status: This ICR is scheduled to expire on February 28, 2010. 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 are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: In accordance with the regulations at 40 CFR part 79, subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of motor-vehicle gasoline, motor-vehicle diesel fuel, and additives for those fuels, are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR part 79, subpart F, is the subject of this ICR. The information collection requirements for subparts A through D, and the supplemental notification requirements of Subpart F (indicating how the manufacturer will satisfy the health-effects data requirements) are covered by a separate ICR (OMB Control No. 2060–0150). The health-effects data will be used to determine if there are any products that have evaporative or combustion emissions that may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. This information is required for specific groups of fuels and additives as defined in the regulations. For example, gasoline and gasoline additives which consist of only carbon, hydrogen, oxygen, nitrogen and/or sulfur, and which involve a gasoline oxygen content of less than 1.5 weight percent, fall into a "baseline" group. Oxygenates, such as ethanol, when used in gasoline as an oxygen level of at least 1.5 weight percent, define separate "nonbaseline" groups for each oxygenate. Additives which contain elements other than carbon, hydrogen, oxygen, nitrogen, and/or sulfur fall into separate atypical groups. There are similar grouping requirements for diesel fuel and diesel fuel additives.

Manufacturers may perform the research independently or may join with other manufacturers to share in the costs for each applicable group. Several research consortiums (groups of manufacturers) have been formed. The largest consortium, organized by the American Petroleum Institute (API), represents most of the manufacturers of baseline gasoline, baseline diesel fuel, baseline fuel additives, and the prominent nonbaseline oxygenated additives for gasoline. The research is structured into three tiers of requirements for each group. Tier 1 requires an emissions characterization and a literature search for information on the health effects of those emissions. Voluminous Tier 1 data for gasoline and diesel fuel were submitted by API and others in 1997. Tier 1 data have been submitted for biodiesel, water/diesel emulsions, several atypical additives, and renewable diesel fuels. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects. Tier 2 data have been submitted for baseline diesel, biodiesel, and water/diesel emulsions. Alternative Tier 2 testing can be required in lieu of standard Tier 2 testing if EPA concludes that such testing would be more appropriate. The EPA reached that conclusion with respect to gasoline and gasoline-oxygenate blends, and alternative requirements were established for the API consortium for baseline gasoline and six gasoline-oxygenate blends. Alternative Tier 2 requirements have also been established for the manganese additive MMT manufactured by the Afton Chemical Corporation (formerly the Ethyl Corporation). Tier 3 provides for follow-up research, at EPA's discretion, when remaining uncertainties as to the significance of observed health effects, welfare effects, and/or emissions exposures from a fuel or fuel/additive mixture interfere with EPA's ability to make reasonable estimates of the potential risks posed by emissions from a fuel or additive. To date, EPA has not imposed any Tier 3 requirements. Under Section 211 of the Clean Air Act, (1) submission of the health-effects information is necessary for a manufacturer to obtain registration of a motor-vehicle gasoline, diesel fuel, or fuel additive, and thus be allowed to introduce that product into commerce, and (2) the information shall not be considered confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7,067 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: Manufacturers of Fuels and Fuel Additives.

Estimated Number of Respondents: 3.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 21,200.

Estimated Total Annual Cost: $2,831,480, which includes $2,244,480 in labor costs, $205,000 in capital costs and $382,000 in O&M costs.

Changes in the Estimates: There is a decrease of 8,950 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is the result of reduced activity with the completion of the MMT alternative Tier 2 testing program the near completion of the oxygenate alternative Tier 2 testing program.

Dated: December 24, 2009.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2010–150 Filed 1–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8987–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements filed 12/28/2009 through 01/01/2010 pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register.** Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register**.

EIS No. 20090451, Draft EIS, FHWA, FL, St. Johns River Crossing Project, Improved Highway Corridor and Bridge Crossing the St. Johns River between Clay and St. Johns Counties, FL, Comment Period Ends: 02/22/2010, Contact: Cathy Kendall 850–942–9650.

EIS No. 20090452, Draft EIS, FHWA, MO, Rex Whitton Expressway Project, To Safely and Reliably Improve Personal and Freight Mobility, Reduce Traffic Congestion, U.S. 50/63 (Rex Whitton Expressway, also Known as Whitton) Facility in Cole County, MO, Comment Period Ends: 02/22/2010, Contact: Peggy Casey 573–636–7104.

Dated: January 5, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–120 Filed 1–7–10; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 14, 2010, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
- December 10, 2009

B. *New Business*
- Auditors' Report on FCA FY 2009/2008 Financial Statements

C. *Reports*
- Office of Examination (OE) Quarterly Report

Closed Session*

- Update on OE Oversight Activities

Dated: January 6, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–246 Filed 1–6–10; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; 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 the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, January 12, 2010, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

DISCUSSION AGENDA: Memorandum and resolution re: Advance Notice of Proposed Rulemaking on Employee Compensation.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: January 5, 2010.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2010–180 Filed 1–6–10; 11:15 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 24, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. James J. Banks, Chicago Illinois, to retain 10 percent or more, and to acquire additional voting shares of Belmont Financial Group, Inc., Chicago, Illinois, and thereby indirectly retain control of Belmont Bank and Trust Company, Chicago, Illinois.

Board of Governors of the Federal Reserve System, January 5, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–90 Filed 00–00–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. Colorow Investment Corp, Greenwood Village, Colorado, to become a bank holding company byacquiring 100 percent of the voting shares of TBHC, Inc., and thereby indirectly acquire Centennial Bank, both in Centennial, Colorado.

Board of Governors of the Federal Reserve System, January 5, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–91 Filed 1–7–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Advisory Council for Faith-based and Neighborhood Partnerships

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the President's Advisory Council for Faith-based and Neighborhood Partnerships announces the following meeting:

Name: President's Advisory Council for Faith-based and Neighborhood Partnerships Council Meeting.

Time and Date: January 11th and January 12th from 4–6 p.m. EST.

Place: Meetings will be held via conference call. Please contact Mara Vanderslice for call-in information at *mara.vanderslice@hhs.gov.*

Status: Open to the public, limited only by the space available. Conference call line will be available.

Purpose: The Council brings together leaders and experts in fields related to the work of faith-based and neighborhood organizations in order to: Identify best practices and successful modes of delivering social services; evaluate the need for improvements in the implementation and coordination of public policies relating to faith- based and other neighborhood organizations; and make recommendations for changes in policies, programs, and practices.

Contact Person For Additional Information: Mara Vanderslice at *mara.vanderslice@hhs.gov.*

SUPPLEMENTARY INFORMATION: Please contact Mara Vanderslice for more information about how to attend the meeting or join via conference call line.

Agenda: Topics to be discussed include deliberation on draft recommendations for Council report. The call on January 11th will be devoted to the Reform of the Office draft taskforce report. The January 12th call will look at the Economic Recovery and Inter-Religious Cooperation draft taskforce reports.

Dated: December 28, 2009.

Mara L. Vanderslice,

Special Assistant.

[FR Doc. 2010–145 Filed 1–7–10; 8:45 am]

BILLING CODE 4154–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10142, CMS–R–262, CMS–R–0282 and CMS–R–64]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CY 2011 Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and implementing regulations at 42 CFR, Medicare Advantage organizations (MAO) and Prescription Drug Plans are required to submit an actuarial pricing "bid" for each plan offered to Medicare beneficiaries for approval by CMS. MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The information provided in the BPT is the basis for the plan's enrollee premiums and CMS payments for each contract year. The tool collects data such as medical expense development (from claims data and/or manual rating), administrative expenses, profit levels, and projected plan enrollment information. By statute, completed BPTs are due to CMS by the first Monday of June each year. CMS reviews and analyzes the information provided on the Bid Pricing Tool. Ultimately, CMS decides whether to approve the plan pricing (*i.e.,* payment and premium) proposed by each organization. Refer to the supporting document attachment "C" for a list of changes. *Form Number:* CMS–10142 (OMB#: 0938–0944); *Frequency:* Reporting—Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 550; *Total Annual Responses:* 6,050; *Total Annual Hours:* 42,350. (For policy questions regarding this collection contact Diane Spitalnic at 410–786–5745. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CY 2011 Plan Benefit Package (PBP) Software and Formulary Submission; *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. The plan benefit package submission consists of the PBP software, formulary file, and supporting documentation, as necessary. MA and PDP organizations use the PBP software to describe their organization's plan benefit packages, including information on premiums, cost sharing, authorization rules, and supplemental benefits. They also generate a formulary to describe their list of drugs, including information on prior authorization, step therapy, tiering, and quantity limits. Additionally, CMS uses the PBP and formulary data to review and approve the plan benefit packages proposed by each MA and PDP organization.

CMS requires that MA and PDP organizations submit a completed PBP and formulary as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval. Based on operational changes and policy clarifications to the Medicare program and continued input and feedback by the industry, CMS has made the necessary changes to the plan benefit package submission. Refer to the supporting document "Appendix B" for a list of changes. *Form Number:* CMS–R–262 (OMB#: 0938–0763); *Frequency:* Reporting—Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 475; *Total Annual Responses:* 4988; *Total Annual Hours:* 12,113. (For policy questions regarding this collection contact Sara Walters at 410–786–3330. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Advantage Appeals and Grievance Data Disclosure Requirements (42 CFR § 422.111); *Use:* Medicare Advantage (MA) organizations must disclose information pertaining to the number of disputes, and their disposition in the aggregate, with the categories of grievances and appeals to any individual eligible to elect an MA organization who requests this information. Medicare demonstrations also are required to conform to MA appeals regulations and thus are included in the count of organizations affected by this requirement. MA organizations also are required by the statute and the MA regulation to provide aggregate grievance data to MA eligible beneficiaries upon request. MA eligible individuals will use this information to help them make informed decisions about their organization's performance in the area of appeals and grievances. *Form Number:* CMS–R–0282 (OMB#: 0938–0778); *Frequency:* Reporting—Semi-annually and Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 629; *Total Annual Responses:* 47,175; *Total Annual Hours:* 4,931.36. (For policy questions regarding this collection contact Stephanie Simons at 206–615–2420. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Extension of the currently approved collection; *Title of Information Collection:* Indirect Medical Education (IME) and Supporting Regulations at 42 CFR 412.105; Direct Graduate Medical Education (GME) and Supporting Regulations at 42 CFR 413.75 through 413.83; *Use:* The information collected on interns and residents (IRs) is used by the Medicare Part A fiscal intermediaries (FI) and Part A Medicare Administrative Contractors (MAC) to verify the number of IRs used in the calculation of Medicare program payments for indirect medical education (IME) as well as direct graduate medical education (GME). The IR data collected from the hospitals is processed through computers at FIs/MACs to identify any duplicated time based upon the accumulated time of each individual that worked at one or more hospitals. The identification of duplicate IRs is necessary to ensure that no IR is counted more than once.

The FIs/MACs use the information collected on IRs to help ensure that all

program payments for IME and GME are based upon an accurate number of FTE–IRs, determined in accordance with Medicare regulations. The IR data submitted by the hospitals are used by the FIs/MACs during their audits of the providers' cost reports. The audit procedures help assure that the information reported was correct, and that IRs who should not have been reported by the hospitals (or portions of the IRs' time) are not included in the FTE count. The FIs/MACs also use reports of duplicate IRs to prevent improper payment for IME and GME. *Form Number:* CMS–R–64 (OMB#: 0938–0456); *Frequency:* Reporting—Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 1,190; *Total Annual Responses:* 1,190; *Total Annual Hours:* 2,380. (For policy questions regarding this collection contact Milton Jacobson at 410–786–7553. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on 410–786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *February 8, 2010.*

OMB, Office of Information and Regulatory Affairs. Attention: CMS Desk Officer. *Fax Number:* 202–395–6974. *E-mail: OIRA_submission@omb.eop.gov.*

Dated: December 24, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–31299 Filed 1–7–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–906]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* The Fiscal Soundness Reporting Requirements; *Use:* CMS is assigned responsibility for overseeing all Medicare Advantage Organizations (MAO), Prescription Drug Plan (PDP) sponsors, 1876 Cost Plans, Demonstration Plans and PACE organizations on-going financial performance. Specifically, CMS needs the requested collection of information to establish that contracting entities within those programs maintain fiscally sound organizations. Refer to the supporting documents for a list of changes to this collection. *Form Number:* CMS–906 (OMB#: 0938–0469); *Frequency:* Reporting—Yearly and Quarterly; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 514; *Total Annual Responses:* 1039; *Total Annual Hours:* 346. (For policy questions regarding this collection contact Robert Ahern at 410–786–0073. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *March 9, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 24, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–31301 Filed 1–7–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0568]

Draft Guidance for Industry on Planning for the Effects of High Absenteeism to Ensure Availability of Medically Necessary Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Planning for the Effects of High Absenteeism to Ensure Availability of Medically Necessary Drug Products." The draft guidance encourages manufacturers of medically necessary drug products (MNPs) and components to develop contingency production plans in the event of an emergency that results in high absenteeism at one or more production

facilities. The purpose of the draft guidance is to provide to industry considerations for developing such emergency plans, as well as to discuss the Center for Drug Evaluation and Research's (CDER's) intended approach to assist in avoiding drug product shortages that may have a negative impact on the national public health during such emergencies.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by March 9, 2010. Submit written comments on the proposed collection of information by March 9, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Thomas Christl, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., WO Bldg. 51, rm. 3359, Silver Spring, MD 20993, 301–796–2057.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Planning for the Effects of High Absenteeism to Ensure Availability of Medically Necessary Drug Products." The draft guidance encourages manufacturers of medically necessary drug products (MNPs) and components to develop contingency production plans in the event of an emergency that results in high absenteeism at one or more production facilities. In particular, the draft guidance provides recommendations regarding considerations for the development and implementation of a contingency production plan, including specific elements to include in such a plan. The draft guidance is intended for manufacturers of finished drug products as well as manufacturers of the raw materials necessary for manufacturing an MNP.

The purpose of this draft guidance is to provide to industry considerations for developing emergency plans, as well as to discuss CDER's intended approach to assist in avoiding shortages that may have a negative impact on the national public health during such emergencies. This draft guidance applies to manufacturers of drug and therapeutic biologic products regulated by CDER, and any components of those products. These considerations include, but are not limited to:

- General preparedness through employee education and immunization,
- Prioritization of manufactured products based on medical necessity,
- Developing training, manufacturing and laboratory contingencies for high absenteeism, and
- How to plan for returning to normal operations.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this draft guidance, FDA invites comments on these topics: (1) Whether the proposed information collected is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimated burden of the proposed information collected, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

The draft guidance recommends that manufacturers of drug and therapeutic biological products and manufacturers of raw materials and components used in those products develop a written Emergency Plan (Plan) for maintaining an adequate supply of MNPs during an emergency that results in high employee absenteeism. The draft guidance discusses the issues that should be covered by the Plan, such as: (1) Identifying a person or position title (as well as two designated alternates) with the authority to activate and deactivate the Plan and make decisions during the emergency; (2) prioritizing the manufacturer's drug products based on medical necessity; (3) identifying actions that should be taken prior to an anticipated period of high absenteeism; (4) identifying criteria for activating the Plan; (5) performing quality risk assessments to determine which manufacturing activities may be reduced to enable the company to meet a demand for MNPs; (6) returning to normal operations and conducting a post-execution assessment of the execution outcomes; and (7) testing the Plan. The draft guidance recommends developing a Plan for each individual manufacturing facility as well as a broader Plan that addresses multiple sites within the organization (for purposes of this analysis, we consider the Plan for an individual manufacturing facility as well as the broader Plan to comprise one Plan for each manufacturer). Based on CDER's

data on the number of manufacturers that would be covered by the draft guidance, we estimate that approximately 70 manufacturers will develop an Emergency Plan as recommended by the draft guidance (i.e., 1 Plan per manufacturer to include all manufacturing facilities, sites, and drug products), and that each Plan will take approximately 500 hours to develop, maintain, and update.

The draft guidance also encourages manufacturers to include a procedure in their Plan for notifying CDER when the Plan is activated and when returning to normal operations. The draft guidance recommends that these notifications occur within 1 day of a Plan's activation and within 1 day of a Plan's deactivation. The draft guidance specifies the information that should be included in these notifications, such as which drug products will be manufactured under altered procedures, which products will have manufacturing temporarily delayed, and any anticipated or potential drug shortages. We expect that approximately two notifications (for purposes of this analysis, we consider an activation and a deactivation notification to equal one notification) will be sent to CDER by approximately two manufacturers each year, and that each notification will take approximately 16 hours to prepare and submit.

This draft guidance also refers to previously approved collections of information found in FDA regulations. Under the draft guidance, if a manufacturer obtains information after releasing a MNP under its Plan leading to suspicion that the product might be defective, CDER should be contacted immediately (*drugshortages@fda.hhs.gov*) in adherence to existing recall reporting regulations (21 CFR 7.40) (OMB control number 0910–0249) or defect reporting requirements for drug application products (21 CFR 314.81(b)(1)) and therapeutic biological products regulated by CDER (21 CFR 600.14) (OMB control numbers 0910–0001 and 0910–0458, respectively).

The following collections of information found in FDA current good manufacturing practice (CGMP) regulations in part 211 (21 CFR part 211) are approved under OMB control number 0190–0139. The draft guidance encourages manufacturers to maintain records, in accordance with the CGMP requirements (see, e.g., § 211.180), that support decisions to carry out changes to approved procedures for manufacturing and release of products under the Plan. The draft guidance states: A Plan should be developed, written, reviewed, and approved within the site's change control quality system in accordance with the requirements in §§ 211.100(a) and 211.160(a); execution of the Plan should be documented in accordance with the requirements described in § 211.100(b); and standard operating procedures should be reviewed and revised or supplementary procedures developed and approved to enable execution of the Plan.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	Number of Respondents	Number of Responses per Respondent	Total Responses	Hours per Response	Total Hours
Notify FDA of Plan activation and deactivation	2	1	2	16	32
Total					32

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

TABLE 2.—ESTIMATED RECORDKEEPING BURDEN[1]

	Number of Recordkeepers	Number of Records per Recordkeeping	Total Records	Hours per Record	Total Hours
Develop initial Plan	70	1	70	500	35,000
Total					35,000

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: January 4, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–87 Filed 1–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC)

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces, the following meeting of the aforementioned committee:

Time and Date: 8:30 a.m.–5:30 p.m., January 22, 2010.

Place: CDC, 4770 Buford Hwy., NE., Building 106, First Floor, Rooms 1B, Atlanta, Georgia 30341.

Status: Open: 8:30 a.m.–11:30 a.m., January 22, 2010. Closed: 11:30 a.m.–5:30 p.m., January 22, 2010.

Purpose: The board makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention goals and provides evidence in injury prevention-related research and programs. The board provides advice on the appropriate balance of intramural and extramural research, and provides advice on the structure, progress and performance of intramural programs. The Board of Scientific Counselors is also designed to provide guidance on extramural scientific program matters, including the: (1) Review of extramural research concepts for funding

opportunity announcements; (2) conduct of Secondary Peer Review of extramural research grants, cooperative agreements, and contracts applications received in response to the funding opportunity announcements as it relates to the Center's programmatic balance and mission; (3) submission of secondary review recommendations to the Center Director of applications to be considered for funding support; (4) review of research portfolios; and (5) review of program proposals. The board shall provide guidance on the National Center of Injury Prevention and Control's programs and research activities by conducting scientific peer review of intramural research and programs within the National Center for Injury Prevention and Control; by ensuring adherence to Office of Management and Budget requirements for intramural peer review; and by monitoring the overall direction, focus, and success of the National Center for Injury Prevention and Control.

Matters to be Discussed: As this meeting of the Board of Scientific Counselors, the board will be discussing the upcoming portfolio topics, activities promoting the Injury Research Agenda, and other scientific matters.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dr. Gwendolyn Cattledge, PhD, MSEH, Deputy Associate Director for Science and the Designated Federal Officer for the Board of Scientific Counselors, NCIPC, CDC, 4770 Buford Highway, NE., Mailstop F–63, Atlanta, Georgia 30341, Telephone (770) 488–1430.

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.

Gary J. Johnson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–22 Filed 1–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

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 committee meeting:

Times and Dates:

8:30 a.m.–5 p.m., February 9, 2010.
8:30 a.m.–3 p.m., February 10, 2010.

Place: CDC, 1600 Clifton Road, NE., Tom Harkin Global Communications Center, Building 19, Room 232, Auditorium B, Atlanta, Georgia 30333.

Online Registration Required: In order to expedite the security clearance process at the CDC Roybal Campus located on Clifton Road, all CLIAC attendees are required to register for the meeting online at least 14 days in advance at *http://wwwn.cdc.gov/cliac/default.aspx* by clicking the "Register for a Meeting" link and completing all forms according to the instructions given. Please complete all the required fields before submitting your registration and submit no later than January 26, 2010.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include updates from the CDC, the Centers for Medicare & Medicaid Services, and the Food and Drug Administration; a report from the CLIAC Biochemical Genetic Testing Workgroup and discussion of the Workgroup's proposals related to good laboratory practices for biochemical genetic testing; and presentations and discussions related to electronic health records and electronic transmission of laboratory information.

Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible.

Oral Comments: In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should, when possible, notify the contact person below at least one week prior to the meeting date.

Written Comments: For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting's Summary Report.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, National Center for Preparedness, Detection, and Control of Infectious Diseases, CDC, 1600 Clifton Road, NE., Mailstop F–11, Atlanta, Georgia 30333; telephone (404) 498–2741; fax (404) 498–2219; or via e-mail at *Nancy.Anderson@cdc.hhs.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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 30, 2009.

Gary J. Johnson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–100 Filed 1–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review U13.
Date: February 11, 2010.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting)
Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd, room 672, MSC 4878, Bethesda, md 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 4, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–96 Filed 1–7–10; 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: Oncology 2—Translational Clinical Integrated Review Group; Cancer Biomarkers Study Section.
Date: February 1–2, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *ngkl@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Radiation Therapeutics and Biology Study Section.
Date: February 1–2, 2010.
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: Bo Hong, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Basic Mechanisms of Cancer Therapeutics Study Section.
Date: February 1–2, 2010.
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: Lambratu Rahman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Etiology Study Section.
Date: February 1–2, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Cathleen L. Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–443–4512, *cooperc@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Hepatobiliary Pathophysiology Study Section.
Date: February 1–2, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Ave., Bethesda, MD 20814.
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*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Biological Rhythms and Sleep Study Section.
Date: February 1, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Bahia Resort Hotel, 998 West Mission Bay Dr., San Diego, CA 92109.
Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1208, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.
Date: February 1–2, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.
Contact Person: Joseph D. Mosca, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Somatosensory and Chemosensory Systems Study Section.
Date: February 1–2, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA.
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.
Date: February 1–2, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Ritz-Carlton, 1150 22nd Street, NW., Washington, DC 20037.
Contact Person: Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.
Date: February 1–2, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Hotel, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroendocrinology, Neuroimmunology, and Behavior Study Section.
Date: February 2–3, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.
Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Myocardial Ischemia and Metabolism Study Section.

Date: February 2–3, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Joseph Thomas Peterson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–443–8130, *petersonjt@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.

Date: February 2–3, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Robert Freund, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: February 2–3, 2010.

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: Olga A. Tjurmina, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Central Visual Processing Study Section.

Date: February 2, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bahia Resort Hotel, 998 West Mission Dr., San Diego, CA 92109.

Contact Person: Judith A. Finkelstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–237–9842, *finkelsj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications in Child Psychopathology.

Date: February 2, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.

Date: February 2–3, 2010.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2172, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: February 3–4, 2010.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier V Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.

Date: February 3–4, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Steven J. Zullo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Cognitive Neuroscience Study Section.

Date: February 3, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bahia Resort Hotel, 998 West Mission Dr, San Diego, CA 92109.

Contact Person: Judith A. Finkelstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–237–9842, *finkelsj@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Gene and Drug Delivery Systems Study Section.

Date: February 3–4, 2010.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Amy L. Rubinstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152 MSC 7844, Bethesda, MD 20892, 301–435–1159, *rubinsteinal@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genomics, Computational Biology and Technology Study Section.

Date: February 3–4, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Barbara J. Thomas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Investigations on Primary Immunodeficiency Disease.

Date: February 3, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Jim Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: February 3, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.

Date: February 3–4, 2010.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Richard A. Currie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@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: December 30, 2009.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–98 Filed 1–7–10; 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: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.
Date: February 3–4, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
Contact Person: George M. Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Epidemiology of Cancer Study Section.
Date: February 4–5, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.
Contact Person: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Gastrointestinal Mucosal Pathobiology Study Section.
Date: February 4, 2010.
Time: 8 a.m. to 6:30 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: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function E Study Section.
Date: February 4–5, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza LAX, 5985 Century Blvd., Los Angeles, CA 90045.
Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Transplantation, Tolerance, and Tumor Immunology Study Section.
Date: February 4–5, 2010.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Jin Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Physiology of Obesity and Diabetes Study Section.
Date: February 4–5, 2010.
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: Reed A. Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.
Date: February 4–5, 2010.
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: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.
Date: February 4–5, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.
Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–408–9041, *claytone@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.
Date: February 4–5, 2010.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Bahiru Gametchu, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1225, *gametchb@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Glia Study Section.
Date: February 4–5, 2010.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Mission Bay, 1441 Quivira Road, San Diego, CA 92109.
Contact Person: Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—A Study Section.
Date: February 4–5, 2010.
Time: 8 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Calbert A. Laing, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group; Development—2 Study Section.
Date: February 4–5, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Sherry L. Dupere, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Learning and Memory Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel and Spa, 3999 Mission Blvd., San Diego, CA 92109.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research Study Section.

Date: February 4–5, 2010.

Time: 8:30 a.m. to 12 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: Everett E. Sinnett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov*.

Name of Committee: Immunology Integrated Review Group; Immunity and Host Defense Study Section.

Date: February 4–5, 2010.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 355 Powell St., San Francisco, CA 94102.

Contact Person: Patrick K. Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Vaccines Against Microbial Diseases Study Section.

Date: February 4–5, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Jian Wang, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—B Study Section.

Date: February 4–5, 2010.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

Date: February 4, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: February 4–5, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Park Hotel at the Anaheim Resort, 1855 South Harbor Boulevard, Anaheim, CA 92802.

Contact Person: Lynn E. Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensorimotor Integration Study Section.

Date: February 5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA.

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@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: January 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–99 Filed 1–7–10; 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 and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: January 28, 2010.

Open: 8 a.m. to 11:30 p.m.

Agenda: (1) A report by the Director, NICHD; (2) Report of the Subcommittee on Planning and Policy; (3) Division of Epidemiology, Statistics and Prevention Research Presentation; and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, C-Wing, Conference Room 6, Bethesda, MD 20892.

Closed: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892. (301) 496–1848.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles,

including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/nachhd.htm*, where an agenda and any additional information for the meeting will be posted when available.

In order to facilitate public attendance at the open session of Council, reserve seating will be made available to the first five individuals reserving seats in the main meeting room, Conference Room 6. Please contact Ms. Lisa Kaeser, Program and Public Liaison Office, NICHD, at 301–496–0536 to make your reservation. Additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access *http://www.nichd.nih.gov/about/overview/advisory/nachhd/virtual-meeting-201001.cfm*.

(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, National Institutes of Health, HHS)

Dated: December 31, 2009.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–97 Filed 1–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: February 1, 2010.

Time: 1 p.m. to 5:30 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 4, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–95 Filed 1–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–1064]

Information Collection Request to Office of Management and Budget; OMB Control Numbers: 1625–0087

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0087, International Ice Patrol Customer Survey. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before March 9, 2010.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2009–1064], please use only one of the following means: January 8, 2010.

(1) *Online: http://www.regulations.gov.*

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

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

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), ATTN Paperwork Reduction Act (PRA) Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2009–1064], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact

you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8–1/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2009–1064" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Information Collection Request:

Title: International Ice Patrol Customer Survey.

OMB Control Number: 1625–0087.

This information collection provides feedback on the processes of delivery and products distributed to the mariner by the International Ice Patrol.

Need: In accordance with Executive Order 12862, the U.S. Coast Guard is directed to conduct surveys (both qualitative and quantitative) to determine the kind and quality of services our customers want and expect, as well as their satisfaction with USCG's existing services. This survey will be limited to data collections which solicit strictly voluntary opinions and will not collect information that is required or regulated.

Forms: None.

Respondents: Owners and operators of vessels transiting the North Atlantic.

Frequency: Annually.

Burden Estimate: The estimated burden remains at 120 hours a year.

Dated: December 18, 2009.

M.B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2010–105 Filed 1–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Passenger List/Crew List (Form I–418)

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0103.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Passenger List/Crew List (Form I–418). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 54840) on October 23, 2009, allowing for a 60-day comment period. Four comments were received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before February 8, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Passenger List/Crew List.

OMB Number: 1651–0103.

Form Number: Form I–418.

Abstract: Form I–418 is used by masters or owners of vessels or aircraft in complying with Sections 231 and 251 of the Immigration and Nationality Act. This Form is filled out upon arrival of any person by water or by air at any port within the United States. The master or commanding officer of the vessel or aircraft is responsible for providing CBP officers at the port of arrival with lists or manifests of the persons onboard such conveyances.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 95,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Hours: 95,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: January 4, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–107 Filed 1–7–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–1079]

Cargo Securing Methods for Packages in Transport Vehicles or Freight Containers

AGENCY: Coast Guard, DHS.

ACTION: Notice of request for comments.

SUMMARY: The Coast Guard seeks comments from the public on methods for securing cargo in transport vehicles and freight containers in order to determine if a standardized approval or certification process or improved performance criteria for flexible strapping securing systems is needed. Under current U.S. regulations and international codes, there is no certification or qualification standard for blocking, bracing, or for the use of strapping systems for securing cargo. Cargo must be secured to prevent shifting in any direction during transport. Packages of hazardous materials must be braced and dunnaged within a container so that they are not likely to be pierced or crushed and the materials must be in proper condition for transportation. Currently, the specific method for securing cargo is left to the discretion of the individual or company packing the container. The Coast Guard is considering whether there is a need for a standardized certification or approval process for cargo securing systems.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before March 9, 2010 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–1079 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Morgan Armstrong, telephone 202–372–1419, e-mail: *Morgan.D.Armstrong@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2009–1079) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Notices" and insert "USCG–2009–1079" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments: To view the comments, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2009–1079" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

It has recently been brought to the Coast Guard's attention that significant damage and shifting of packages has purportedly occurred in cargo transport units in which the cargo was secured with flexible strapping. There is a concern that without an approval process, certain flexible strapping systems could be used even though they may not adequately secure cargo when properly installed.

Requirements for the securing of cargo can be found in 49 CFR 176.76 and in Chapter 7.5 of the International Maritime Dangerous Goods (IMDG) Code. Additional recommendations can be found in the IMDG Code Supplement. These are the Guidelines for Packing of Cargo Transport Units (CTUs), which were developed in 1996 by the United Nations Economic Commission for Europe (UN ECE) Working Party on Combined Transport, the International Labor Organization (ILO), and the International Maritime Organization (IMO). These Guidelines are based on the existing ILO/IMO Guidelines for Packing Cargo in Freight Containers or Vehicles and are applicable to transport operations by all surface and water modes of transportation and the whole international transportation chain.

As required in 49 CFR 176.76, cargo, including hazardous materials, transported in vehicles and freight containers must be secured during transport to prevent shifting of the cargo and damage to the container. This requirement is true for all modes of surface transportation due to the fact that containers are transported by vessel, rail, and highway. Accordingly, the cargo must be adequately secured to withstand the unique forces exerted on the packages during each of these modes

of transport. Although there are recommended methods, the ultimate responsibility for properly securing cargo inside a container (by blocking, bracing, and strapping) resides with the packer of the container.

U.S. regulations make reference to dunnage as a method for securing cargo and defines it in 49 CFR 176.2 as "lumber of not less than 25 mm (0.98 inch) commercial thickness or equivalent material laid over or against structures such as tank tops, decks, bulkheads, frames, plating, or ladders, or used for filling voids or fitting around cargo, to prevent damage during transportation." However, there is no reference made to flexible strapping systems. The Department of Transportation (DOT) has issued exemptions to 49 CFR 176.76(a)(4), allowing the use of fabric restraint dunnage systems to secure certain hazardous materials, when installed as specified by the manufacturer's instructions.

There are a variety of options for developing a standard. One option is to request that the UN ECE, ILO, and IMO consider incorporating flexible strapping systems into their Guidelines. Another option is to have the International Standards Organization (ISO) develop testing and performance requirements. The U.S. could also create domestic regulations for incorporation into 49 CFR part 176. The final option is to continue operations as they currently exist, allowing the packer to determine the best method of securing cargo without a standardized approval or certification process.

The Coast Guard invites comments on the following topics:

- The need for a new approval process or certification standard for cargo securing systems.
- Information on currently used standards for the approval and use of cargo securing systems.
- Methods for ensuring or verifying that securing systems adequately secure cargo without damaging the container or cargo.
- Existing test methods for securing systems.
- Materials used for securing cargo within the container (*e.g.* wood, plastic, bags, web, wire, chain, *etc.*).
- Allowances for movement of cargo within the container when securing systems are used.
- Information on cargo securing systems that are currently being used to secure cargo in containers, both domestically and internationally.

Written comments and responses to the above topics will be added to the docket number for this notice (USCG–2009–1079). The Coast Guard intends to review and analyze all comments received in order to develop a way forward for securing cargo in containers.

This notice is issued under authority of 5 U.S.C. 552.

Dated: December 29, 2009.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2010–106 Filed 1–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–01]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: January 8, 2010.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 29, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E9–31169 Filed 1–7–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000 L19900000 EX0000]

Extension of Approved Information Collection, OMB Control Number 1004–0194

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request that the Office of Management and Budget (OMB) extend approval for the collection of information under 43 CFR subpart 3809. The OMB previously approved this collection of information and assigned it the control number 1004–0194.

DATES: You must submit your comments to the BLM at the address below on or before March 9, 2010. The BLM is not obligated to consider any comments postmarked or received after the above date.

ADDRESSES: You may mail comments to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401–LS, 1849 C St., NW., Washington, DC 20240, Attention: 1004–0194. You may also comment electronically at: *Jean_Sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact Adam Merrill, Solid Minerals Group, at (202) 912–7044 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, 24 hours a day, seven days a week, to contact Mr. Merrill. You may also contact Mr. Merrill to obtain a copy, at no cost, of the regulations and forms that require this collection of information.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), require that interested members of the public and affected agencies be provided an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies information collections that are contained in 43 CFR subpart 3809. The BLM will request that the OMB approve this information collection activity for a 3-year term.

Comments are invited on: (1) The need for the collection of information

for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the BLM's submission of the information collection requests to OMB.

The following information is provided for the information collection:

Title: Surface Management Activities under the General Mining Law (43 CFR subpart 3809).

Forms

- Form 3809–1, Surface Management Surety Bond;
- Form 3809–2, Surface Management Personal Bond;
- Form 3809–4, Bond Rider Extending Coverage of Bond to Assume Liabilities for Operations Conducted by Parties Other Than the Principal;
- Form 3809–4a, Surface Management Personal Bond Rider; and
- Form 3809–5, Notification of Change of Operator and Assumption of Past Liability.

OMB Control Number: 1004–0194.

Abstract: This collection of information enables the BLM to determine whether operators and mining claimants are meeting their responsibility to prevent unnecessary or undue degradation while conducting exploration and mining activities on public lands under the General Mining Law (30 U.S.C. 22–54.). It also enables the BLM to obtain financial guarantees for the reclamation of public lands. This collection of information is found at 43 CFR subpart 3809, and in the forms listed above.

Frequency: On occasion.

Description of Respondents: Operators and mining claimants.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 1,369 responses and 166,661 hours. The following tables detail the individual components and estimated annual hour burdens of this collection.

TABLE 1—INITIAL AND EXTENDED PLAN OF OPERATIONS

43 CFR citation	Type of response	Number of responses	Hours per response	Total hours
3809.11	Plan of Operations	54	245	13,230
3809.401(c)	Data for EIS	6	4,960	29.760
3809.401(c)	Data for Standard EA	16	890	14,240
3809.401(c)	Data for Simple Exploration EA	35	320	11,200
Totals		111		68,430

TABLE 2—MODIFICATION OF PLAN OF OPERATIONS

43 CFR citation	Type of response	Number of responses	Hours per response	Total hours
3809.430 and 3809.431	Modification of Plan of Operations	96	245	23,520
3809.432(a) and 3809.401(c)	Data for EIS	2	4,960	9,920
3809.432(a) and 3809.401(c)	Data for Standard EA	29	890	25,810
3809.432(a) and 3809.401(c)	Data for Simple Exploration EA	62	320	19,840
Totals		189		79,090

TABLE 3—INITIAL, MODIFIED AND EXTENDED NOTICE OF OPERATIONS

43 CFR citation	Type of response	Number of responses	Hours per response	Total hours
3809.21	Notice of Operations	386	32	12,352
3809.330	Modification of Notice of Operations	108	32	3,456
3809.333	Extension of Notice of Operations	169	0.5	85
Totals		663		15,893

TABLE 4—FINANCIAL GUARANTEE REQUIREMENTS

43 CFR citation	Type of response	Number of responses	Hours per response	Total hours
3809.500	Form 3809–1, Surface Management Surety Bond.	67	8	536
3809.500	Form 3809–2, Surface Management Personal Bond.	270	8	2,160
3809.500	Form 3809–4, Bond Rider Extending Coverage of Bond.	13	8	104
3809.500	Form 3809–4a, Surface Management Personal Bond Rider.	10	8	80

TABLE 4—FINANCIAL GUARANTEE REQUIREMENTS—Continued

43 CFR citation	Type of response	Number of responses	Hours per response	Total hours
3809.116	Form 3809–5, Notification of Change of Operator and Assumption of Past Liability.	46	8	368
Totals		406		3,248

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: The only non-hour costs are $5,600 in fees for notarizing Forms 3809–2 and 3809–4a ($20 per form × 280 forms annually = $5,600).

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2010–92 Filed 1–7–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2009–N198; 40136–1265–0000–S3]

Holla Bend National Wildlife Refuge, Pope and Yell Counties, AR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Holla Bend National Wildlife Refuge (NWR) for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by February 8, 2010.

ADDRESSES: Send comments, questions, and requests for information to: Mr. Durwin Carter, Holla Bend National Wildlife Refuge, 10448 Holla Bend Road, Dardanelle, AR 72834; telephone: 479–229–4300; e-mail: *durwin_carter@fws.gov.* The Draft CCP/EA is available on compact disk or in hard copy. The Draft CCP/EA may also be accessed and downloaded from the Service's Internet Site: *http://southeast.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Mr. Mike Dawson, Refuge Planner, Jackson, MS; telephone: 601–965–4903, extension 20.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Holla Bend NWR. We started the process through a notice in the **Federal Register** on May 17, 2007 (72 FR 27837).

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

CCP Alternatives, Including Our Proposed Alternative

We developed four alternatives for managing the refuge and chose Alternative D as the proposed alternative. Each alternative would pursue the same four broad refuge goals—wildlife, habitat, public use, and refuge administration. A full description is in the Draft CCP/EA. We summarize each alternative below.

Alternative A—Current Management (No Action)

Alternative A would continue current management strategies, with little or no change in budgeting or funding. Under this alternative, we would protect, maintain, restore, and enhance 6,616 acres of refuge lands and 441 additional acres included in a migratory bird closure area around the refuge, primarily focusing on the needs of migratory waterfowl. We would place additional emphasis on the needs of resident wildlife, migratory non-game birds, and threatened and endangered species. We would continue cooperative farming on 1,200 acres. We would continue mandated activities for protection of federally listed species. Control of nuisance wildlife populations would be undertaken as necessary. Habitat management efforts would concentrate on moist-soil management, waterfowl impoundments, and crop production. We would continue to monitor invasive plants.

We would maintain the current levels of wildlife-dependent recreation activities (*e.g.,* hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation). We would maintain two designated hiking trails, a 10-mile, self-guided auto tour route (for wildlife observation and photography), and three boat launch ramps with gravel parking areas, to the extent that these facilities would not substantially interfere with or

detract from wildlife conservation. The refuge would continue to be closed to all migratory bird hunting, but would be opened to deer hunting, using archery/crossbow and gun, with the exception of a small tract adjacent to the Levee Trail. Turkeys, rabbits, squirrels, coyotes, beavers, raccoons, and bobcats would also be allowed to be taken incidental to deer hunting, and on certain designated days there would be special hunts for raccoons and turkeys. Sport fishing would be permitted in all refuge waters from March 1 to October 31 each year. The refuge would be closed to fishing during the winter months to limit disturbance of wintering waterfowl (except for bank fishing on Long Lake from November 1 to February 28).

Under this alternative, we would pursue opportunities that arise to purchase or exchange priority tracts within the refuge acquisition boundary, which include 1,703 acres in private ownership distributed in numerous small tracts around the perimeter of the refuge.

We would not have a dedicated park ranger (visitor services), but staff would continue to provide environmental education services to the public, including limited visits to schools, environmental education workshops, and on-site and off-site environmental education programs. We would continue to maintain exhibits in the visitor center, a kiosk outside the visitor center, and one on the Woodpecker Interpretive Trail.

We would continue to offer opportunities for wildlife observation and photography throughout the refuge, accessible along the refuge road system from March 16 to November 14, but with the addition of a wildlife observation deck next to the visitor center. We would maintain a staff of 4, including the refuge manager, office assistant, maintenance mechanic, and equipment operator. We would maintain the refuge headquarters, visitor center, maintenance building and yard, roads, gates, and equipment such as road grader, tractors, dozers, and backhoe.

Alternative B—Enhanced Management of Habitat and Fish and Wildlife Populations

Alternative B reflects an increase in management of habitat and fish and wildlife populations. In addition to the activities described under Alternative A, we would develop baseline inventories of biota and habitat potential, including inventories of forest conditions, aquatic species, and suitable woodcock habitat. We would broaden our focus on migratory waterfowl to include objectives for forest-dwelling and early successional birds, shorebirds, woodcock, colonial waterbirds, marsh birds, and wood ducks. In addition to continuing mandated activities for protection of federally listed species, we would develop a strategy to address these threatened and endangered species, as well as State-listed rare species. We would develop a database and monitor deer herd status, trends in wild turkey populations, and the presence of waterbird rookeries. Data on nuisance wildlife would be collected and aggressive control measures initiated.

Habitat management would include converting 125 acres from agricultural production to grassland and scrub/shrub habitat. By utilizing force account farming, the cropland acreage on the refuge would be reduced by 25 percent and crops would be converted to preferred waterfowl foods. We would also aggressively monitor non-native plants and implement a plan to eliminate them. Enhancements in the management of moist-soil habitat would include developing complete water control capability on all moist-soil acres and using periodic disturbance to set back succession. Further, we would pursue cooperative projects to improve habitat quality on about 500 acres of open water. Waterfowl usage and shorebird response to habitat management would be monitored.

Under this alternative, we would pursue opportunities to purchase or exchange tracts within the refuge acquisition boundary that would enhance fish and wildlife management. The staff would increase by the addition of a biologist, biological science technician, and park ranger (law enforcement). Wildlife-dependent recreation activities would be the same as under Alternative A.

Alternative C—Enhanced Management for Wildlife-Dependent Public Uses

This alternative represents an increased focus on wildlife-dependent public uses, rather than more emphasis on management of fish and wildlife populations and habitat as described under Alternative B. In addition to the activities described under Alternative A, we would increase wildlife-dependent recreation activities (*e.g.,* hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation).

The two most significant enhancements under this alternative would be the development of an environmental education center and the addition of a park ranger (visitor services) to the staff. These enhancements would greatly increase our capability to conduct environmental education and interpretation programs, and to better utilize qualified volunteers in support of Holla Bend NWR's mission and objectives. In addition to the park ranger, the staff would increase by the addition of an operations specialist and a heavy equipment mechanic. One function of the park ranger would be to develop a plan for recruiting and effectively managing volunteer support.

This alternative would include construction of fishing piers at both Long Lake and Lodge Lake to be accessible by disabled individuals; development of a bird observation trail north of the refuge office; improvements to the Lodge Lake Trail and the loop to the Levee Trail; and vegetation management along refuge roads to improve wildlife viewing opportunities. Information kiosks, direction signs, parking lots, and other visitor use facilities would be improved. Under this alternative, we would determine the maximum number of archery hunters that refuge resources could support, and we would open a dove hunting season.

We would pursue opportunities to purchase or exchange tracts within the refuge acquisition boundary that would enhance the public use program.

Alternative D—Balanced Enhancement of Management for Habitat, Fish and Wildlife Populations, and Wildlife-Dependent Public Uses (Proposed Alternative)

This adaptive management alternative is basically concurrent implementation of selected enhancements under Alternatives B and C, which would result in greater benefits to the refuge and the surrounding area. For example, the baseline biological information developed under Alternative B would be useful in identifying opportunities to improve visitor experiences, and the increased volunteer support management developed under Alternative C would lead to increased efficiencies in collecting data on biological resources and responses (*e.g.,* nuisance and invasive species occurrence, deer herd status, and evaluation of habitat management efforts) identified under Alternative B.

Habitat management would include converting 100 acres from agricultural production to grassland and scrub/shrub habitat; cooperative farming would continue on 1,200 acres. To the extent possible, crops would be converted to preferred waterfowl foods. We would monitor non-native plants and develop a strategy to eliminate them. Enhancements in the management of

moist-soil habitat would include developing complete water control capability on all moist-soil acres and use of periodic disturbance to set back succession. Further, the Service would pursue cooperative projects to improve habitat quality on 500 acres of open water. Waterfowl usage and shorebird response to habitat management would be monitored.

The two significant enhancements in the public use program would be development of an environmental education center on the refuge and the addition of a park ranger (visitor services) to the staff. These enhancements would greatly increase our capability and opportunity to conduct environmental education and interpretation programs, and to better utilize qualified volunteers in support of Holla Bend NWR's mission and objectives. One responsibility of the park ranger would be to develop a plan for recruiting and effectively managing volunteer support. Wildlife-dependent recreation activities would be the same as under Alternative A.

This alternative would include the construction of a fishing pier at Lodge Lake to be accessible by disabled individuals; development of a bird observation trail north of the refuge office; improvements to the Lodge Lake Trail and the loop to the Levee Trail; and selective vegetation management along refuge roads to improve wildlife viewing opportunities. Information kiosks, direction signs, parking lots, and other visitor use facilities also would be improved to the extent feasible. We would determine the maximum number of archery hunters that refuge resources could support, and we would evaluate the feasibility of adding a dove season.

We would pursue opportunities to purchase or exchange priority tracts within the refuge acquisition boundary, which includes 1,703 acres in private ownership distributed in numerous small tracts around the perimeter of the refuge.

The staff would include a refuge manager, deputy refuge manager, heavy equipment operator, and office assistant, and would be increased to also include a biologist and biological science technician, a park ranger (visitor services), a park ranger (law enforcement), an operations specialist, and a heavy equipment mechanic.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: October 15, 2009.

Jacquelyn B. Parrish,

Acting Regional Director.

[FR Doc. 2010–101 Filed 1–7–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from October 19 to October 23, and on December 30, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th Floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: January 4, 2010.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

AMERICAN SAMOA

Western District

Kirwan, Michael J., Educational Television Center, Route 118, N. side of Utulei, Utulei vicinity, 09000842, LISTED, 10/23/09

ALABAMA

Russell County

Hurtsboro Historic District, 308–905 Church St., 508 Daniel St., 303–407 Dickinson St., 302–802 Goolsby St., 402–502 Lloyd St., 242–282 Long St., Hurtsboro, 09000001, LISTED, 10/19/09

FLORIDA

Hernando County

Spring Lake Community Center, 4184 Spring Lake Hwy., Brooksville vicinity, 09000843, LISTED, 10/20/09 (Florida's New Deal Resources MPS)

FLORIDA

Orange County

Rosemere Historic District, Roughly by E. Harvard St., N. Orange Ave., Cornell Ave. & E. Vanderbilt St., Orlando, 09000844, LISTED, 10/21/09

GEORGIA

Muscogee County

Thomas, Alma, House, 411 21st St., Columbus, 09000270, LISTED, 10/20/09

NEVADA

Clark County

Berkley Square, Area bounded by Byrnes Ave., D St., Leonard Ave., and G St., Las Vegas, 09000846, LISTED, 10/23/09

NEW YORK

Chenango County

Mathewson, Holden B., House, 1567 NY 26, South Otselic, 09000860, LISTED, 10/23/09

NEW YORK

Columbia County

Van Rensselaer, Conyn, House, 644 Spook Rock Rd., Claverack vicinity, 09000861, LISTED, 10/20/09

NEW YORK

Dutchess County

Mt. Beacon Fire Observation Tower, S. Beacon Mtn., Beacon vicinity, 09000862, LISTED, 10/23/09

NEW YORK

Onondaga County

Barber, Peale's, Farm Mastodon Exhumation Site, Rt. 17K, Montgomery vicinity, 09000863, LISTED, 10/20/09

NORTH CAROLINA

Dare County

Midgett, Rasmus, House, 25438 NC Hwy 12, Waves, 09000847, LISTED, 10/21/09

OHIO

Erie County

Feick Building, 158–160 E. Market St., Sandusky, 09000848, LISTED, 10/22/09

OHIO

Geauga County

ASM Headquarters and Geodesic Dome, 9639 Kinsman Rd., Materials Park, 09000849, LISTED, 10/22/09

WEST VIRGINIA

Logan County

Blair Mountain Battlefield, Address Restricted, Logan vicinity, 08000496, REMOVED/DETERMINED ELIGIBLE, 12/30/09

WISCONSIN

Jefferson County

North Washington Street Historic District, N. Church St. generally bounded by O'Connell and N. Green St., N. Washington St. bounded by O'Connell and Elm Sts., Watertown, 09000850, LISTED, 10/23/09

WISCONSIN

Milwaukee County

Pittsburgh Plate Glass Enamel Plant, 201 E. Pittsburgh Ave., Milwaukee, 09000851, LISTED, 10/21/09

[FR Doc. 2010–49 Filed 1–7–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf Civil Penalties

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice summarizing review of the maximum daily civil penalty assessment.

SUMMARY: The Outer Continental Shelf Lands Act requires the MMS to review the maximum daily civil penalty assessment for violations of regulations governing oil and gas operations in the Outer Continental Shelf at least once every 3 years. This review ensures that the maximum penalty assessment reflects any increases in the Consumer Price Index as prepared by the Bureau of Labor Statistics, U.S. Department of Labor. After conducting the required review in August 2009, the MMS determined that no adjustment is necessary at this time.

FOR FURTHER INFORMATION CONTACT: Joanne McCammon, Safety and Enforcement Branch at (703) 787–1292 or e-mail at *Joanne.McCammon@mms.gov.*

SUPPLEMENTARY INFORMATION: The goal of the MMS Outer Continental Shelf (OCS) Civil Penalty Program is to ensure safe and clean operations on the OCS. By assessing and collecting civil penalties, the program is designed to encourage compliance with OCS statutes and regulations. Not all regulatory violations warrant a review to initiate civil penalty proceedings; however, violations that cause injury, death, or environmental damage, or pose a threat to human life or the environment, will trigger such review.

The Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) expanded and strengthened MMS's authority to impose penalties for violating regulations promulgated under the OCS Lands Act. Section 8201 of OPA 90, which amended section 24(b) of the OCS Lands Act, 43 U.S.C. 1350(b), directs the Secretary of the Interior to adjust the maximum civil penalty amount at least once every 3 years to reflect any increases in the Consumer Price Index (CPI). The purpose of this adjustment is to ensure that punitive assessments keep up with inflation. If an adjustment is necessary, MMS informs the public through publication in the **Federal Register** of the new maximum amount. The MMS uses Office of Management and Budget (OMB) guidelines for determining how penalty amounts should be rounded.

The MMS published regulations adjusting the civil penalty assessment to $25,000 per violation per day on August 8, 1997 (62 FR 42667); to $30,000 on October 29, 2003 (68 FR 61622); and to $35,000 on February 28, 2007 (72 FR 8897). In August 2009, MMS performed computations to determine if it should increase the current maximum civil penalty amount of $35,000 per violation per day. After running the computations, the MMS determined that the CPI did not increase enough to warrant raising the maximum civil penalty amount at this time. The MMS will monitor the CPI, and when the computations justify raising the maximum civil penalty amount, the MMS will publish a Notice in the **Federal Register** to notify the public of the increase.

Authority: 43 U.S.C. 1350.

Dated: January 4, 2010.

Chris Oynes,

Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2010–119 Filed 1–7–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–920000–L143000000–ET0000; WYW 109115]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior—Land and Minerals Management proposes to extend the duration of Public Land Order (PLO) No. 6797 for an additional 20-year term. PLO No. 6797 withdrew 9,609.74 acres of public mineral estate from location or entry under the United States mining laws (30 U.S.C. Ch.2), to protect the Whiskey Mountain Bighorn Sheep Winter Range in Fremont County. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by April 8, 2010.

ADDRESSES: Comments and meeting requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janelle Wrigley, BLM Wyoming State Office, 307–775–6257, or at the above address.

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 6797 (55 FR 37878 (1990)) will expire September 13, 2010, unless extended. PLO No. 6797 is incorporated herein by reference. The BLM has filed a petition/application to extend PLO No. 6797 for an additional 20-year term. The withdrawal was made to protect the bighorn sheep winter range and capital investments on the land described in the PLO at 55 FR 37878 (1990). The area aggregates 9,609.74 acres in Fremont County, Wyoming.

The purpose of the proposed extension is to continue the withdrawal created by PLO No. 6797 for an additional 20-year term to protect the Whiskey Mountain Bighorn Sheep Winter Range and capital investments in the area.

The use of a right-of-way, interagency, or cooperative agreement would not adequately constrain nondiscretionary uses which could result in the permanent loss of significant values and irreplaceable resources of the range.

There are no suitable alternative sites since the lands described herein contain the area that has historically been used as bighorn sheep winter range, due to its physical characteristics, and because of the local weather conditions.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

Records relating to the application may be examined by contacting Janelle Wrigley at the above address or by phone at 307–775–6257 or by contacting the BLM Field Manager, Lander Field Office, 1335 Main Street, Lander, Wyoming 82520 or by phone at 307–332–8400.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension may present their views in writing to the BLM Wyoming State Director at the address noted above. Comments, including names and street addresses of respondents, will be available for public review at the BLM Lander Field Office, 1335 Main Street, Lander, Wyoming, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that one or more public meetings will be held in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed extension must submit a written request to the BLM Wyoming State Director within 90 days from the date of publication of this notice. A notice of the time and place of any public meetings will be published in the **Federal Register** and at least one local newspaper at least 30 days before the scheduled date of the meeting.

This withdrawal extension petition/application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

(Authority: 43 CFR 2310.3–1)

Michael Madrid,

Chief, Branch of Fluid Mineral Operations, Lands and Appraisal.

[FR Doc. 2010–93 Filed 1–7–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–1410–ET; AA–5964, AA–3060, AA–5934]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture (USDA) Forest Service has filed an application with the Bureau of Land Management (BLM) that proposes to extend the duration of Public Land Order (PLO) No. 6884 for an additional 20-year period. This order withdrew approximately 1,855 acres of National Forest System land from surface entry and mining—but not from mineral leasing laws—to protect the recreational values of the Kenai River Recreation Area, the Russian River Campground Area, and the Lower Russian Lake Recreation Area. This notice gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by April 8, 2010.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Ramona Chinn, BLM Alaska State Office, 907–271–3806 or at the address above.

SUPPLEMENTARY INFORMATION: The withdrawal, created by PLO No. 6884 (56 FR 49847, (1991)), will expire on October 1, 2011, unless extended. The USDA Forest Service has filed an application to extend the withdrawal for an additional 20-year period to protect the recreational values of the Kenai River Recreation Area, the Russian River Campground Area, and the Lower Russian Lake Recreation Area.

This withdrawal comprises approximately 1,855 acres of National Forest System land located in the Chugach National Forest, within Tps. 4 and 5 N., R. 4 W., Seward Meridian, as described in PLO No. 6884, as corrected (56 FR 56275 (1991)).

A complete description, along with all other records pertaining to the extension application, can be examined in the BLM Alaska State Office at the address shown above.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not adequately protect the recreational values of the Kenai River Recreation Area, the Russian River Campground Area, and the Lower Russian Lake Recreation Area.

There are no suitable alternative sites available that could be substituted for the above described public land, since the Kenai River Recreation Area, the Russian River Campground Area, and the Lower Russian Lake Recreation Area are unique.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

Records relating to the application may be found by contacting Ramona Chinn, BLM Alaska State Office at the address above.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Alaska State Director at the address indicated above. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Alaska State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and in at least one local newspaper no less than 30 days before the scheduled date of the meeting.

The withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4 and subject to Section 810 of the

Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120.

Authority: 43 CFR 2310.3–1(b).

Ramona Chinn,

Deputy State Director, Division of Alaska Lands.

[FR Doc. 2010–94 Filed 1–7–10; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1063, 1064, 1066–1068 (Review)]

Frozen Warmwater Shrimp From Brazil, China, India, Thailand, and Vietnam

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is February 3, 2010. Comments on the adequacy of responses may be filed with the Commission by March 19, 2010. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. 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. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On February 1, 2005, the Department of Commerce ("Commerce") issued antidumping duty orders on imports of frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam (70 FR 5143–5156).[2] The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Brazil, China, India, Thailand, and Vietnam.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original affirmative determinations, the Commission defined the *Domestic Like Product* to consist of fresh warmwater shrimp and prawns and those frozen warmwater shrimp and prawn products defined in Commerce's scope definition. Certain Commissioners defined the *Domestic Like Product* differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original affirmative determinations, the Commission defined the *Domestic Industry* to consist of: (1) All entities that harvest fresh warmwater shrimp (*i.e.,* fishermen and shrimp farmers) and (2) all processors of frozen shrimp products within the scope definition except for firms that do not engage in sufficient production-related activities to be considered domestic producers.[3] In addition several producers were excluded by the Commission from the *Domestic Industry* pursuant to the related parties provision.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is February 1, 2005.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–209, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

[2] Commerce has subsequently revoked the antidumping duty order on imports of frozen warmwater shrimp from Thailand with respect to certain manufacturer/exporters. 74 FR 5638 (January 30, 2009). On February 1, 2005, Commerce also issued an antidumping duty order on imports of frozen warmwater shrimp from Ecuador. Commerce subsequently revoked that order. 72 FR 48257 (August 23, 2007).

On May 5, 2005, the Commission instituted changed circumstances reviews pursuant to section 751(b) of the Act concerning its affirmative determinations on frozen warmwater shrimp from India and Thailand. 70 FR 23384 (May 5, 2005). In the changed circumstances reviews, it determined that revocation of the antidumping duty orders on subject imports from India and Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. 70 FR 71557 (November 29, 2005).

[3] The Commission found that processing activities such as deheading, grading, machine peeling, deveining, and cooking all constitute domestic production but that marinating and skewering do not constitute domestic production. The Commission also concluded that breading did not constitute domestic production activity because breaded shrimp was not part of the *Domestic Like Product.*

the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 3, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 19, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the Order Date.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* that are not themselves members of the *Domestic Industry* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or

the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production. If you are a processor, indicate the nature of the processing activities you perform (e.g., deheading, grading, machine peeling, deveining, cooking, marinating and/or skewering);

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. production facility(ies);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. production facility(ies); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. production facility(ies) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: January 4, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–88 Filed 1–7–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–657]

Certain Automotive Multimedia Display and Navigation Systems, Components Thereof, and Products Containing Same; Notice of Commission Determination To Grant the Joint Motion To Terminate the Investigation on the Basis of Settlement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant the joint motion to terminate the above-captioned investigation based upon settlement.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202)

708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Investigation No. 337–TA–657 on September 22, 2008, based on a complaint filed by Honeywell International Inc. of Morristown, New Jersey ("Honeywell"). 73 FR 54617 (Sept. 22, 2008). The complainant named the following respondents: Alpine Electronics, Inc. of Japan, and Alpine Electronics of America, Inc. of Torrance, California (collectively "Alpine"); Denso Corporation of Japan, and Denso International America, Inc. of Southfield, Michigan (collectively "Denso"); Pioneer Corporation of Japan and Pioneer Electronics (USA) Inc. of Long Beach, California (collectively "Pioneer"); and Kenwood Corporation of Japan and Kenwood USA Corporation of Long Beach, California (collectively "Kenwood"). The complaint alleged violations of Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation, sale for importation, and sale within the United States after importation of certain automotive multimedia display and navigation systems, components thereof, and products containing the same that infringe certain claims of certain Honeywell patents. Honeywell settled its disputes with Kenwood, Denso, and Alpine, and the Administrative Law Judge ("ALJ") terminated the investigation with regard to those respondents. The Commission determined not to review any of these initial determinations. Pioneer remained as the sole respondent, and its products accused of infringement include factory-installed GPS units in certain automobiles and certain after-market "head-unit" GPS devices that are mounted in automobile dashboards.

On September 22, 2009, the ALJ issued his final Initial Determination ("ID"), finding no violation of section 337 by Pioneer. On November 23, 2009, the Commission determined, upon Honeywell's motion and Pioneer's contingent motion, to review in part the ID. 74 FR 62589 (Nov. 30, 2009). On November 30, 2009, Honeywell and Pioneer moved the Commission to extend the briefing deadlines because the parties were engaged in settlement discussions. The Commission granted that motion, extending briefing for approximately three weeks. 74 FR 64100 (Dec. 7, 2009).

On December 22, 2009, Honeywell and Pioneer filed their Joint Motion to Terminate Investigation as to Respondents Pioneer Corporation and Pioneer Electronics (USA) Inc. Based Upon Settlement Agreement. On December 24, 2009, the Commission investigative attorney filed a response that recommended that the Commission grant the motion.

Having examined the record of this investigation, the Commission has determined to grant the joint motion to terminate the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21).

Issued: January 4, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–89 Filed 1–7–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0030]

Justice Management Division; Office of Attorney Recruitment and Management; Agency Information Collection Activities: Proposed Renewal of Previously Approved Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Electronic Applications for the Attorney General's Honors Program and the Summer Law Intern Program.

The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until March 9, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department Clearance Officer, United States Department of Justice, Suite 1600, 601 D Street NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a Currently Approved Collection.

(2) *The title of the form/collection:* Electronic Applications for the Attorney General's Honors Program and the Summer Law Intern Program.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: none. Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Individuals or households. Other: None. The application form is submitted voluntarily, once a year by law students and judicial law clerks who will be in this applicant pool only once; the revision to this collection concerns two additional forms required to be submitted only by those applicants who were selected to be interviewed by DOJ components. Both of these forms seek information in order to prepare both the official Travel Authorizations prior to the interviewees' performing pre-employment interview travel (as defined by 41 CFR 301–1.3), and the official Travel Vouchers after the travel is completed. The first new form is the Travel Survey—used by the Department in scheduling travel and/or hotel accommodations, which in turn provides the estimated travel costs required by the Travel Authorization form. The second new form is a simple Reimbursement Form—the interviewees are asked to provide their travel costs and/or hotel accommodations (if applicable) in order for the Department to prepare the Travel Vouchers required before these interviewees can be reimbursed by the Department for the authorized costs they incurred during this pre-employment interview travel.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 5000 respondents will complete the application in approximately 1 hour per application. The revised burden would include 600 respondents who will complete the travel survey in approximately 10 minutes per form, and 600 respondents who will complete the reimbursement form in approximately 10 minutes per form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated revised total annual public burden associated with this application is 5200 hours.

If additional information is required contact Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: *January 4, 2010.*

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. 2010–53 Filed 1–7–10; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0001]

Civil Rights Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

The Department of Justice (DOJ), CRT will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until March 9, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robert S. Berman, U.S. Department of Justice, Voting Section, Civil Rights Division, 950 Pennsylvania Avenue, NW., 7243 NWB, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

(3) *Agency form number:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State or Local or Tribal Government. Other: None. Abstract: Jurisdictions specially covered under the Voting Rights Act are required to comply with Section 5 of the Act before they may implement any change in a standard, practice, or procedure affecting voting. One option for such compliance is to submit that change to Attorney General for review and establish that the proposed voting changes are not racially discriminatory. The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,109 respondents will complete each form within approximately 10.02 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 41,172 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: January 4, 2010.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. 2010–54 Filed 1–7–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

Notice is hereby given that on December 22, 2009 a proposed consent decree ("proposed Decree") in *United States* v. *Thoro Products Company*, Civil Action No. 04–M–2330, was lodged with the United States District Court for the District of Colorado.

In this action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a) ("CERCLA"), the United States sought to recover response costs incurred or to be incurred by the United States as a result of releases and threatened releases of hazardous substances from the solvent recycling facility operated by Thoro Products Company located at the Rocky Flats Industrial Park Superfund Site, in Jefferson County, Colorado. The proposed Decree requires the defendant to pay $573,355.54 to the United States in reimbursement of past and future response costs, and provides the defendant with a covenant not to sue under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Thoro Products Company,* D.J. Ref. 90–11–3–1719/7.

The proposed Decree may be examined at the Office of the United States Attorney for the District of Colorado, 1225 17th Street, Suite 700, Denver, CO 80202, and at U.S. EPA Region 8, 1595 Wynkoop St, Denver, CO 80202–1129. During the public comment period, the proposed Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $16.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–125 Filed 1–7–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0038]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Reporting and Recordkeeping for Digital Certificates

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at 74 FR 53760 (October 20, 2009), allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 8, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection 1117–0038

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Reporting and recordkeeping for digital certificates.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number:

DEA Form 251: CSOS DEA Registrant Certificate Application.

DEA Form 252: CSOS Principal Coordinator/Alternate Coordinator Certificate Application.

DEA Form 253: CSOS Power of Attorney Certificate Application.

DEA Form 254: CSOS Certificate Application Registrant List Addendum.

CSOS Certificate Revocation.

Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Non-profit, State and local government.

Abstract: Persons use these forms to apply for DEA-issued digital certificates to order Schedule I and II controlled substances. Certificates must be renewed upon renewal of the DEA registration to which the certificate is linked. Certificates may be revoked and/or replaced when information on which the certificate is based changes.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Total number of respondents: 38,000 per year and 113,000 for the three-year period. Average time to respond: 0.58 hours.

(5) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 21,129 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 21, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–50 Filed 1–7–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–NEW]

Agency Information Collection Activities: New Collection, Comments Requested

ACTION: 60-Day emergency notice of information collection under review: New collection; InfraGard Knowledge/Skills/Abilities Profile questionnaire.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by February 11, 2010. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 9, 2010. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Douglas Dvorak, Supervisory Special Agent, Federal Bureau of Investigation, Cyber Division, 935 Pennsylvania Avenue, NW., Washington, DC 20535, (202) 651–3269.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* InfraGard Knowledge/Skills/Abilities Profile.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: None; Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Public and private professionals self-identified as having information technology expertise. Brief Abstract: InfraGard is a public/private alliance as mandated in Presidential Decision Directive 63. This form is used to classify members according to their expertise.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 28,000 InfraGard members, for a total of 28,000 responses with an estimated response time of two minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 917 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: *January 4, 2010.*

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–52 Filed 1–7–10; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1105–0071]

Agency Information Collection Activities: Proposed Reinstatement With Change of a Previously Approved Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: extension with change of a previously approved collection national drug threat survey.

The United States Department of Justice (DOJ), National Drug Intelligence Center (NDIC), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 201, page 53759 on October 20, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 8, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension Reinstatement with Change of a Previously Approved Collection.

(2) *Title of the Form/Collection:* National Drug Threat Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NDIC Form # A–34j.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal, State, Tribal, and local law enforcement agencies. This survey is a critical component of the National Drug Threat Assessment and other reports and assessments produced by the National Drug Intelligence Center. It provides direct access to detailed drug threat data from State and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 3,500 respondents will complete a survey response within approximately 20 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,167 total annual burden hours associated with this collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 21, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–51 Filed 1–7–10; 8:45 am]

BILLING CODE 4410–DC–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[Docket No. ATF 34N]

Commerce in Explosives; List of Explosive Materials (2009R–18T)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice.

ACTION: Notice of list of explosive materials.

SUMMARY: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et seq.* The list covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in 18 U.S.C. 841(c). As a result of a recent court decision, ammonium perchlorate composite propellant (APCP) is no longer regulated under the Federal explosives laws. Therefore, APCP has been removed from the list of explosives. In addition, the Department is revising the list to include a parenthetical text after "ammonium perchlorate explosive mixtures" to clarify that this term excludes APCP. This notice publishes the 2009 List of Explosive Materials.

DATES: The list becomes effective upon publication of this notice on January 8, 2010.

FOR FURTHER INFORMATION CONTACT: Debra S. Satkowiak, Chief; Explosives Industry Programs Branch; Arson and Explosives Programs Division; Bureau of Alcohol, Tobacco, Firearms and Explosives; United States Department of Justice; 99 New York Avenue, NE., Washington, DC 20226 (202–648–7120).

SUPPLEMENTARY INFORMATION: The list is intended to include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all-inclusive. The fact that an explosive material is not on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in 18 U.S.C. 841. Explosive materials are listed alphabetically by their common names followed, where applicable, by chemical names and synonyms in brackets.

The Department has not added any new terms to the list of explosive materials. However, ammonium perchlorate composite propellant (APCP) has been removed from the list of explosive materials. On March 16, 2009, the United States District Court for the District of Columbia vacated the ATF classification of APCP as an explosive as defined under 18 U.S.C. 841(d). *Tripoli Rocketry Ass'n, Inc.* v. *ATF,* No. 00–0273 (March 16, 2009 Order). As a result of the court's decision, APCP is no longer regulated under the Federal explosives laws at 18 U.S.C. Chapter 40. Accordingly, APCP has been removed from the list of explosive materials. In addition, the Department is revising the list to include a parenthetical text after "ammonium perchlorate explosive mixtures" to clarify that the term excludes APCP.

This list supersedes the List of Explosive Materials dated December 31, 2008 (Docket No. ATF 28N, 73 FR 80428).

Notice of List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as explosive materials covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
* Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate explosive mixtures (excluding ammonium perchlorate composite propellant (APCP)).
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B

Baranol.
Baratol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMTD [hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.

Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].
TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

Approved: December 28, 2009.

Kenneth E. Melson,

Deputy Director.

[FR Doc. 2010–45 Filed 1–7–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 4, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Revision and extension of a previously approved collection.

Title of Collection: OSHA Data Initiative (ODI).

OMB Control Number: 1218–0209.

Affected Public: Business or other for-profits and State, Local, or Tribal Government.

Estimated Number of Respondents: 120,000.

Estimated Total Annual Burden Hours: 20,000.

Estimated Total Annual Costs Burden (excludes hourly wage costs): $0.

Description: To meet the Agency's program needs, OSHA is proposing to continue its initiative to collect injury and illness data and the number of workers and hours worked from establishments in portions of the private sector and some State government agencies. The purpose of the data collection is to compile occupational injury and illness data from employers within specific industries and size categories allowing OSHA to calculate occupational injury and illness rates by employer and specific industry. The agency will require this information from up to 120,000 employers required to create and maintain records pursuant to 29 CFR Part 1904. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at Vol. 74 FR 45881 on September 4, 2009. PRA documentation prepared in association with the preclearance notice is available on *http://www.regulations.gov* under docket number OSHA–2009–0029.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–86 Filed 1–7–10; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Astronomy and Astrophysics Advisory Committee (#13883) meeting:

Date and Time: February 1–2, 2010, 8:30 a.m.–5 p.m.

Place: National Science Foundation, Room 595, Stafford II Building, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Craig Foltz, Acting Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4909.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and

astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: January 5, 2010.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2010–82 Filed 1–7–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0578]

Notice of Availability of a Memorandum of Understanding Between the Nuclear Regulatory Commission and the Bureau of Land Management

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Bjornsen, Project Manager, Environmental Review Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852, Telephone: 301–415–1195, fax number: 301–415–5369; e-mail: *Alan.Bjornsen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) and the Bureau of Land Management (BLM) have finalized a Memorandum of Understanding (MOU) to define the cooperative working relationship between the agencies in each agency's preparation of National Environmental Policy Act (NEPA) documents related to the extraction of uranium and thorium on public lands administered by BLM. The MOU was finalized on November 30, 2009. The MOU will improve the interagency communications, facilitate the sharing of special expertise and information, and coordinate the preparation of studies, reports and environmental (NEPA) documents.

II. Summary

The MOU provides a framework for this cooperative relationship and identifies the responsibilities of each agency. The intent of the MOU is to improve interagency communications, facilitate the sharing of special expertise and information, and coordinate the preparation of studies, reports and environmental (NEPA) documents associated with NRC licensing actions and the BLM administration of public lands. The implementation of the MOU will occur through periodic meetings between the NRC and BLM management to ensure coordination, establishing points of contact at each agency, identifying information gaps that can be filled by each agency, and ensuring that specific environmental resources issues of interest to each agency are covered in each environmental review. To the fullest extent possible, NRC and BLM will participate either as lead agency, co-lead or cooperating agency on the preparation of site-specific environmental documents.

III. Further Information

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0578. Address questions about NRC documents to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Publicly available documents related to this notice can be accessed using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Public File Area 01 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The "Memorandum of Understanding between the Bureau of Land Management, Department of the Interior and the Nuclear Regulatory Commission, an Independent Agency" is available electronically under ADAMS Accession Number ML093430195.

Dated at Rockville, Maryland, this 31st day of December 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. 2010–116 Filed 1–7–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 3:30 p.m., Monday, January 11, 2010; and 7:30 a.m., Tuesday, January 12, 2010.

PLACE: Newport Beach, California, at the Fairmont Hotel, 4500 MacArthur Boulevard.

STATUS: (Closed)

MATTERS TO BE CONSIDERED:

Monday, January 11, at 3:30 p.m. (Closed)

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Tuesday, January 12, at 7:30 a.m. (Closed)

1. Continuation of Monday's agenda.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2010–161 Filed 1–6–10; 11:15 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Sunshine Act; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on January 14, 2010, 9 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

Portion open to the public:

(1) Executive Committee Reports.

Portion closed to the public:

(A) Employer Status Determination—Employee Service Determination—Decision on Remand—Former Police Officers of MTA.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: January 5, 2010.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 2010–210 Filed 1–6–10; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad-11; SEC File No. 270–261; OMB Control No. 3235–0274.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for Rule 17Ad-11 (17 CFR 240.17Ad-11) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

Rule 17Ad-11 requires all registered transfer agents to report to issuers and the appropriate regulatory agency in the event that aged record differences exceed certain dollar value thresholds. An aged record difference occurs when an issuer's records do not agree with those of securityowners as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption or transfer. In addition, the rule requires transfer agents to report to the appropriate regulatory agency in the event of a failure to post certificate detail to the master securityholder file within 5 business days of the time required by Rule 17Ad-10 (17 CFR 240.17Ad-10). Also, transfer agents must maintain a copy of each report prepared under Rule 17Ad-11 for a period of three years following the date of the report. This recordkeeping requirement assists the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

Because the information required by Rule 17Ad-11 is already available to transfer agents, any collection burden for small transfer agents is minimal. Based on a review of the number of Rule 17Ad-11 reports the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation received since 2006, the Commission estimates that 25 respondents will file a total of approximately 30 reports annually. The Commission estimates that each report can be completed in 30 minutes. Therefore, the total annual hourly burden to the entire transfer agent industry is approximately 15 hours (30 minutes multiplied by 30 reports). Assuming an average hourly rate of a transfer agent staff employee of $25, the average total cost of the report is $12.50. The total cost for the approximate 25 respondents is approximately $750.

The retention period for the recordkeeping requirement under Rule 17Ad-11 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad-11 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: (i) *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

January 4, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–68 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17i–3, SEC File No. 270–529, OMB Control No. 3235–0593.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [1] the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below. The Code of Federal Regulation citation to this collection of information is the following: 17 CFR 240.17i–3.

Section 231 of the Gramm-Leach-Bliley Act of 1999 [2] (the "GLBA") amended Section 17 of the Securities Exchange Act of 1934 (17 USC 78a *et seq.*) ("the Exchange Act") to create a regulatory framework under which a holding company of a broker-dealer ("investment bank holding company" or "IBHC") may voluntarily be supervised by the Commission as a supervised investment bank holding company (or "SIBHC").[3] In 2004, the Commission promulgated rules, including Rule 17i–3, to create a framework for the Commission to supervise SIBHCs.[4] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor for SIBHCs and their affiliated broker-dealers.[5]

Rule 17i–3 permits an SIBHC to withdraw from Commission supervision by filing a notice of withdrawal with the Commission. The Rule requires that an SIBHC include in its notice of withdrawal a statement that it is in compliance with Rule 17i–2(c) regarding amendments to its Notice of Intention to help to assure that the Commission has updated information

[1] 44 U.S.C. 3501 *et seq.*

[2] Public Law 106–102, 113 Stat. 1338 (1999).

[3] See 15 U.S.C. 78q(i).

[4] See Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[5] See H.R. Conf. Rep. No. 106–434, 165 (1999). See also Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

when considering the SIBHC's withdrawal request.

The collection of information required by Rule 17i–3 is necessary to enable the Commission to evaluate whether it is necessary and appropriate in the furtherance of Section 17 of the Exchange Act for the Commission to allow an SIBHC to withdraw from supervision. Without this information, the Commission would be unable to make this evaluation.

We estimate, for Paperwork Reduction Act purposes only, that one SIBHC may wish to withdraw from Commission supervision as an SIBHC over a ten-year period. Each SIBHC that withdraws from Commission supervision as an SIBHC will require approximately 24 hours to draft a withdrawal notice and submit it to the Commission. An SIBHC likely would have an attorney perform this task. Further, an SIBHC likely will have a senior attorney or executive officer review the notice of withdrawal before submitting it to the Commission, which will take approximately eight hours. Thus, we estimate that the annual, aggregate burden of withdrawing from Commission supervision as an SIBHC will be approximately 3.2 hours each year.[6]

The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to Section 17(j) of the Securities Exchange Act of 1934[7] and Section 552(b)(3)(B) of the Freedom of Information Act,[8] notwithstanding any other provision of law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC, 20503 or by sending an e-mail to: *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

[6] (1 SIBHC/every 10 years) × (24 hours to draft + 8 hours to review) = 3.2 hours.

[7] 15 U.S.C. 78q(j).

[8] 5 U.S.C. 552(b)(3)(B).

Dated: December 30, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–40 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–8B–2; SEC File No. 270–186; OMB Control No. 3235–0186.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form N–8B–2 (17 CFR 274.12) is the form used by unit investment trusts ("UITs") other than separate accounts that are currently issuing securities, including UITs that are issuers of periodic payment plan certificates and UITs of which a management investment company is the sponsor or depositor, to comply with the filing and disclosure requirements imposed by section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)). Form N–8B–2 requires disclosure about the organization of a UIT, its securities, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, the trustee or custodian, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Investment Company Act.

Based on the Commission's industry statistics, the Commission estimates that there would be approximately two initial filings on Form N–8B–2 and 14 post-effective amendment filings to the Form annually. The Commission estimates that each registrant filing an initial Form N–8B–2 would spend 44 hours in preparing and filing the Form and that the total hour burden for all initial Form N–8B–2 filings would be 88 hours. Also, the Commission estimates that each UIT filing a post-effective amendment to Form N–8B–2 would spend 16 hours in preparing and filing the amendment and that the total hour burden for all post-effective amendments to the Form would be 224 hours. By combining the total hour burdens estimated for initial Form N–8B–2 filings and post-effective amendments filings to the Form, the Commission estimates that the total annual burden hours for all registrants on Form N–8B–2 would be 312. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8B–2 is mandatory. The information provided on Form N–8B–2 will not be kept confidential. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 4, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–67 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on January 13, 2010 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

Item 1: The Commission will consider whether to publish a concept release on equity market structure. The concept release would invite public comment on a wide range of issues, including the performance of equity market structure in recent years, high frequency trading, and undisplayed, or "dark," liquidity.

Item 2: The Commission will consider whether to propose a new rule regarding risk management controls and supervisory procedures to manage financial, regulatory and other risks for brokers or dealers that provide market access.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: January 5, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–200 Filed 1–6–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61273; File No. SR–NYSE–2009–134]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Deleting NYSE Rule 445 and Adopting New Rule 3310 To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

December 31, 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 December 31, 2009, New York Stock Exchange LLC ("NYSE" 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 substantially 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 delete NYSE Rule 445 and adopt new Rule 3310 to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[4] 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 Changes

1. Purpose

The purpose of the proposed rule changes is to delete NYSE Rule 445 (Anti-Money Laundering Compliance Program) and adopt new Rule 3310 (Anti-Money Laundering Compliance Program) to correspond with rule changes filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). NYSE Amex LLC ("NYSE Amex") became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Conforming Amendments to NYSE Rules

FINRA adopted, subject to certain amendments, NASD Rule 3011 (Anti-Money Laundering Compliance Program) and related Interpretive Material NASD IM–3011–1 and 3011–2 as consolidated FINRA Rule 3310 (Anti-Money Laundering Compliance Program), and deleted FINRA Incorporated NYSE Rule 445 (Anti-Money Laundering Compliance Program) as duplicative of the new Rule.[7]

Because it is substantially similar to the provisions of FINRA Rule 3310, FINRA deleted FINRA Incorporated NYSE Rule 445. In particular, FINRA Incorporated NYSE Rule 445(1)–(5) are substantially the same as consolidated FINRA Rule 3310(a)–(e). In addition, Supplementary Material .10 and .20 to FINRA Incorporated NYSE Rule 445 are substantially the same as Supplementary Material .01 to consolidated FINRA Rule 3310. Finally, read together, part (4) and Supplementary Material .30 to FINRA Incorporated NYSE Rule 445 are substantially the same as Supplementary Material .02 to consolidated FINRA Rule 3310 with respect to the notification of AML compliance person designations.[8]

To harmonize the NYSE Rules with the approved consolidated FINRA Rules, the Exchange correspondingly proposes to delete NYSE Rule 445 and replace it with proposed NYSE Rule 3310, which is substantially similar to the new FINRA Rule.[9] As proposed,

[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. 60645 (September 10, 2009), 74 FR 47630 (September 16, 2009) (order approving SR–FINRA–2009–039).

[5] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules") and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] *See* Securities Exchange Act Release No. 60645 (September 10, 2009), 74 FR 47630 (September 16, 2009).

[8] *Id.*

[9] NYSE Amex has submitted a companion rule filing amending its rules in accordance with

Continued

NYSE Rule 3310 adopts the same language as FINRA Rule 3310, except for substituting for or adding to, as needed, the term "member organization" for the term "member," and making corresponding technical changes that reflect the difference between NYSE's and FINRA's membership structures. In addition, in Supplementary Material .02 to proposed Rule 3310, the Exchange added a cross-reference to NYSE Rule 416A to ensure that those Exchange members and member organizations that are not FINRA members are required to update the contact information for anti-money laundering compliance personnel in accordance with NYSE Rules.

Finally, in order to ensure that both proposed NYSE Rule 3310 and FINRA Rule 3310 are fully harmonized, the Exchange also proposes to add Supplementary Material .03 to NYSE Rule 3310 to provide that, for the purposes of the rule, the term "associated person of the member or member organization" shall have the same meaning as the terms "person associated with a member" or "associated person of a member" as defined in Article I (rr) of the FINRA By-Laws.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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.

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. To the extent the Exchange's proposal differs from FINRA's version of the Rules, such differences are technical in nature and do not change the substance of the proposed NYSE Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) becomes operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposed rule change is substantially identical to a rule change proposed by FINRA and approved by the Commission after an opportunity for public comment, and does not raise any new substantive issues.[16] For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will promote greater harmonization between NYSE Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for joint members and greater harmonization between NYSE Rules and FINRA Rules. Therefore, the Commission designates the proposed rule change effective and operative upon filing.[17]

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–NYSE–2009–134 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–NYSE–2009–134. 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

FINRA's rule changes. *See* SR–NYSE–Amex–2009–99.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii). 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.

[16] *See supra note* 7.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 NYSE's principal office and on its Internet Web site at *http://www.nyse.com*. 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–NYSE–2009–134 and should be submitted on or before January 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–80 Filed 1–7–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61254; File No. SR–OCC–2009–20]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares

December 29, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on December 14, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The proposed rule change would clarify that the term "fund share" includes any option or any futures contracts on ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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

The purpose of the proposed rule change is to clarify the jurisdictional status of options or security futures on ETFS Physical Swiss Gold Shares or ETFS Physical Silver Shares. OCC proposes to amend the interpretation following the definition of "fund share" in Article I, Section 1, of OCC's By-Laws.[2] Under this proposed rule change, OCC would (i) clear and treat as securities options any option contracts on ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares that are traded on securities exchanges and (ii) clear and treat as security futures any futures contracts on ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares.

In its capacity as a "derivatives clearing organization" registered as such with the Commodities Futures Trading Commission ("CFTC"), OCC is filing this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act ("CEA") in order to foreclose any potential liability under the CEA based on an argument that OCC's clearing of such options as securities options or the clearing of such futures as security futures constitutes a violation of the CEA. The products for which approval is requested are essentially the same as the options and security futures on SPDR Gold Shares, iShares COMEX Gold Shares, and iShares Silver Shares that OCC currently clears pursuant to the rule changes referred to above and exemptions issued by the CFTC. [3] OCC believes that this filing raises no new regulatory or policy issues.

OCC believes that the proposed interpretation of OCC's By-Laws is consistent with the purposes and requirements of Section 17A of the Act [4] because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options and security futures, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes these purposes by reducing the likelihood of a dispute as to the Commission's jurisdiction or shared jurisdiction in the case of security futures over derivatives based on ETFS Physical Swiss Gold Shares or ETFS Physical Silver Shares. OCC also states that the proposed rule change is not inconsistent with OCC's By-Laws and Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory

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[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 57895 (May 30, 2008), 73 FR 32066 (June 5, 2008), and CFTC Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares, 73 FR 31981 (June 5, 2008) (orders approving a proposed rule change clarifying that options and securities futures on SPDR Gold Shares are included in the definition of "fund share" in OCC's rules); Securities Exchange Act Release No. 59054 (Dec. 4, 2008), 73 FR 75159 (Dec. 10, 2008) and CFTC Order Exempting the Trading and Clearing of Certain Products Related to iShares COMEX Gold Trust Shares and iShares Silver Trust Shares, 73 FR 79830 (Dec. 3, 2008) (orders approving proposed rule change adding options and security futures on iShares COMEX Gold Shares and iShares Silver Shares to OCC's interpretation of "fund share").

[3] *Supra* note 2.

[4] 15 U.S.C. 78q–1.

organization consents, the Commission will:

(A) by order approve the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–OCC–2009–20 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–OCC–2009–20. 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 OCC's principal office and on OCC's Web site at *http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jspU.* 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 submission should refer to File No. SR–OCC–2009–20 and should be submitted on or before January 29, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–69 Filed 1–7–10; 8:45 am]

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[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61265; File No. SR–NYSEAmex–2009–96)

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 123C(8)(a)(1) To Extend the Operation of the Extreme Order Imbalances Pilot

December 31, 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 December 24, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 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 NYSE Amex Equities Rule 123C(8)(a)(1) to extend the operation of the pilot to temporarily suspend certain NYSE Amex Equities Rule requirements relating to the closing of securities on the Exchange until the earlier of Securities and Exchange Commission approval to make such pilot permanent or March 1, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex Equities Rule 123C(8)(a)(1) allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The rule has operated on a pilot basis since April 2009 ("Extreme Order Imbalances Pilot" or "Pilot").[3] Through this filing, NYSE Amex proposes to extend the Pilot until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or March 1, 2010.[4]

Background

Pursuant to NYSE Amex Equities Rule 123C(8)(a)(1), the Exchange may suspend NYSE Amex Equities Rules 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close. The provisions of NYSE Amex Equities Rule 123C(8)(a)(1) operate as the Extreme Order Imbalance Pilot.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How often a Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4 p.m.

[3] *See* Securities Exchange Act Release No. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR–NYSEALTR–2009–15).

[4] The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC. *See* SR–NYSE–2009–131.

The Extreme Order Imbalance Pilot is scheduled to end operation on December 31, 2009.[5] The Exchange is currently preparing a rule filing seeking permission to make the provisions of the Pilot permanent with certain modifications but does not expect that filing to be completed and approved by the Commission before December 31, 2009.

Proposal To Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a mechanism for ensuring a fair and orderly close when interest is received at or near the close that could negatively affect the closing transaction. The Exchange believes that this tool has proved very useful to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.

As the Exchange has previously stated, NYSE Amex Equities Rule 123C(8) will be invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price. This is evidenced by the fact that during the course of the Pilot, the Exchange invoked the provisions of NYSE Amex Equities Rule 123C(8), including the provisions of the Extreme Order Imbalance Pilot pursuant to NYSE Amex Equities Rule 123C(8)(a)(1), in only two securities on June 26, 2009, the date of the annual rebalancing of Russell Indexes.

In addition, during the operation of the Pilot, the Exchange determined that it would not be as onerous, as previously believed, to modify Exchange systems to accept orders electronically after 4 p.m. The Exchange anticipates that such system modifications could [sic] be completed by December 31, 2009.

Given the above, the Exchange believes that provisions governing the Extreme Order Imbalance Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the Pilot in order to allow the Exchange to formally submit a filing to the Commission to convert the provisions governing the Pilot to permanent rules and complete the technological modifications required to accept orders electronically after 4 p.m. The Exchange therefore requests an extension from the current expiration date of December 31, 2009, until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or March 1, 2010.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[6] that an Exchange have rules that are 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. The Exchange believes that the instant filing is consistent with these principles. Specifically an extension will allow the Exchange to: (i) Prepare and submit a filing to make the provisions governing the Extreme Order Imbalance Pilot permanent; (ii) have such filing complete the public notice and comment period; and (iii) complete the 19b–4 approval process. The rule operates to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[9] However, pursuant to Rule 19b4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),[10] which would make the rule change operative immediately. The Exchange believes that continuation of the Pilot does not burden competition and would operate to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Pilot to continue without interruption while the Exchange works towards submitting a separate proposal to make the Pilot permanent. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[11]

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.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[5] *See* Securities Exchange Act Release No. 60808 (October 9, 2009), 74 FR 53539 (October 19, 2009) (SR–NYSEAmex–2009–70) (extending the operation of the pilot from October 13, 2009 to December 31, 2009).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE Amex has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(3)(C).

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–2009–96 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-2009–96. 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,[13] 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 Section 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 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–2009–96 and should be submitted on or before January 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–73 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

[13] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61267; File No. SR–NYSEArca–2009–115]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Equities Orders From Archipelago Securities LLC

December 31, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 22, 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 extend the pilot period of the Exchange's prior approvals to receive inbound routes of equities orders from Archipelago Securities LLC ("Arca Securities"), an NYSE Arca affiliated ETP Holder. 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.

[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

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.[3] Arca Securities is also the approved outbound order routing facility of the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex").[4] The Exchange, through its wholly-owned subsidiary, NYSE Arca Equities, Inc., has also been previously approved to receive inbound routes of equities orders by Arca Securities in its capacity as an order routing facility of NYSE Amex and the NYSE.[5] The Exchange's authority to receive inbound routes of equities orders by Arca Securities is subject to a pilot period ending December 31, 2009.[6] The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 3 months, through March 31, 2010.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative

[3] *See* Securities Exchange Act Release No. 53238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR–NYSEArca–2006–13); *see also,* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90); *see also,* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also,* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90).

[4] *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also,* Securities and [sic] Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76). *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR–NYSEALTR–2008–07); *see also,* Securities and [sic] Exchange Act Release No. 59473 (February 27, 2009) 74 FR 9853 (March 6, 2009) (order approving SR–NYSEALTR–2009–18).

[5] *See* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90); *see also,* Securities and [sic] Exchange Act Release No. 59010 (November 24, 2008), 73 FR 73373 (December 2, 2008) (order approving SR–NYSEArca–2008–130).

[6] *See* Securities Exchange Act Release No. 60750 (September 30, 2009), 74 FR 52285 (October 7, 2009) (notice of immediate effectiveness of SR–NYSEArca–2009–87).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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 mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE and NYSE Amex, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for three months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).[9]

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 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[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.[14] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through March 31, 2010. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[15]

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–2009–115 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–2009–115. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–115 and should be submitted on or before January 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–75 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

[9] The Exchange is currently analyzing the condition regarding non-public information and system changes in order to better reflect the operation of Arca Securities.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 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.

[13] *Id.*

[14] *See supra* note 9 and accompanying text.

[15] 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61269; File No. SR–NYSEAmex–2009–91)

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Orders From Archipelago Securities LLC

December 31, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 22, 2009, NYSE Amex LLC ("NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Amex" 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 extend the pilot period of the Exchange's prior approvals to receive inbound routes of orders from Archipelago Securities LLC ("Arca Securities"), an NYSE Amex affiliated member. 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

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.[3] Arca Securities is also the approved outbound order routing facility of the New York Stock Exchange ("NYSE") and NYSE Arca, Inc. ("NYSE Arca").[4] The Exchange has also been previously approved to receive inbound routes of orders by Arca Securities in its capacity as an order routing facility of NYSE Arca and the NYSE.[5] The Exchange's authority to receive inbound routes of orders by Arca Securities is subject to a pilot period ending December 31, 2009.[6] The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 3 months, through March 31, 2010.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[8] 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 mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE and NYSE Arca, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for three months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).[9]

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 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[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.[14] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through March 31, 2010. For this reason, the Commission

[3] *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR–NYSEALTR–2008–07); *see also,* Securities and [sic] Exchange Act Release No. 59473 (February 27, 2009), 74 FR 9853 (March 6, 2009) (order approving SR–NYSEALTR–2009–18).

[4] *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also,* Securities and [sic] Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76). *See* Securities Exchange Act Release No. 53238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR–NYSEArca–2006–13); *see also,* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90); *see also,* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also,* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90).

[5] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (order approving SR–Amex–2008–62). *See also,* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (order approving SR–AMEX–2008–63).

[6] *See* Securities Exchange Act Release No. 60751 (September 30, 2009), 74 FR 51630 (October 7, 2009) (notice of immediate effectiveness of SR–NYSEAmex–2009–67).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange is currently analyzing the condition regarding non-public information and system changes in order to better reflect the operation of Arca Securities.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 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.

[13] *Id.*

[14] *See supra* note 9 and accompanying text.

designates the proposed rule change to be operative upon filing with the Commission.[15]

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–NYSEAmex–2009–91 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–2009–91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–91 and should be submitted on or before January 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–77 Filed 1–7–10; 8:45 am]

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[15] 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61272; File No. SR–NYSEAmex–2009–99]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Deleting Rule 445—NYSE Amex Equities and Adopting New Rule 3310—NYSE Amex Equities To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

December 31, 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 December 31, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 substantially 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 delete Rule 445—NYSE Amex Equities and adopt new Rule 3310—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[4] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://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 the proposed rule changes is to delete Rule 445—NYSE Amex Equities (Anti-Money Laundering Compliance Program) and adopt new Rule 3310—NYSE Amex Equities (Anti-Money Laundering Compliance Program) to correspond with rule changes filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, the New York Stock Exchange LLC ("NYSE"), NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). The Exchange became a party to the Agreement effective December 15, 2008.[5]

[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. 60645 (September 10, 2009), 74 FR 47630 (September 16, 2009) (order approving SR–FINRA–2009–039).

[5] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Conforming Amendments to NYSE Rules

FINRA adopted, subject to certain amendments, NASD Rule 3011 (Anti-Money Laundering Compliance Program) and related Interpretive Material NASD IM–3011–1 and 3011–2 as consolidated FINRA Rule 3310 (Anti-Money Laundering Compliance Program), and deleted FINRA Incorporated NYSE Rule 445 (Anti-Money Laundering Compliance Program) as duplicative of the new Rule.[7]

Because it is substantially similar to the provisions of FINRA Rule 3310, FINRA deleted FINRA Incorporated NYSE Rule 445. In particular, FINRA Incorporated NYSE Rule 445(1)–(5) are substantially the same as consolidated FINRA Rule 3310(a)–(e). In addition, Supplementary Material .10 and .20 to FINRA Incorporated NYSE Rule 445 are substantially the same as Supplementary Material .01 to consolidated FINRA Rule 3310. Finally, read together, part (4) and Supplementary Material .30 to FINRA Incorporated NYSE Rule 445 are substantially the same as Supplementary Material .02 to consolidated FINRA Rule 3310 with respect to the notification of AML compliance person designations.[8]

To harmonize the NYSE Amex Equities Rules with the approved consolidated FINRA Rules, the Exchange correspondingly proposes to delete Rule 445—NYSE Amex Equities and replace it with proposed Rule 3310—NYSE Amex Equities, which is substantially similar to the new FINRA Rule.[9] As proposed, Rule 3310—NYSE Amex Equities adopts the same language as FINRA Rule 3310, except for substituting for or adding to, as needed, the term "member organization" for the term "member," and making corresponding technical changes that reflect the difference between NYSE Amex's and FINRA's membership structures. In addition, in Supplementary Material .02 to proposed Rule 3310, the Exchange added a cross-reference to Rule 416A—NYSE Amex Equities to ensure that those Exchange members and member organizations that are not FINRA members are required to update the contact information for anti-money laundering compliance personnel in accordance with NYSE Amex Equities Rules.

Finally, in order to ensure that both proposed Rule 3310—NYSE Amex Equities and FINRA Rule 3310 are fully harmonized, the Exchange also proposes to add Supplementary Material .03 to Rule 3310—NYSE Amex Equities to provide that, for the purposes of the rule, the term "associated person of the member or member organization" shall have the same meaning as the terms "person associated with a member" or "associated person of a member" as defined in Article I (rr) of the FINRA By-Laws.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and further the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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.

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for joint members. To the extent the Exchange's proposal differs from FINRA' version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposed rule change is substantially identical to a rule change proposed by FINRA and approved by the Commission after an opportunity for public comment, and does not raise any new substantive issues.[16] For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will promote

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE, while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] *See* Securities Exchange Act Release No. 60645 (September 10, 2009), 74 FR 47630 (September 16, 2009).

[8] *Id.*

[9] NYSE has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. *See* SR–NYSE–2009–134.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii). 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.

[16] *See supra note* 7.

greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for joint members and greater harmonization between NYSE Amex Equities Rules and FINRA Rules. Therefore, the Commission designates the proposed rule change effective and operative upon filing.[17]

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–2009–99 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–2009–99. 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 NYSE's principal office and on its Internet Web site at *http://www.nyse.com*. 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–2009–99 and should be submitted on or before January 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–79 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61261; File No. SR–BX–2009–086]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Minimum Trading Increments on the Boston Options Exchange Facility

December 30, 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 December 24, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 from interested persons.

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Section 6 (Minimum Trading Increments) of the Rules of the Boston Options Exchange Group, LLC ("BOX"). The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*, at the Commission's Public Reference Room, and also on the Commission's Web site at *http://www.sec.gov.*

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

On October 19, 2009 the Exchange submitted a proposed rule change to amend Chapter V, Section 33 (Penny Pilot Program) of the BOX Rules to (i) extend the Penny Pilot Program in options classes ("Penny Pilot Program" or "Pilot") previously approved by the Securities and Exchange Commission ("Commission") through December 31, 2010; (ii) expand the number of classes included in the Pilot; and (iii) replace on a semi-annual basis any Pilot Program classes that have been delisted.[5]

The Exchange now proposes to designate two Penny Pilot Program classes as eligible to quote and trade all options contracts in one cent increments, regardless of premium value. Specifically, the Exchange proposes to so designate SPY (SPDR S&P 500 ETF) and IWM (iShares Russell 2000 Index Fund). In selecting these classes the Exchange considered, among other things, that these symbols are (a)

[5] *See* Securities Exchange Act Release No. 60886 (October 27, 2009), 74 FR 56897 (November 3, 2009) (SR–BX–2009–067).

among the most actively traded classes nationally, with a wide array of investor interest, (b) have more series trading at a premium between $3 and $10, and (c) are trading at prices that are neither extremely low nor high, but are generally trading between $15–$50. The Exchange believes that classes that meet these criteria benefit the most from the ability to quote and trade all options series in penny increments.

This proposal is based on a recent Commission-approved proposal of the NYSEArca exchange.[6] The Exchange proposes to designate SPY and IWM as eligible to quote and trade all options contracts in one cent increments as of February 1, 2010. This date corresponds with the second phase-in date for additional classes in the Penny Pilot Program.

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. In particular, the Exchange believes that allowing market participants to quote in smaller increments reduces spreads, thereby lowering costs to investors.

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

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

This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act[9] and Rule 19b–4(f)(6) thereunder[10] and does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition and; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Commission recently granted approval for a similar filing proposed by the NYSEArca.[11] The Exchange believes that this proposed rule change, which is essential for competitive purposes and to promote a free and open market for the benefit of investors, does not raise any new, unique or substantive issues from those raised in the approved NYSEArca proposal.

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–2009–086 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–2009–086. 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–2009–086 and should be submitted on or before January 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–71 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[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, as required by Rule 19b–4(f)(6)(iii), the Exchange has submitted 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.

[11] *See supra* note 6.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61271; File No. SR–BX–2009–085]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Orders From Nasdaq Execution Services

December 31, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 23, 2009, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I and II, below, which Items have been prepared by BX. BX has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX submits this proposed rule change to extend the pilot period of BX's prior approval to receive inbound routes of equities orders from Nasdaq Execution Services, LLC ("NES") through March 23, 2010.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NES is the approved outbound routing facility of the NASDAQ Stock Market LLC ("NASDAQ") for cash equities, providing outbound routing from NASDAQ to other market centers.[4] BX also has been previously approved to receive inbound routes of equities orders by NES in its capacity as an order routing facility of NASDAQ.[5] The Exchange's authority to receive inbound routes of equities orders by NES is subject to a pilot period ending December 23, 2009. The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 3 months, through March 23, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from NES acting in its capacity as a facility of Nasdaq, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for three months is of sufficient length to permit both the Exchange and the Commission to assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via NES (including the attendant obligations and conditions).

B. Self-Regulatory Organization's Statement on Burden on Competition

BX 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 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 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. BX has requested that the Commission waive the 30-day operative delay. BX notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from NES, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.[12] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through March 23, 2010. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[13]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SRNASD–2005–128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System). *See also* Securities Exchange Act Release Nos. 58752 (October 8, 2008), 73 FR 61181 (October 15, 2008) (SR–NASDAQ–2008–079); 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR–NASDAQ–2008–061); 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR–NASDAQ–2008–054); 56708 (October 26, 2007), 72 FR 61925 (November 1, 2007) (SR–NASDAQ–2007–078); 56867 (November 29, 2007), 72 FR 69263 (December 7, 2007) (SR–NASDAQ–2007–065); 55335 (February 23, 2007), 72 FR 9369 (March 1, 2007) (SR–NASDAQ–2007–005); 54613 (October 17, 2006), 71 FR 62325 (October 24, 2006) (SR–NASDAQ 2006–043); 54271 (August 3, 2006), 71 FR 45876 (August 10, 2006) (SR–NASDAQ–2006–027); and 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001).

[5] *See* Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008).

[6] 15 U.S.C. 78f.

[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 supra* at II.A.2.

[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).

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–2009–085 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–2009–085. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–085 and should be submitted on or before January 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–78 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61268; File No. SR–NYSE–2009–128]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Certain Equities Orders From Archipelago Securities LLC

December 31, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 22, 2009, New York Stock Exchange LLC ("NYSE" 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 extend the pilot period of the Exchange's prior approvals to receive inbound routes of certain equities orders from Archipelago Securities LLC ("Arca Securities"), an NYSE affiliated member. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://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 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

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.[3] Arca Securities is also the approved outbound order routing facility of NYSE Arca and NYSE Amex LLC ("NYSE Amex").[4] The Exchange has also been previously approved to receive inbound routes of equities orders by Arca Securities in its capacity as an order routing facility of NYSE Arca and NYSE Amex.[5] The Exchange's authority to receive inbound routes of equities orders by Arca Securities is subject to a pilot period ending December 31, 2009.[6] The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 3 months, through March 31, 2010.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also,* Securities and [sic] Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76).

[4] *See* Securities Exchange Act Release No. 53238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR–NYSEArca–2006–13); *see also,* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90); *see also,* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also,* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90). *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR–NYSEALTR–2008–07); *see also,* Securities and [sic] Exchange Act Release No. 59473 (February 27, 2009), 74 FR 9853 (March 6, 2009) (order approving SR–NYSEALTR–2009–18).

[5] *See* Securities and [sic] Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76); *see* Securities Exchange Act Release No. 59011 (November 24, 2008) 73 FR 73360 (December 2, 2008) (order approving SR–NYSE–2008–122); *see also* Securities and [sic] Exchange Act Release No. 60255 (July 7, 2009) 74 FR 34065 (July 14, 2009) (order approving SR–NYSE–2009–58).

[6] *See* Securities Exchange Act Release No. 60752 (September 30, 2009), 74 FR 51641 (October 7, 2009) (notice of immediate effectiveness of SR–NYSE–2009–101).

[7] 15 U.S.C. 78f(b).

objectives of Section 6(b)(5)[8] 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 mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE Arca and NYSE Amex, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for three months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).[9]

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 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[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.[14] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through March 31, 2010. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[15]

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–NYSE–2009–128 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–NYSE–2009–128. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–128 and should be submitted on or before January 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–76 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange is currently analyzing the condition regarding non-public information and system changes in order to better reflect the operation of Arca Securities.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 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.

[13] *Id.*

[14] *See supra* note 9 and accompanying text.

[15] 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61266; File No. SR–NYSE–2009–130]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Establish a Trading License Fee for 2010

December 31, 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 December 23, 2009, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule changes 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 establish a $40,000 trading license fee for calendar 2010. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), 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 these statements may be examined at the places specified in Item IV below. The NYSE 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

NYSE Rule 300(b) provides that, in each annual offering, up to 1366 trading licenses for the following calendar year will be sold annually to member organizations at a price per trading license to be established each year by the Exchange pursuant to a rule filing submitted to the Commission and that the price per trading license will be published each year in the Exchange's price list. The Exchange proposes to establish a trading license fee for calendar 2010 of $40,000. This is the same as the trading license fee charged in calendar 2009.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6[5] of the Act in general and Section 6(b)(4)[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges, as all member organizations will be charged the same trading license fee.

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 purpose 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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and Rule 19b–4(f)(2)[8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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–NYSE–2009–130 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2009–130. 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,[9] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 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–NYSE–2009–130 and should be submitted on or before January 29, 2010.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 59140, 73 FR 80488 (December 31, 2009[sic]) (SR–NYSE–2008–130).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–74 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61264; File No. SR–NYSE–2009–131]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 123C(8)(a)(1) To Extend Operation of the Extreme Order Imbalances Pilot

December 31, 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 December 24, 2009, New York Stock Exchange LLC ("NYSE" 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 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 NYSE Rule 123C(8)(a)(1) to extend the operation of the pilot to temporarily suspend certain NYSE requirements relating to the closing of securities on the Exchange until the earlier of Securities and Exchange Commission approval to make such pilot permanent or March 1, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 123C(8)(a)(1) allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The rule has operated on a pilot basis since April 2009 ("Extreme Order Imbalances Pilot" or "Pilot").[3] Through this filing, NYSE proposes to extend the Pilot until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or March 1, 2010.[4]

Background

Pursuant to NYSE Rule 123C(8)(a)(1), the Exchange may suspend NYSE Rules 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close. The provisions of NYSE Rule 123C(8)(a)(1) operate as the Extreme Order Imbalance Pilot.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How often a Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4 p.m.

The Extreme Order Imbalance Pilot is scheduled to end operation on December 31, 2009.[5] The Exchange is currently preparing a rule filing seeking permission to make the provisions of the Pilot permanent with certain modifications but does not expect that filing to be completed and approved by the Commission before December 31, 2009.

Proposal To Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a mechanism for ensuring a fair and orderly close when interest is received at or near the close that could negatively affect the closing transaction. The Exchange believes that this tool has proved very useful to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.

As the Exchange has previously stated, NYSE Rule 123C(8) will be invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price. This is evidenced by the fact that during the course of the Pilot, the Exchange invoked the provisions of NYSE Rule 123C(8), including the provisions of the Extreme Order Imbalance Pilot pursuant to NYSE Rule 123C(8)(a)(1), in only one security on August 31, 2009.

In addition, during the operation of the Pilot, the Exchange determined that it would not be as onerous as previously believed to modify Exchange systems to accept orders electronically after 4:00 p.m. The Exchange anticipates that such system modifications could [sic] be completed by December 31, 2009.

Given the above, the Exchange believes that provisions governing the Extreme Order Imbalance Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the Pilot in order to allow the Exchange to formally submit a filing to the Commission to convert the provisions governing the Pilot to permanent rules and complete the technological modifications required to accept orders electronically after 4:00 p.m. The Exchange therefore requests an extension from the current expiration date of December 31, 2009, until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or March 1, 2010.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [6] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR–NYSE–2009–18).

[4] The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. *See* SR–NYSEAmex–2009–96.

[5] *See* Securities Exchange Act Release No. 60809 (October 9, 2009), 74 FR 53532 (October 19, 2009) (SR–NYSE–2009–104) (extending the operation of the pilot from October 13, 2009 to December 31, 2009).

[6] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles. Specifically an extension will allow the Exchange to: (i) Prepare and submit a filing to make the provisions governing the Extreme Order Imbalance Pilot permanent; (ii) have such filing complete public notice and comment period; and (iii) complete the 19b–4 approval process. The rule operates to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[9] However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[10] which would make the rule change operative immediately. The Exchange believes that continuation of the Pilot does not burden competition and would operate to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Pilot to continue without interruption while the Exchange works towards submitting a separate proposal to make the Pilot permanent. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[11]

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.[12]

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–NYSE–2009–131 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–NYSE–2009–131. 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,[13] 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 Section 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 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–NYSE–2009–131 and should be submitted on or before January 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–72 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61260; File No. SR–BATS–2009–032]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend BATS Fee Schedule To Impose Fees for Physical Ports Used To Connect to BATS Exchange

December 30, 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 December 18, 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, 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 has filed a proposed rule change to amend the fee schedule applicable to Members [3] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Pursuant to the proposed rule change the Exchange will commence charging fees to Members and non-members for certain physical ports used to connect to the Exchange's systems. The Exchange will implement the proposed rule change on the first day of the month immediately following Commission approval (or on the date of approval, if on the first business day of a month).

The text of the proposed rule change is available on the Exchange's Web site at *http://www.batstrading.com*, on the Commission's Web site (*http://www.sec.gov*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 begin charging a monthly fee for physical ports used to connect to the Exchange's system for order entry and receipt of data from the Exchange. The Exchange recently began charging for "logical" ports used for order entry or receipt of Exchange data,[4] but does not currently charge for the "physical" ports needed to connect to the Exchange's system. A logical port is also commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or PITCH data receipt. In contrast, a physical port is the port that is used by a Member or non-member to literally plug into the Exchange at the data centers where the Exchange's servers are located (*i.e.*, either a cross-connection or a private line Ethernet connection to the Exchange's network within the data center). Multiple logical ports can be created for a single physical port.

The Exchange proposes to provide four (4) pairs [5] of physical ports without charge to any Member or non-member that has been approved to connect to the Exchange. Due to the infrastructure costs associated with providing physical ports, the Exchange proposes to charge $2,000 for each additional single physical port provided by the Exchange to any Member or non-member in any data center. Under the Exchange's current policy all physical ports are provided free of charge but Members and non-members are only permitted to establish up to 4 such physical port pairs. The Exchange's proposal is intended to permit those Members and non-members that wish to establish additional physical ports to do so if such constituent is willing to pay for such ports. Based on the proposal, the change applies to all Exchange constituents with physical connections, including Members that obtain ports for direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, Sponsored Participants, and market data recipients. Very few Members or other non-members require four physical ports for their operations related to the Exchange or would utilize more than four physical ports, and thus, the proposal should not affect many of the Exchange's constituents. However, the Exchange believes that Members and non-members that wish to pay for additional physical ports outside of those provided for free should have the ability to do so.

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 Exchange believes that the proposed change is consistent with Section 6(b)(4) of the Act,[7] because it provides an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that its proposed physical port fees are reasonable in light of the benefits to Exchange Users of direct market access and receipt of data, which access and data can be accomplished without charge through the four physical port pairs provided free of charge or through other means of access not requiring physical ports (e.g., access through a virtual private network, or "VPN", connection). In addition, the Exchange believes that its fees are equitably allocated among its constituents as they are uniform in application to all Members and non-Members. The Exchange believes that fees for each single physical port over and above four free physical port pairs will enable it to cover its infrastructure costs associated with allowing constituents to establish additional physical ports to connect to the Exchange's systems.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] *See* Release No. 34–60364 (July 22, 2009), 74 FR 37285 (July 28, 2009) (File No. SR–BATS–2009–026).

[5] A "pair" of ports refers to one port at the site of the Exchange's primary data center (including the expansion space located adjacent to such data center) and one port at the site of the Exchange's secondary data center.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Market participants will not be affected by the proposal unless such participants' technological needs are such that they wish to establish more than four physical connections to the Exchange. In addition, the Exchange believes that the proposed physical port fees are reasonable, especially in light of the 4 pairs of physical ports provided by the Exchange for free.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BATS–2009–032 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–BATS–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 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–BATS–2009–032 and should be submitted on or before January 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–70 Filed 1–7–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6862]

Culturally Significant Objects Imported for Exhibition Determinations: "Marina Abramovic: The Artist Is Present"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Marina Abramovic: The Artist Is Present," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, NY, from on or about March 14, 2010, until on or about May 31, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: January 4, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–146 Filed 1–7–10; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS399]

WTO Dispute Settlement Proceeding Regarding United States—Certain Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tires From China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on December 9, 2009 the United States received a request from China for the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") concerning certain measures affecting imports of certain passenger vehicle and light truck tires from China. The request may be found at *http://www.wto.org* in document WT/DS399/2. USTR invites written comments from the public

concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 29, 2010, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2009–0035. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below), the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: María L. Pagán, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–7305.

SUPPLEMENTARY INFORMATION: USTR is providing notice that establishment of a dispute settlement panel has been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). If a dispute settlement panel is established, the panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by China

In its request for the establishment of a panel, China challenges the additional duties imposed by the United States on certain passenger vehicle and light truck tires from China pursuant to a Presidential determination and proclamation issued on September 11, 2009 under section 421 of the Trade Act of 1974, as amended (19 U.S.C. 2451). The President's determination can be found at 74 FR 47433 (September 16, 2009); the proclamation can be found at 74 FR 47861 (September 17, 2009). The related report by the U.S. International Trade Commission issued as part of the investigation can be found at *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China,* Investigation No. TA–421–7, USITC Publication No. 4085 (July 2009). The additional duties took effect on September 26, 2009. The request purports to include any other measures the United States has announced or may announce to implement the President's determination.

China alleges that the additional duties, not having been justified as emergency action under relevant WTO rules, are inconsistent with Article I:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), because the United States does not accord to Chinese tires the same treatment it accords to passenger vehicle and light truck tires from China originating in other countries; and with Article II of the GATT 1994, because the higher tariffs consist of unjustified modifications of U.S. concessions. China also alleges that these measures have not been properly justified pursuant to Article XIX of the GATT 1994 and the WTO *Agreement on Safeguards.* China also alleges that these measures have not been properly justified as China-specific restrictions under the *Protocol on the Accession of the People's Republic of China* (Protocol of Accession).

Furthermore, China alleges that the U.S. statute authorizing these China-specific restrictions is inconsistent on its face with Article 16 of the Protocol of Accession because, according to China, the statute impermissibly weakens the standard of "significant cause" by imposing a definition of the term that contradicts Article 16.4 of the Protocol of Accession. Finally, China alleges that the restrictions are inconsistent with Articles 16.1, 16.3, 16.4, and 16.6 of the Protocol of Accession.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2009–0035. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2009–0035 on the click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a "Type Comment and Upload File" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment and Upload File" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection. USTR will maintain a docket on this dispute settlement proceeding accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions,

received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

Steven F. Fabry,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2010–126 Filed 1–7–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2003–15962]

Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the U.S. Department of Transportation's (DOT) intention to request renewal of a previously approved information collection.

DATES: Comments on this notice must be received by March 9, 2010.

ADDRESSES: You may submit comments [identified by DOT Docket Number DOT–OST–2003–15962 by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–001.
- *Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Wednesday and Federal Holidays.

Instructions: All submissions must include the agency name and Docket Number DOT–OST–2003–15962. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. You should know that 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.*).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 a.m., Monday through Friday, except Wednesday and Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Title: Procedures and Evidence Rules for Air Carrier Authority Applications: 14 CFR Part 201—Air Carrier Authority under Subtitle VII of Title 49 of the United States Code—(Amended); 14 CFR Part 204—Data to Support Fitness Determinations; 14 CFR Part 291—Cargo Operations in Interstate Air Transportation.

OMB Control Number: 2106–0023.

Expiration Date: May 31, 2010.

Type of Request: Extension of a previously approved collection.

Abstract: In order to determine the fitness of persons seeking authority to engage in air transportation, the Department collects information from them about their ownership, citizenship, managerial competence, operating proposal, financial condition, and compliance history. The specific information to be filed by respondents is set forth in 14 CFR Parts 201 and 204.

Respondents: Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

Estimated Number of Respondents: 147.6.

Average Annual Burden per Respondent: 45.73 hours.

Estimated Total Burden on Respondents: 6,750 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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.

Issued in Washington, DC on January 4, 2010.

Todd M. Homan,

Director, Office of Aviation Analysis.

[FR Doc. 2010–134 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2003–15623]

Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the U.S. Department of Transportation's (DOT) intention to request renewal of a previously approved information collection.

DATES: Comments on this notice must be received by March 9, 2010.

ADDRESSES: You may submit comments [identified by DOT Docket Number DOT–OST–2003–15623] by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Wednesday and Federal Holidays.

Instructions: All submissions must include the agency name and Docket Number DOT–OST–2003–15962. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. You should know that 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.*).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 a.m., Monday through Friday, except Wednesday and Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Use and Change of Names of Air Carriers, Foreign Air Charters, and Commuter Air Carriers, 14 CFR part 215.

OMB Control Number: 2106–0043.

Type of Request: Renewal of a previously approved collection.

Abstract: In accordance with the procedures set forth in 14 CFR part 215, before a holder of certificated, foreign, or commuter air carrier authority may hold itself out to the public in any particular name or trade name, it must register that name or trade name with the Department, and notify all other certificated, foreign, and commuter air carriers that have registered the same or similar name(s) of the intended name registration.

Respondents: Persons seeking to use or change the name or trade name in which they hold themselves out to the public as an air carrier or foreign air carrier.

Estimated Number of Respondents: 12.

Estimated Total Burden on Respondents: 65 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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.

Issued in Washington, DC, on January 4, 2010.

James Dann,

Associate Director, Office of Aviation Analysis.

[FR Doc. 2010–135 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 26, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2007–0007.

Date Filed: December 22, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 12, 2010.

Description: Application of Baltia Air Lines, Inc. (Baltia), requesting that its experimental certificate of public convenience and necessity for foreign air transportation, Route 890 be extended for eight-month and that Baltia be reissued one round trip weekly frequency between New York and St. Petersburg, Russia.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 2010–127 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 12, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0329.

Date Filed: December 9, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 30, 2009.

Description: Application of Kalitta Air, L.L.C. requesting: (1) A certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of property and mail between a point or points in the United States and a point or points in China, via intermediate points, and beyond China to any point or points; (2) an exemption to the extent necessary authorizing the service described above; (3) designation as the additional U.S.-flag carrier permitted effective March 25, 2010; (4) allocation of six of the 15 scheduled all-cargo frequencies that become available March 25, 2010 or which are otherwise unused and available; (5) and motion to consolidate this application with the exemption application filed by Southern Air, Inc. to be considered contemporaneously.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 2010–131 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 19, 2009.

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0343.

Date Filed: December 16, 2009.

Parties: Members of the International Air Transport Association.

Subject:

TC3 Special Passenger Amending Resolution 010k between Japan, Korea (Rep. of) and China (excluding Hong Kong SAR and Macao SAR), and between Japan and Korea (Rep. of) (Memo 1342)

Intended effective date: 15 January 2010.

Docket Number: DOT–OST–2009–0346.

Date Filed: December 16, 2009.

Parties: Members of the International Air Transport Association.

Subject:

TC3 Areawide Revalidating Resolution 002, (Memo 1343)

Intended effective date: 1 April 2010.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–133 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 12, 2009

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0325.

Date Filed: December 8, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Japan, Korea, Resolutions and Specified Fares Tables (Memo 1331), *Intended effective date:* 1 April 2010.

Docket Number: DOT–OST–2009–0326.

Date Filed: December 8, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Japan, Korea—South Asian Subcontinent Resolutions and Specified Fares Tables, (Memo 1332) & Technical Corrections (Memo 1340), *Intended effective date:* 1 April 2010.

Docket Number: DOT–OST–2009–0327.

Date Filed: December 8, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Japan, Korea—South East Asia except between Korea (Rep. of) and Guam, Northern Mariana Islands Resolutions and Specified Fares Tables (Memo 1333) & Technical Corrections (Memo 1341), *Intended effective date:* 1 April 2010.

Docket Number: DOT–OST–2009–0328.

Date Filed: December 8, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Within South East Asia except between Malaysia and Guam Resolutions and Specified Fares Tables (Memo 1334), *Intended effective date:* 1 April 2010.

Docket Number: DOT–OST–2009–0330.

Date Filed: December 8, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 South East Asia-South Asian Subcontinent Resolutions and Specified Fares Tables (Memo 1335), *Intended effective date:* 1 April 2010.

Docket Number: DOT–OST–2009–0331.

Date Filed: December 8, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Within South Asian Subcontinent Resolutions (Memo 1336), *Intended effective date:* 1 April 2010.

Docket Number: DOT–OST–2009–0332.

Date Filed: December 8, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Within South East Asia from Malaysia to Guam Resolutions & Specified Fares Tables (Memo 1337), *Intended effective date:* 1 April 2010.

Docket Number: DOT–OST–2009–0333.

Date Filed: December 8, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Japan, Korea-South East Asia between Korea (Rep. of) and Guam, Northern Mariana Islands Resolutions & Specified Fares Tables (Memo 1338) & TC3 Minutes (Memo 1339), *Intended effective date:* 1 April 2010.

Docket Number: DOT–OST–2009–0334.

Date Filed: December 8, 2009.

Parties: Members of the International Air Transport Association.

Subject: Composite Passenger Tariff Coordinating Conference; Resolution 017c (Memo 1555), *Intended effective date:* 1 April 2010.

Docket Number: DOT–OST–2009–0335.

Date Filed: December 8, 2009.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 615—Flex Fares Package; TC23/123 Europe-Japan, Korea Resolutions (Memo 0192), *Intended effective date:* 1 April 2010.

Docket Number: DOT–OST–2009–0336.

Date Filed: December 8, 2009.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 614—Flex Fares Package; TC23 Europe-South East Asia Resolutions (Memo 0294), *Intended effective date:* 1 April 2010.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 2010–132 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, State Route 16 between the town of Brooks and Interstate 505 in the County Yolo, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public

of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 7, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Jeremy Ketchum, Caltrans Senior Environmental Planner, 2800 Gateway Oaks Drive, Sacramento, CA 95833 or call (916) 274–0621 or e-mail *jketchum@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans proposes to improve the safety of State Route 16 between the town of Brooks and Interstate 505 in Yolo County by realigning the highway and constructing 8-foot shoulders and a 20-foot clear recovery zone for the length of the project (excluding the towns of Capay and Esparto). The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on December 3, 2009, in the Finding of No Significant Impact (FONSI) issued on December 3, 2009, and in other documents in the FHWA project records. The EA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA and FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist3/projects/yolo16/documents.html*, or viewed at the Esparto Public Library located at 17065 Yolo Avenue, in Esparto, during normal business hours.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal Aid-Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16U.S.C. 703–712].
4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470]; Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303].
5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
6. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675.
7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1344].
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management: E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: January 4, 2010.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2010–110 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Invitation for Public Comment on Strategic Research Direction, Research Priority Areas and Performance Metrics To Guide Departmental Strategic Plan for Research, Development and Technology Activities (2010—2015)

AGENCY: Research and Innovative Technology Administration, DOT.

ACTION: Notice, request for public comments.

SUMMARY: The U.S. Department of Transportation (U.S. DOT) is providing notice that it is engaging in a strategic planning effort that will guide the Department's research, development, and technology activities as required by SAFETEA–LU. The Research and Innovative Technology Administration (RITA)'s Office of Research, Development, and Technology (RD&T) is coordinating this effort in collaboration with partner modal administrations and offices across the U.S. DOT. As recommended by the U.S. Government Accountability Office (GAO) and the National Research Council (NRC), RITA and its partners are seeking public stakeholder input on research strategies and metrics necessary to achieve U.S. DOT strategic transportation goals and to drive transportation policy in both the short and long terms.

The U.S. DOT's research, development, and technology (RD&T) efforts and outcomes play critical roles in attaining the vision of a safe, truly multimodal transportation system that provides the traveling public and U.S. businesses with safe, convenient, affordable and environmentally sustainable transportation choices. A previous DOT Research, Development, and Technology Strategic Plan was published in 2006 and served as a compendium of modal research pursuits at that time. The Department is now pursuing a more cross-modal, collaborative and strategic planning process to cover the years 2010–2015 and to address the proposed Departmental key priorities as outlined in the Background section.

DATES: *Comment Period:* Written comments should be submitted by February 8, 2010.

ADDRESSES: You may submit comments identified by RITA Docket ID Number RITA 2009–0005 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Identify docket number, RITA 2009–0005, at the beginning of your comments. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard containing the Docket number.

All comments received by DOT will be posted at *http://www.regulations.gov.*

All comments/questions will be posted electronically without change or edits, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments/questions filed in our dockets by the name of the individual submitting the comment or question (or signing the comment, if submitted on behalf of an association, corporation, business entity, 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://DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: M.J. Fiocco, Office of Research, Development and Technology, Research and Innovative Technology Administration, Telephone Number (202) 366–8018, or E-mail—*mj.fiocco@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA–LU) enacted in 2005 called for the U.S. DOT to develop a strategic plan to guide its RD&T activities. The strategic plan being pursued as outlined in this notice addresses this requirement and also responds to feedback from the National Research Council's review (*http://onlinepubs.trb.org/onlinepubs/reports/letterreport_usdotrd&tplan.pdf*) of an earlier plan, published in 2006, "Transportation Research, Development and Technology Strategic Plan 2006–2010" (*http://www.rita.dot.gov/publications/transportation_rd_t_strategic_plan/pdf/entire.pdf*), and the recommendations of the GAO report published in 2006, "Transportation Research: Opportunities for Improving the Oversight of DOT's Research Programs and User Satisfaction with Transportation" (*http://www.gao.gov/new.items/d06917.pdf*).

The U.S. DOT, with leadership and coordination from its Research and Innovative Technology Administration (RITA), is engaged in an ongoing collaborative process involving all of the U.S. DOT operating administrations. Two cross-modal bodies participate in this process: the RD&T Planning Council (composed of the heads of the operating administrations, the Under Secretary for Policy, and other senior U.S. DOT leaders) and the RD&T Planning Team, which includes the Associate Administrators for RD&T in each operating administration. Through this **Federal Register** notice, the U.S. DOT is seeking input from stakeholders including individual citizens, members of the private sector, the academic community, non-governmental organizations, and other interested parties.

Stakeholder suggestions for strategic research direction, research priority areas and performance metrics for research outcomes should be aligned, if possible, with the new key priorities for the Department, that will be set forth in the U.S. DOT's 2010–2015 Strategic Plan (which is still in development) for all federal transportation programs and activities. Other high priority research areas also are invited. Stakeholder suggestions also should provide overall guidance for DOT RD&T activities over the next five years and provide a high level view of appropriate research areas. Suggestions for longer term research needs also are welcome. These DOT key priorities include:

- Safety—Fostering a safety culture in our daily work and encouraging our partners, stakeholders and the public to redouble their efforts to reduce transportation-related fatalities and injuries.
- Livable Communities—Creating livable communities that provide residents with affordable transportation options to promote increased access to jobs, school, health services, and other activities for our citizens while improving the quality of life in their communities.
- State of Good Repair—Adequately maintaining and modernizing our vast, existing infrastructure to maximize its reliability, capacity and performance, to reduce operational and replacement costs and to extend the system's useful life.
- Economic Competitiveness—Achieving the maximum economic impact from our transportation investments and lay the groundwork for long-term economic growth and prosperity.
- Environmental Sustainability—Advancing transportation policies and investments that reduce carbon emissions and consumption of fossil fuels as well as protecting and enhancing natural resources.

The RD&T strategic planning process is collaborative, cross-modal, and forward looking, focusing on articulating the U.S. DOT's key research priorities with measurable outcomes over the next five years. The process is taking a department-wide, systems-level view of the multimodal transportation system, and is setting strategies to address research areas that stress a multi-modal-oriented perspective as well as a modal-specific and modal-funded perspective. The strategies described in the plan will be designed to ensure that RD&T resources are invested wisely to achieve measurable improvements in our Nation's transportation system.

Issued in Washington, DC on December 23, 2009.

Robert L. Bertini,

Deputy Administrator.

[FR Doc. E9–30944 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held February 11, 2010, from 10 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org. METRO: L'Enfant Plaza Station (Use 7th & Maryland Exit*).

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions)
- Trajectory Operations (TOps) Work Group Status Report
- NextGen Implementation Work Group (NGIWG) Report, Discussion, and Next Steps
- Airspace Work Group Annual Report and Recommendations
- Closing Plenary (Other Business, Adjourn)

Note: Please arrive in the FAA lobby by 9:30 a.m. to allow ample time for security and check in procedures.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 29, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–147 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0191; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2005 and 2006 Mercedes Benz S-Class Passenger Cars Manufactured Before September 1, 2006, Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2005 and 2006 Mercedes Benz S-Class passenger cars manufactured before September 1, 2006, are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2005 and 2006 Mercedes Benz S-Class passenger cars manufactured before September 1, 2006, that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2005 and 2006 Mercedes Benz S-Class passenger cars manufactured before September 1, 2006,) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 8, 2010.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

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 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov*.

Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Technologies, LLC ("JK"), of Baltimore, Maryland (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2005 and 2006 Mercedes Benz S–Class passenger cars manufactured before September 1, 2006 are eligible for importation into the United States. The vehicles which JK believes are substantially similar are 2005 and 2006 Mercedes Benz S–Class passenger cars manufactured before September 1, 2006 that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner states that it compared non-U.S. certified 2005 and 2006 Mercedes Benz S–Class passenger cars manufactured before September 1, 2006 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

JK submitted information with its petition intended to demonstrate that non-U.S. certified 2005 and 2006 Mercedes Benz S–Class passenger cars manufactured before September 1, 2006, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2005 and 2006

Mercedes Benz S–Class passenger cars manufactured before September 1, 2006 are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) replacement of the instrument cluster with a U.S.-model component; (b) installation or activation of the U.S.-version control and display software and (c) installation of a U.S.-model cruise control lever.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of the following U.S.-model components on vehicles that are not already so equipped: (a) Front sidemarker lamps; (b) headlamps; (c) tail lamps with integral rear side marker lamps.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection:* Installation of a supplemental key warning buzzer, or installation or activation of U.S.-version software to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Installation or activation of U.S.-version software in the vehicle's computer system to meet the requirements of this standard on vehicles that do not already have this software installed or activated.

Standard No. 208 *Occupant Crash Protection:* Inspection of all vehicles and replacement of any non U.S.-model seat belts, and (b) installation or activation of U.S.-version software to ensure that the seat belt warning system meets the requirements of this standard.

The petitioner states that with the exemption of the seat belts the occupant crash protection system used in these vehicles is identical to that found in the U.S.-certified model.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and installation of U.S.-model seat belts on vehicles that are not already so equipped.

Standard No. 225 *Child Restraint Anchorage Systems:* Inspection of all vehicles and installation of U.S.-model child restraint anchorage system components on vehicles not already so equipped.

Standard No. 401 *Interior Trunk Release:* Inspection of all vehicles and installation of U.S.-model components on vehicles not already so equipped.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 4, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–56 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Laroe Winn Moerman & Donovan on behalf of plaintiffs in connection with the antitrust litigation pending in the United States District Court for the District of Columbia captioned *In re* RAIL FREIGHT FUEL SURCHARGE ANTITRUST LITIGATION, MDL Docket No. 1869 (WB10–015–12/17/09), for permission to use certain data from the Board's 1985 through 2008 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–85 Filed 1–7–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35340]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Pursuant to a written trackage rights agreement dated December 17, 2009, Union Pacific Railroad Company (UP) has agreed to grant temporary nonexclusive overhead trackage rights to BNSF Railway Company (BNSF) over UP lines extending between: (1) UP milepost 93.2 at Stockton, CA, on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, CA, on UP's Canyon Subdivision, a distance of approximately 126.2 miles; and (2) UP milepost 219.4 at Elsey, CA, and UP milepost 280.7 at Keddie, CA, on UP's Canyon Subdivision, a distance of 61.3 miles.

The transaction is scheduled to be consummated on January 22, 2010, the effective date of the exemption (30 days after the exemption is filed).

The nonexclusive overhead trackage rights will permit BNSF to handle ballast trains of company material for use in the maintenance of BNSF's tracks. The trackage rights are temporary in nature and are for a period from January 22, 2010 through December 10, 2010.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any

employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by January 15, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35340, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Adrian L. Steel, Jr., Mayer Brown LLP, 1999 K Street, NW., Washington, DC 20006–1101.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 31, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–31405 Filed 1–7–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (Supplier)]

Agency Information Collection (Supplier Perception Survey) Activity Under OMB Review

AGENCY: Office of Acquisition, Logistics and Construction, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Office of Acquisition, Logistics and Construction, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 8, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (Supplier)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–New (Supplier)."

SUPPLEMENTARY INFORMATION:

Title: Department of Veterans Affairs Supplier Perception Survey.

OMB Control Number: 2900–New (Supplier).

Type of Review: New collection.

Abstract: The data collected will be used to improve the quality of services delivered to VA customers and to help develop key performance indicators in acquisition and logistics operations across VA enterprise.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 4, 2009, on pages 57220–57221.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 48,600 hours.

Estimated Average Burden per Respondent: 32 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 90,240.

Dated: January 5, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–121 Filed 1–7–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0476)]

Agency Information Collection (Survey of Appropriate and Timely Diagnosis of Infectious Diseases) Activity Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATE: Comments must be submitted on or before February 8, 2010.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (VA Form 10–0476)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–New (VA Form 10–0476)."

SUPPLEMENTARY INFORMATION:

Titles:

a. Survey of Appropriate and Timely Diagnosis of Infectious Diseases (Leishmaniasis), VA Form 10–0476.

b. Survey of Appropriate and Timely Diagnosis of Infectious Diseases (Malaria), VA Form 10–0476a.

OMB Control Number: 2900–New (VA Form 10–0476).

Type of Review: New collection.

Abstract: The data collected will be used to determine whether rural veterans have difficulty receiving appropriate and timely care for infectious diseases acquired while in Iraq or Afghanistan compared to veterans residing in urban areas.

An agency may not conduct or sponsor, and a person is not required to

respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 4, 2009, on pages 57219–57220.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 8 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 100.

Dated: January 5, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst,Enterprise Records Service.

[FR Doc. 2010–122 Filed 1–7–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (10–0478)]

Agency Information Collection (Health-Care Use Survey for Enduring Freedom and Operation Iraqi Freedom (OEF/OIF) Veterans) Activity Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATE: Comments must be submitted on or before February 8, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (10–0478)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–New (10–0478)."

SUPPLEMENTARY INFORMATION:

Title: Health-Care Use Survey for Enduring Freedom and Operation Iraqi Freedom (OEF/OIF) Veterans.

OMB Control Number: 2900–New (10–0478).

Type of Review: New collection.

Abstract: The data collected will be used to better understand the factors that impact Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) veterans' use of healthcare services, both within and outside of the VA.

The objectives of the study are to: (1) Examine the stigma-related barriers to VA health care; (2) document unique barriers to VA care for women and men; and (3) provide reliable and valid measures of barriers to care that can be used by other researchers to study factors that influence veterans' health care behaviors.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 4, 2009, at page 57221.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,058.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,410.

Dated: January 5, 2010.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–123 Filed 1–7–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
January 8, 2010

Part II

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products (Dishwashers, Dehumidifiers, Microwave Ovens, and Electric and Gas Kitchen Ranges and Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers); Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2006–STD–0127]

RIN 1904–AB93

Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products (Dishwashers, Dehumidifiers, Microwave Ovens, and Electric and Gas Kitchen Ranges and Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is adopting amended energy conservation standards for commercial clothes washers (CCWs). DOE has determined that amended energy conservation standards for these types of equipment would result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is March 9, 2010. The standards established in today's final rule will be applicable starting January 8, 2013.

ADDRESSES: For access to the docket to read background documents, the technical support document, transcripts of the public meetings in this proceeding, or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. (**Note**: DOE's Freedom of Information Reading Room no longer houses rulemaking materials.) You may also obtain copies of certain previous rulemaking documents in this proceeding (*i.e.,* framework document, advance notice of proposed rulemaking, notice of proposed rulemaking, supplemental notice of proposed rulemaking), draft analyses, public meeting materials, and related test procedure documents from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/clothes_washers.html.*

FOR FURTHER INFORMATION CONTACT: Stephen Witkowski, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585 Telephone: (202) 586–7463. E-mail: *Stephen.Witkowski@ee.doe.gov.*

Francine Pinto, Esq. or Betsy Kohl, Esq., U.S. Department of Energy, Office of General Counsel, GC–71/72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–7432, (202) 586–7796. E-mail: *Francine.Pinto@hq.doe.gov, Elizabeth.Kohl@hq.doe.gov.*

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I. Summary of the Final Rule and Its Benefits

A. The Standard Levels

The Energy Policy and Conservation Act[1] (EPCA), as amended (42 U.S.C. 6291 *et seq.;* EPCA), directs the Department of Energy (DOE) to consider amended mandatory energy conservation standards for CCWs. (42 U.S.C. 6313(e)(2)(A)) Any such amended energy conservation standard must be designed to "achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified." (42 U.S.C. 6295(o)(2)(A) and 6316(a)) Furthermore, any new or amended standard must "result in significant conservation of energy." (42 U.S.C. 6295(o)(3)(B) and 6316(a)) The standards in today's final rule, which apply to all CCWs, satisfy these and other statutory criteria discussed in this notice.

Table I.1 shows the amended standard levels that DOE is adopting today. These standards will apply to all CCWs manufactured for sale in the United States, or imported to the United States, on or after January 8, 2013.

TABLE I.1—AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL CLOTHES WASHERS

Equipment class	Amended energy conservation standards
Top-loading commercial clothes washers.	1.60 Modified Energy Factor/8.5 Water Factor.
Front-loading commercial clothes washers.	2.00 Modified Energy Factor/5.5 Water Factor.

B. Current Federal Standards for Commercial Clothes Washers

EPCA, as amended by the Energy Policy Act of 2005 (EPACT 2005), prescribes standards for CCWs manufactured on or after January 1, 2007. (42 U.S.C. 6313(e)) These standards require that CCWs have a modified energy factor (MEF) of at least 1.26 and a water factor (WF) of not more than 9.5. (*Id.;* 10 CFR 431.156)

C. Benefits to Consumers of Commercial Clothes Washers

Table I.2 indicates the impacts on commercial consumers of today's amended standards. The economic impacts of the amended CCW standards on commercial consumers as measured by the average life-cycle cost (LCC) savings are positive, even though the standards may increase some initial costs. For example, typical top-loading CCWs—the most common type currently being sold—have an average installed price of $760 and average lifetime operating costs (discounted) of $3,286. To meet the amended standards, DOE estimates that the average installed price of such equipment will increase by $214, which will be more than offset by savings of $394 in average lifetime operating costs (discounted).

TABLE I.2—IMPLICATIONS OF AMENDED STANDARDS FOR COMMERCIAL CONSUMERS

Equipment class	Energy conservation standard	Average installed price * $	Average installed price increase $	Average life-cycle cost savings $	Median payback period *years*
Top-loading CCWs	1.60 Modified Energy Factor/8.5 Water Factor	974	214	180	4.3
Front-loading CCWs	2.00 Modified Energy Factor/5.5 Water Factor	1,365	23	** 20	** 0.4

* For a baseline model.
** DOE estimates that 96 percent of front-loading CCW consumers would purchase a model at the standard level even without amended standards. The values refer to average impacts for the 4 percent of consumers who would be affected by the standard.

D. Impact on Manufacturers

Using a real corporate discount rate of 7.2 percent, DOE estimates the industry net present value (INPV) of the CCW industry to be approximately $62 million in 2008$. DOE expects the impact of today's standards on the INPV of manufacturers of CCWs to be a loss of between 7.8 percent and 11.4 percent of the INPV, which is approximately $5 to $7 million. Based on DOE's interviews with the manufacturers of CCWs, DOE expects possible loss of employment for one manufacturer as a result of the standards.

E. National Benefits

DOE estimates that the energy conservation standards will save a significant amount of energy—an estimated 0.10 quadrillion British thermal units (Btu), or quads, of cumulative energy over 30 years (2013–2043). This amount is equivalent to 2 days of U.S. gasoline use. In addition, DOE estimates the standards for CCWs will save over 143 billion gallons of cumulative water consumption over 30 years (2013–2043).

The national net present value (NPV) of CCW consumer benefit resulting from the standards, considering the impacts of equipment sold in 2013–2043, is $0.4 billion using a 7-percent discount rate and $0.9 billion using a 3-percent discount rate, in 2008$. This is the estimated total value of future operating cost savings minus the estimated increased equipment costs, discounted to 2009. The NPV for consumers (at the 7-percent discount rate) would exceed industry losses, discussed above, due to energy efficiency standards by at least 80 times.

By 2043, DOE expects the energy savings from the standards to eliminate the need for approximately 18 MW of electricity generating capacity. The energy savings will result in cumulative greenhouse gas emissions reductions in 2013–2043 of approximately 5.1 million tons (Mt) of carbon dioxide (CO_2), or an amount equal to that produced by approximately 5.1 million new cars in a year. Additionally, the standards will help alleviate air pollution by resulting in approximately 3.0 kilotons (kt) of cumulative nitrogen oxide (NO_X) emission reductions and 0.0003 tons of cumulative mercury (Hg) emission reductions. The estimated net present monetary values of these emissions reductions at a 7-percent discount rate (discounted to 2009 and expressed in 2008$) are between $13 and $140 million for CO_2, between $0.4 and $4.2

[1] 42 U.S.C. 6291 *et seq.*

million for NO_X, and between $0.0 and $0.6 million for Hg. At a 3-percent discount rate, the estimated net present values of these emissions reductions (discounted to 2009 and expressed in 2008$) are between $28 and $303 million for CO_2, between $0.8 million and $8.4 million for NO_X, and between $0.0 and $0.6 million for Hg.

The benefits and costs of today's final rule can also be expressed in terms of annualized values. Estimates of annualized values for three economic growth cases are shown in Table I.3. The annualized monetary values are the sum of the annualized national economic value of operating savings benefits (energy, maintenance and repair), plus the monetary values of the benefits of carbon dioxide emission reductions, monetized using a value of $20 per metric ton of carbon dioxide. The $20 value is a central interim value from a recent interagency process, as discussed in section VI.C.6. Although summing the value of operating savings to the values of CO_2 reductions provides a valuable perspective, please note the following. The national operating savings are domestic U.S. consumer monetary savings found in market transactions while the CO_2 value is based on a range of estimates of imputed marginal social cost of carbon, which are meant to reflect the global benefits of CO_2 reductions. Furthermore, the assessments of operating savings and CO_2 savings are performed with different computer models, leading to different time frames for analysis. The present value of national operating savings considers the impacts of equipment sold in 2013–2043. The value of CO_2, on the other hand is meant to reflect the present value of all future climate-related impacts, which go well beyond the lifetime of the equipment sold in the forecast period.

Using a 7-percent discount rate for the annualized cost analysis, the cost of the standards established in today's final rule for CCWs is $23.4 million per year in increased equipment and installation costs, while the annualized benefits are $60.6 million per year in reduced equipment operating costs and $5.1 million in CO_2 reductions, for a net benefit of $42.2 million per year. Using a 3-percent discount rate, the cost of the standards established in today's final rule is $22.7 million per year in increased equipment and installation costs, while the benefits of today's standards are $72.8 million per year in reduced operating costs and $5.9 million in CO_2 reductions, for a net benefit of $56.0 million per year.

TABLE I.3—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS FOR COMMERCIAL CLOTHES WASHERS (TSL 3)

Category	Unit	Primary estimate (*AEO* reference case)		Low estimate (*AEO* low-growth case)		High estimate (*AEO* high-growth case)	
		7%	3%	7%	3%	7%	3%
Benefits							
Monetized Operating Cost Savings	*Million 2008$*	60.6	72.8	54.9	65.3	66.6	80.4
Quantified Emissions Reductions	CO_2 *(Mt)*	0.14	0.16	0.14	0.16	0.14	0.16
	NO_X *(kt)*	0.087	0.194	0.087	0.194	0.087	0.194
	Hg *(t)*	0.0002	0.0001	0.0002	0.0001	0.0002	0.0001
Monetized Avoided Emissions Reductions (*Million 2008$*).	CO_2	5.1	5.9	5.1	5.9	5.1	5.9
	NO_X	0.2	0.3	0.2	0.3	0.2	0.3
	Hg	0.0	0.0	0.0	0.0	0.0	0.0
Costs							
Monetized Incremental Product and Installation Costs.	*Million 2008$*	23.4	22.7	21.9	20.9	24.6	23.9
Net Benefits							
Monetized Value	*Million 2008$*	42.5	56.3	38.3	50.6	47.3	62.7

* For CO_2, benefits reflect value of $20/t, which is in the middle of the values considered by DOE for valuing the potential global benefits resulting from reduced CO_2 emissions. For NO_X and Hg, the benefits reflect values of $2,491/t and $17 million/t, respectively. These values are the midpoint of the range considered by DOE.

F. Conclusion

The benefits (energy savings, LCC savings for CCW consumers, positive national NPV, and emissions reductions) to the Nation of the standards outweigh their costs (loss of manufacturer INPV and LCC increases for some CCW consumers). Today's standards also represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in significant energy savings. At present, CCWs that meet the amended standard levels are commercially available.

II. Introduction

A. Consumer Overview

DOE is amending in today's final rule energy conservation standard levels for CCWs as shown in Table I.1. These standards apply to equipment manufactured or imported on or after January 8, 2013.

DOE research suggests that commercial consumers will see benefits from today's standards even though DOE expects the purchase price of the high efficiency CCWs to increase (by 2 to 28 percent) from the average price of this equipment today. However, the energy efficiency gains are expected to result in lower energy and water costs, saving consumers $53 to $103 per year on their energy and water bills, again depending on the equipment class. When these savings are summed over the lifetime of the equipment, consumers are expected to save an average of $20 to $190, depending on the equipment class, utility costs, and other factors. DOE estimates that the payback period (PBP) for the more efficient, higher-priced equipment will range from 0.2 to 5.6 years, depending on the equipment class.

B. Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A–1 of Title III (42 U.S.C. 6311–6317) establishes an energy conservation program for "Certain Industrial Equipment," which deals with a variety of commercial and industrial equipment (referred to hereafter as "covered equipment") including CCWs, the subject of this rulemaking. (42 U.S.C. 6312; 6313(e)) DOE publishes today's final rule pursuant to Part A–1 of Title III, which provides for test procedures, labeling, and energy conservation standards for CCWs and certain other equipment, and authorizes DOE to require information and reports from manufacturers. The test procedures for CCWs appear at 10 CFR part 430, subpart B, appendix J1 (pursuant to 10 CFR 431.154).

Section 136(a) and (e) of the Energy Policy Act of 2005 (EPACT 2005; Pub. L. 109–058) added CCWs as equipment covered under EPCA and established standards for such equipment that is manufactured on or after January 1, 2007.[2] (42 U.S.C. 6311(1) and 6313(e)) These amendments to EPCA also require that DOE issue a final rule by January 1, 2010, to determine whether these standards should be amended. (EPACT 2005, section 136(e); 42 U.S.C. 6313(e)) If amended standards are justified, they would become effective no later than January 1, 2013. (*Id.*)

EPCA provides criteria for prescribing amended standards for covered products and equipment.[3] As indicated above, any amended standard for this equipment must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a)) Additionally, EPCA provides specific prohibitions on prescribing such standards. DOE may not prescribe an amended or new standard for any equipment for which DOE has not established a test procedure. (42 U.S.C. 6295(o)(3)(A) and 6316(a)). Further, DOE may not prescribe an amended standard if DOE determines by rule that such standard would not result in "significant conservation of energy" or "is not technologically feasible or economically justified." (42 U.S.C. 6295(o)(3)(B) and 6316(a))

EPCA also provides that, in deciding whether such a standard is economically justified for equipment such as CCWs, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the products or equipment subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products or equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;

(3) The total projected amount of energy (or, as applicable, water) savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products or equipment likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a))

In addition, EPCA, as amended (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a)), establishes a rebuttable presumption that any standard for covered products is economically justified if the Secretary finds that "the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure * * *" in place for that standard. See section III.D.2.

Furthermore, EPCA contains what is commonly known as an "anti-backsliding" provision. (42 U.S.C. 6295(o)(1) and 6316(a)) This provision prohibits the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product or equipment. EPCA further provides that the Secretary may not prescribe an amended standard if interested persons have established by a preponderance of the evidence that the standard is "likely to result in the unavailability in the United States of any product type (or class)" with performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4) and 6316(a))

Section 325(q)(1) of EPCA is applicable to promulgating standards for most types or classes of equipment, including CCWs, that have two or more subcategories. (42 U.S.C. 6295(q)(1) and 42 U.S.C. 6316(a)) Under this provision, DOE must specify a different standard level than that which applies generally to such type or class of products or equipment "for any group of covered products which have the same function or intended use, if * * * covered products within such group—(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard" than applies or will apply to the other products. (42 U.S.C. 6295(q)(1)(A) and (B)) In determining whether a performance-related feature justifies such a different standard for a group of equipment, DOE must consider "such factors as the utility to the consumer of such a feature" and other factors DOE deems appropriate. (42 U.S.C. 6295(q)(1)) Any rule prescribing such a standard must include an explanation of the basis on which DOE established such higher or lower level. (See 42 U.S.C. 6295(q)(2))

Federal energy conservation requirements for commercial equipment, including CCWs, generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c); 42 U.S.C. 6316(a)) DOE can, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA found in 42 U.S.C. 6297(d). Specifically, States that regulate an energy conservation standard for a type of covered product for which there is a Federal energy conservation standard may petition the Secretary for a DOE rule that allows the State regulation to become effective with respect to such covered product. (42 U.S.C. 6297(d)(1)(A); 42 U.S.C. 6316(a)) DOE must prescribe a rule granting the petition if the Secretary finds that the

[2] Under the statute, a CCW must have an MEF of at least 1.26 and a WF of not more than 9.5.

[3] The EPCA provisions discussed in the remainder of this subsection directly apply to covered products, and also apply to certain covered equipment, such as CCWs, by virtue of 42 U.S.C. 6316(a). Note that the term "product" is used generally to refer to consumer appliances, while "equipment" is used generally to refer to commercial units.

State has established by a preponderance of the evidence that its regulation is needed to meet "unusual and compelling State or local energy * * * interests." (42 U.S.C. 6297(d)(1)(B); 42 U.S.C. 6316(a))

C. Background

1. Current Standards

EPCA, as amended by EPACT 2005, prescribes energy conservation standards for CCWs manufactured on or after January 1, 2007. (42 U.S.C. 6313(e)) These standards require that CCWs have an MEF of at least 1.26 cubic feet of capacity (ft^3) per kilowatt-hour (kWh) and a WF of not more than 9.5 gallons of water (gal) per ft^3. (*Id.;* 10 CFR 431.156)

2. History of Standards Rulemaking

As discussed in the supplemental notice of proposed rulemaking (SNOPR), 74 FR 57738 (Nov. 9, 2009) (the November 2009 SNOPR), the EPACT 2005 amendments to EPCA require that DOE issue a final rule by January 1, 2010, to determine whether standards for CCWs should be amended. (EPACT 2005, section 136(e); 42 U.S.C. 6313(e)) If amended standards are justified, they would become effective no later than January 1, 2013. (*Id.*)

To initiate the current rulemaking to consider energy conservation standards, on March 15, 2006, DOE published on its Web site a document titled, *Rulemaking Framework for Commercial Clothes Washers and Residential Dishwashers, Dehumidifiers, and Cooking Products* (Framework Document).[4] 71 FR 15059 (March 27, 2006). The Framework Document described the procedural and analytical approaches that DOE anticipated using to evaluate energy conservation standards for these products, and identified various issues to be resolved in conducting the rulemaking. DOE held a public meeting on April 27, 2006, to present the Framework Document, to describe the analyses it planned to conduct during the rulemaking, to receive comments from interested parties, and to inform and facilitate interested parties' involvement in the rulemaking. DOE received 11 written comments in response to the Framework Document after the public meeting.

DOE published the advance notice of proposed rulemaking (ANOPR) for this rulemaking on November 15, 2007 (November 2007 ANOPR) (72 FR 64432), and held a public meeting on December 13, 2007, to present and seek comment on the November 2007 ANOPR analytical methodology and results. The November 2007 ANOPR included background information on the history and conduct of this rulemaking. 72 FR 64432, 64438–39 (Nov. 15, 2007) In the November 2007 ANOPR, DOE described and sought further comment on the analytical framework, models, and tools (*e.g.,* LCC and NIA spreadsheets) it was using to analyze the impacts of energy conservation standards for these products. In conjunction with the November 2007 ANOPR, DOE also posted on its Web site the complete November 2007 ANOPR technical support document (TSD). The TSD included the results of a number of DOE's preliminary analyses in this rulemaking. In the November 2007 ANOPR and at the public meeting, DOE invited comment in particular on the following issues concerning CCWs: (1) Product classes; (2) horizontal-axis designs; (3) technologies unable to be analyzed and exempted product classes, including potential limitations of existing test procedures; (4) per-cycle energy consumption; (5) consumer prices; (6) repair and maintenance costs; (7) efficiency distributions in the base case; (8) shipments forecasts; (9) base-case and standards-case forecasted efficiencies; and (10) TSLs. 72 FR 64432, 64512–14 (Nov. 15, 2007).

On October 17, 2008, DOE published a NOPR (October 2008 NOPR) in the **Federal Register,** in which it proposed amended energy conservation standards for certain products and equipment, including CCWs. 73 FR 62034. The energy conservation standards proposed in the October 2008 NOPR for CCWs are shown in Table II.1.

TABLE II.1—COMMERCIAL CLOTHES WASHER ENERGY CONSERVATION STANDARDS PROPOSED IN THE OCTOBER 2008 NOPR

Equipment	Modified energy factor *ft^3/kWh*	Water factor *gal/ft^3*
Top-loading CCWs	1.76	8.3
Front-loading CCWs	2.00	5.5

In the October 2008 NOPR, DOE described and sought further comment on the analytical framework, models, and tools (*e.g.,* LCC and NIA spreadsheets) it was using to analyze the impacts of energy conservation standards for this equipment. In conjunction with the October 2008 NOPR, DOE also posted on its Web site the complete TSD, which along with the October 2008 NOPR, is available at *http://www1.eere.energy.gov/buildings/appliance_standards/*. The TSD included the results of a number of DOE's analyses. In the October 2008 NOPR and at the public meeting held on November 13, 2008 (referred to as the "November 2008 public meeting"), DOE invited comment in particular on the following issues concerning CCWs: (1) The efficiency levels; (2) DOE's determination of the maximum technologically feasible (max-tech) efficiency levels for top-loading and front-loading CCWs; (3) the magnitude of possible equipment class shifting to front-loading CCWs; (4) the analysis and data relevant to the price elasticity of demand for calculating the anticipated energy and water savings at different TSLs; (5) the analysis of consumer knowledge of the Federal ENERGY STAR program and its potential as a resource for increasing knowledge of the availability and benefits of energy efficient appliances in the home appliance consumer market; (6) discount rates other than 7 percent and 3 percent real to discount future emissions reductions; (7) data that might enable DOE to test for market failures or other specific problems for CCWs; and (8) the determination of anticipated environmental impacts of the standards proposed in the October 2008 NOPR, particularly with respect to the methods for valuing the expected CO_2 and NO_X emissions savings. 73 FR 62034, 62133 (Oct. 17, 2008).

The October 2008 NOPR also included background information, in

[4] This document is available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/clothes_washers.html.*

addition to that set forth above, on the history and conduct of this rulemaking. 73 FR 62034, 62040–62041 (Oct. 17, 2008). DOE presented the methodologies and results for the October 2008 NOPR analyses at the November 2008 public meeting. Comments presented by interested parties during this meeting and submitted in response to the October 2008 NOPR concerning the accuracy of the stated max-tech CCW efficiency level led to a thorough investigation of CCW efficiencies and the November 2009 SNOPR. DOE subsequently tested the max-tech unit at an independent test facility, revised the max-tech level, updated the analysis, and published the November 2008 SNOPR to allow interested parties to comment on the revised efficiency level proposals. 74 FR 57738 (Nov. 9, 2009).

In the November 2009 SNOPR, DOE revised the proposed energy conservation standards for CCWs. 74 FR 57738 (Nov. 9, 2009). In conjunction with the November 2009 SNOPR, DOE also published on its Web site the complete TSD for the proposed rule, which incorporated the final analyses that DOE conducted, and contained technical documentation for each step of the analysis. The TSD included the engineering analysis spreadsheets, the LCC spreadsheet, and the national impact analysis spreadsheet. The revised energy conservation standards proposed in the November 2009 SNOPR for CCWs are shown in Table II.2.

TABLE II.2—COMMERCIAL CLOTHES WASHER ENERGY CONSERVATION STANDARDS PROPOSED IN THE NOVEMBER 2009 SNOPR

Equipment	Modified energy factor ft^3/kWh	Water factor gal/ft^3
Top-loading CCWs	1.60	8.5
Front-loading CCWs	2.00	5.5

In the November 2009 SNOPR, DOE identified issues on which it was particularly interested in receiving comments and views of interested parties. These included the following: (1) Whether the method of "loading" clothes washers, or any other characteristic commonly associated with traditional "top-loading" or "front-loading" clothes washers, are "features" within the meaning of 42 U.S.C. 6295(o)(4) in EPCA and whether the availability of such feature(s) would likely be affected by eliminating the separate classes for these equipment types previously established by DOE; (2) the revised efficiency levels, including the revised max-tech level for top-loading CCWs; (3) technological feasibility of the proposed max-tech CCW, including washing and rinsing performance measures for CCWs and population data for water heating CCWs; (4) the determination of manufacturer impacts, including the effects of manufacturer tax credits and competitive concerns; (5) the determination of environmental impacts; and (6) the newly proposed energy conservation standards. 74 FR 57738, 57800 (Nov. 9, 2009) After the publication of the November 2009 SNOPR, DOE also held a public meeting in Washington, DC, on November 16, 2009 (referred to as the "November 2009 public meeting"), to hear oral comments on and solicit information relevant to the revised proposed rule. The November 2009 SNOPR included additional background information on the history of this rulemaking. 74 FR 57738, 57742–43 (Nov. 9, 2009).

Comments presented by interested parties during the November 2009 public meeting and submitted in response to the November 2009 NOPR concerning the sensitivity of the analyses to the estimated market share split of CCW shipments among laundromats, multi-family housing, and on-premises laundry applications led DOE to conduct a sensitivity analysis for today's final rule. See appendix 11C of the TSD.

III. General Discussion

A. Test Procedures

EPCA directs DOE to use the same test procedures for CCWs as those established by DOE for residential clothes washers (RCWs). (42 U.S.C. 6314(a)(8)) 73 FR 62034, 62043–44 (Oct. 17, 2008). While DOE believes commercial laundry practices likely differ from residential practices,[5] DOE concluded in the October 2008 NOPR that the existing clothes washer test procedure (at 10 CFR part 430, subpart B, appendix J1) adequately accounts for the efficiency rating of CCWs, and that DOE's methods for characterizing energy and water use in the October 2008 NOPR analyses adequately accounted for the consumer usage patterns specific to CCWs. In response to the October 2008 NOPR, interested parties agreed with DOE's conclusion that the DOE clothes washer test procedure is adequate for rating CCWs. DOE did not receive any comments objecting to the use of the DOE clothes washer test procedure for CCWs. Therefore, for the November 2009 SNOPR, DOE continued to consider the existing DOE test procedure adequate to measure energy and water consumption of CCWs. 74 FR 57738, 57743 (Nov. 9, 2009).

The Appliance Standards Awareness Project (ASAP) commented that DOE is currently reviewing its clothes washer test procedure, and noted that there may be revisions as a result of that rulemaking. ASAP asked whether, under EPACT 2005, those potential changes in the test procedure would apply to the determinations of compliance with this standard that is currently proposed for CCWs. (ASAP, Public Meeting Transcript, No. 67.4 at pp. 13–16[6]) EPCA states that "[w]ith respect to commercial clothes washers, the test procedures shall be the same as the test procedures established by the Secretary for RCWs under section 6295(g) of this title." (42 U.S.C. 6314(a)(8)) Therefore, CCWs will be required to be tested to the DOE clothes washer test procedure that is effective at the time the testing is conducted.

B. Technological Feasibility

1. General

As stated above, any standards that DOE establishes for CCWs must be technologically feasible. (42 U.S.C.

[5] CCWs are typically used more frequently and filled with a larger load than RCWs.

[6] A notation in the form "ASAP, Public Meeting Transcript, No. 67.4 at pp. 13–16" identifies an oral comment that DOE received during the November 16, 2009, SNOPR public meeting and which was recorded in the public meeting transcript in the docket for this rulemaking (Docket No. EE–2006–STD–0127), maintained in the Resource Room of the Building Technologies Program. This particular notation refers to a comment (1) made by the Appliance Standards Awareness Project (ASAP) during the public meeting, (2) recorded in document number 67.4, which is the public meeting transcript that is filed in the docket of this rulemaking, and (3) which appears on pages 13–16 of document number 67.4.

6295(o)(2)(A) and (o)(3)(B); 42 U.S.C. 6316(a)) DOE considers a design option to be technologically feasible if it is in use by the respective industry or if research has progressed to the development of a working prototype. "Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible." 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i). Therefore, in each standards rulemaking, DOE conducts a screening analysis, based on information it has gathered regarding existing technology options and prototype designs. In consultation with manufacturers, design engineers, and other interested parties, DOE develops a list of design options for consideration in the rulemaking. Once DOE has determined that a particular design option is technologically feasible, it further evaluates each design option in light of the following three additional criteria: (a) Practicability to manufacture, install, and service; (b) adverse impacts on product utility or availability; or (c) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(3) and (4). All design options that pass these screening criteria are candidates for further assessment in the engineering and subsequent analyses in the NOPR (or SNOPR) stage.

DOE published a list of evaluated CCW technologies in the November 2007 ANOPR. 72 FR 64432, 64458 (Nov. 15, 2007). For the reasons described in the November 2007 ANOPR and in chapter 4 of the TSD, DOE is not considering the following design options, as they do not meet one or more of the screening criteria: Bubble action, electrolytic disassociation of water, ozonated laundering, reduced thermal mass, suds-saving, and ultrasonic washing. In the November 2009 SNOPR, DOE did not screen out any additional technology options that were retained in the October 2008 NOPR analyses. No comments were received objecting to the technology options which were screened out in the October 2008 NOPR. 73 FR 62034, 62052 (Oct. 17, 2008). Therefore, DOE considered the same design options in the November 2009 SNOPR as those evaluated in the October 2008 NOPR. 74 FR 57738, 57743–44 (Nov. 9, 2009).

This final rule considers the same design options as those evaluated in the November 2009 SNOPR. All the evaluated technologies have been used (or are being used) in commercially available equipment or working prototypes. DOE also has determined that there is equipment either in the market or in working prototypes at all of the efficiency levels analyzed in this notice. Therefore, DOE has determined that all of the efficiency levels evaluated in this final rule, which are based upon the retained design options, are technologically feasible. For more detail on DOE's method for developing CCW technology options and the process for screening these options, refer to the chapters 3 and 4 of the TSD.

2. Maximum Technologically Feasible Levels

When DOE considers an amended standard for a type (or class) of equipment such as front-loading or top-loading CCWs, it must "determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible" for such equipment. (42 U.S.C. 6295(p)(2) and 6316(a)) For the October 2008 NOPR, DOE determined the max-tech efficiency levels for front-loading and top-loading CCWs in the engineering analysis, based on published MEF and WF values of commercially available equipment. (See chapter 5 in the NOPR TSD.) For the October 2008 NOPR, DOE proposed the max-tech levels shown in Table III.1. 73 FR 62034, 62036 (Oct. 17, 2008).

TABLE III.1—COMMERCIAL CLOTHES WASHER MAX-TECH EFFICIENCY LEVELS PROPOSED IN THE OCTOBER 2008 NOPR

Equipment class	Max-tech level	
	MEF, ft^3/kW	WF, gal/ft^3
Top-Loading CCWs	1.76	8.3
Front-Loading CCWs	2.35	4.4

DOE received comments in response to the October 2008 NOPR questioning the max-tech top-loading CCW efficiency rating presented in the November 2009 SNOPR. DOE examined the max-tech efficiency level for top-loading CCWs, contracting an independent testing laboratory to verify the performance ratings for the max-tech top-loading CCW model. The laboratory results (based on a 3-unit sample) suggested that the max-tech model achieves 1.63 MEF/8.4 WF. Based on this information, DOE revised the max-tech top-loading CCW level in the November 2009 SNOPR downward to 1.60 MEF/8.5 WF, a level proposed in the October 2008 NOPR as a "gap-fill" level and one which DOE concluded in the November 2009 SNOPR is attainable by the max-tech CCW model. For the November 2009 SNOPR, the proposed front-loading max-tech level was the same as in the October 2008 NOPR, whereas the proposed top-loading max-tech level was revised to 1.60 MEF/8.5 WF based on the independent test results. 74 FR 57738, 57744 (Nov. 9, 2009).

DOE received comments in response to the November 2009 SNOPR that objected to the max-tech efficiency level for top-loading CCWs based on lack of wash performance and consumer acceptance of the max-tech top-loading CCW model in a commercial laundry setting. DOE agrees that inherent in a determination of technological feasibility is performance related to the equipment's primary function (*i.e.,* cleaning clothes), but DOE considers as evidence of sufficient performance and consumer acceptance of the highest efficiency top-loading CCWs the presence on the market of two such models at or near the max-tech level proposed in the November 2009 SNOPR. Therefore, for today's final rule, the max-tech levels for both classes are the max-tech levels identified in the November 2009 SNOPR. These levels are shown in Table III.2 below. For more details on this selection of max-tech levels, see section IV.C.1.a of today's final rule.

TABLE III.2—COMMERCIAL CLOTHES WASHER MAX-TECH EFFICIENCY LEVELS

Equipment class	Max-tech level	
	MEF, ft^3/kW	WF, gal/ft^3
Top-Loading CCWs	1.60	8.5
Front-Loading CCWs	2.35	4.4

C. Energy Savings

DOE forecasted energy savings in its national energy savings (NES) analysis through the use of an NES spreadsheet tool, as discussed in the November 2009 SNOPR. 74 FR 57738, 57744 (Nov. 9, 2009).

One criterion that governs DOE's adoption of standards for CCWs is the standard must result in "significant" energy savings. (42 U.S.C. 6295(o)(3)(B) and 42 U.S.C. 6316(a)) While EPCA does not define the term "significant," the U.S. Court of Appeals for the District of Columbia, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended "significant" energy savings in this context to be savings that were not "genuinely trivial." DOE's estimates of the energy savings for the energy conservation standards adopted in today's final rule are nontrivial. Therefore, DOE considers them "significant" within the meaning of section 325 of EPCA.

D. Economic Justification

1. Specific Criteria

As noted earlier, EPCA provides seven factors to be evaluated in determining whether an energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B) and 42 U.S.C. 6316(a)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Commercial Consumers and Manufacturers

DOE considered the economic impact of the amended CCW standards on commercial consumers and manufacturers. For consumers, DOE measured the economic impact as the change in installed cost and life-cycle operating costs, *i.e.,* the LCC. (See sections IV.D and IV.E and chapter 8 of the TSD.) DOE investigated the impacts on manufacturers through the manufacturer impact analysis (MIA). (See sections IV.G and VI.C.2, and chapter 13 of the TSD.) The economic impact on commercial consumers and manufacturers is discussed in detail in the November 2009 SNOPR. 74 FR 57738, 57751–55, 57761–65, 57769–77 (Nov. 9, 2009).

b. Life-Cycle Costs

DOE considered life-cycle costs of CCWs, as discussed in the November 2009 SNOPR. 74 FR 57738, 57751–55 (Nov. 9, 2009). DOE calculated the sum of the purchase price and the operating expense—discounted over the lifetime of the equipment—to estimate the range in LCC benefits that commercial consumers would expect to achieve due to the standards.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, EPCA also requires DOE, in determining the economic justification of a proposed standard, to consider the total projected energy savings that are expected to result directly from the standard (42 U.S.C. 6295(o)(2)(B)(i)(III) and 42 U.S.C. 6316(a)). As in the November 2009 SNOPR (74 FR 57738, 57755–61 (Nov. 9, 2009)), for today's final rule, DOE used the NIA spreadsheet results in its consideration of total projected savings that are directly attributable to the standard levels DOE considered.

d. Lessening of Utility or Performance of Equipment

In selecting today's standard levels, DOE sought to avoid new standards for CCWs that would lessen the utility or performance of that equipment (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 42 U.S.C. 6316(a)). As with the November 2009 SNOPR (74 FR 57738, 57745 (Nov. 9, 2009)), today's standards do not involve changes in equipment design or unusual installation requirements that would reduce the utility or performance of CCWs.

e. Impact of Any Lessening of Competition

DOE considers any lessening of competition likely to result from standards. Accordingly, as discussed in the November 2009 SNOPR (74 FR 57738, 57745, 57762–63 (Nov. 9, 2009)), DOE requested that the Attorney General transmit to the Secretary a written determination of the impact, if any, of lessening of competition likely to result from the proposed standards, together with an analysis of the nature and extent of such impact (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii) and 42 U.S.C. 6316(a)).

To assist the Attorney General in making such a determination, DOE provided the U.S. Department of Justice (DOJ) with copies of the November 2009 proposed rule and the TSD for review. The Attorney General's response is discussed in section VI.C.5 below, and is reprinted at the end of this rule. Impacts on manufacturers are also discussed in section IV.G below.

f. Need of the Nation to Conserve Energy

In considering standards for CCWs, the Secretary must consider the need of the Nation to conserve energy (42 U.S.C. 6295(o)(2)(B)(i)(VI) and 42 U.S.C. 6316(a)). The Secretary recognizes that energy conservation benefits the Nation in several important ways. The non-monetary benefits of the standards are likely to be reflected in improvements to the security and reliability of the Nation's energy system. Today's standards will also result in environmental benefits. As discussed in the November 2009 SNOPR, DOE has considered these factors in adopting today's standards. 74 FR 57738, 57765–67 (Nov. 9, 2009).

g. Other Factors

In determining whether a standard is economically justified, EPCA directs the Secretary to consider any other factors deemed relevant (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 42 U.S.C. 6316(a)). In adopting today's amended standards, the Secretary found no relevant factors other than those identified elsewhere in today's final rule.

2. Rebuttable Presumption

Section 325(o)(2)(B)(iii) of EPCA states that there is a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer that meets the standard level is less than three times the value of the first-year energy savings resulting from the standard (and water savings in the case of a water efficiency standard), as calculated under the applicable DOE test procedure (42 U.S.C. 6295(o)(2)(B)(iii) and 42 U.S.C. 6316(a)).

DOE's LCC and PBP analyses generate values that calculate the PBP for consumers of equipment meeting potential energy conservation standards, which includes, but is not limited to, the 3-year PBP contemplated under the rebuttable presumption test discussed above. (See chapter 8 of the TSD.) However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6316(a). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

IV. Methodology and Discussion of Comments on Methodology

DOE used several previously developed analytical tools in setting today's standard. Each was adapted for this rule. One of these analytical tools is a spreadsheet that calculates LCC and PBP. Another calculates national energy savings and national NPV. A third tool is the Government Regulatory Impact Model (GRIM), the results of which are the basis for the MIA, among other methods. In addition, DOE developed an approach using the National Energy Modeling System (NEMS) to estimate impacts of energy efficiency standards for CCWs on electric utilities and the environment. The TSD appendices discuss each of these analytical tools in detail.

As a basis for this final rule, DOE has continued to use the spreadsheets and approaches explained in the November 2009 SNOPR. DOE used the same general methodology but has revised some of the assumptions and inputs for this final rule in response to comments from interested parties. The following paragraphs discuss these revisions.

A. Equipment Classes

In the October 2008 NOPR, DOE proposed separate equipment classes and accompanying standards for top-loading and front-loading CCWs with separate standards for each class. 73 FR 62034, 62036 (Oct. 17, 2008). DOE determined in the October 2008 NOPR that two equipment classes were warranted because the method of "loading" had been previously determined, under DOE rulemakings for residential clothes washers, to be a "feature," as defined by EPCA, and because an amended standard for a single equipment class might set the MEF for all CCWs at a level significantly higher than what the max-tech for top-loading machines can attain today, and effectively eliminate top-loading CCWs from the market. 73 FR 62034, 62049–50 (Oct. 17, 2008). This determination remained unchanged in the November 2009 SNOPR, 74 FR 57738, 57746–47, although DOE sought comment as to (1) whether the method of "loading" clothes washers, or any other characteristic commonly associated with traditional "top-loading" or "front-loading" clothes washers, such as presence or absence of agitators, ability to interrupt cycles, and possibly others, are "features" within the meaning of 42 U.S.C. 6295(o)(4) in EPCA; and (2) whether the availability of such feature(s) would likely be affected by eliminating the separate classes for these equipment types previously established by DOE. DOE received comments in response to the November 2009 SNOPR both in support of and opposed to establishing two equipment classes for CCWs. These comments are described in more detail in the following paragraphs.

The Association of Home Appliance Manufacturers (AHAM), GE Consumer & Industrial (GE),[7] Whirlpool Corporation (Whirlpool), and Alliance Laundry Systems (Alliance) stated that they support the definition of separate equipment classes for top-loading and front-loading CCWs. (AHAM, Public Meeting Transcript, No. 67.4 at p. 33; AHAM, No. 67.12 at p. 2;[8]; GE, Public Meeting Transcript, No. 67.4 at p. 44; GE, No. 67.9 at p. 1) Whirlpool, Public Meeting Transcript, No. 67.4 at p. 45; Whirlpool, No. 67.11 at p. 1; Alliance, Public Meeting Transcript, No. 67.4 at p. 46. AHAM stated that EPACT 2005 allows DOE to establish different classes, directing DOE to create "classes of products, depending on their energy use or performance characteristics." AHAM noted that there is a bimodal distribution of efficiencies between top-loading and front-loading CCWs. According to AHAM, the standards proposed for the front-load equipment class in terms of MEF and WF are beyond the capability of a traditional, or even a non-traditional, top-load CCW. (AHAM, Public Meeting Transcript, No. 67.4 at pp. 39–40; AHAM, No. 67.12 at pp. 2–3) GE, Whirlpool, and Alliance agree that DOE has the ability to define two CCW equipment classes. (GE, Public Meeting Transcript, No. 67.4 at p. 44; Whirlpool, Public Meeting Transcript, No. 67.4 at p. 45; Alliance, Public Meeting Transcript, No. 67.4 at p. 46). AHAM further stated that if DOE moves forward with a single equipment class, top-loading CCWs would not be able to meet a standard that would be fairly easy for front-loaders to achieve. With two equipment classes, energy and water savings could be achieved by both top-loaders and front-loaders, albeit at a different level. According to AHAM, this reduces the possibility that consumers would repair older, less efficient top-loading CCWs, because new high efficiency top-loaders would be available. (AHAM, Public Meeting Transcript, No. 67.4 at pp. 40–41; AHAM, No. 67.12 at p. 2.)

Alliance commented that " 'top-loading' is a 'feature' within the meaning of 42 U.S.C. 6295, because it provides consumers the opportunity to purchase lower cost CCWs." Alliance stated that purchase cost is a primary reason why top-loading clothes washers hold an approximate 65-percent market share, since consumers can choose the lower-cost design option of a top-loading door for a vertical-axis machine versus the higher-cost front-loading door design for a horizontal-axis machine. Alliance noted that there is one unique horizontal-axis design that incorporates a loading door on top that essentially opens a door on the side of the horizontally rotatable spin tub, but described this design as "unpopular." Alliance commented that, although the cost difference between vertical-axis and horizontal-axis models has decreased, a comparably featured standard capacity top-loader remains far less costly than a standard capacity front-loader due to the inherent differences in components. Alliance listed variable speed motors, sophisticated motor electronic controls, heavy mass weights, and door assembly costs as the key components contributing to the cost of front-loading designs. More specifically, Alliance stated that a front-loader door must incorporate high-temperature impact-resistant glass, a door/tub boot seal, a very sophisticated lock system, and a heavy-duty hinge system to withstand the abuse in a commercial environment. In contrast, Alliance described a top-loader door as a simple metal stamping

[7] In its December 9, 2009, letter, GE states that it "adopt[s] by reference the comments on the SNOPR that [it] understand[s] will be submitted by the Association of Home Appliance Manufacturers (AHAM) * * * " Therefore, comments submitted by AHAM, designated by comment number 67.12 in the docket for this rulemaking, should be interpreted as representing GE's and well as AHAM's views.

[8] A notation in the form "AHAM, No. 67.12 at p. 2" identifies a written comment (1) made by the Association of Home Appliance Manufacturers (AHAM), (2) recorded in document number 67.12 that is filed in the docket of this rulemaking (Docket No. EE–2006–STD–0127), maintained in the Resource Room of the Building Technologies Program, and (3) which appears on page 2 of document number 67.12.

with a low-cost hinge and a fairly simple micro-switch to remove power from the basket drive mechanism during spin. Additionally, Alliance stated that front-loaders require a "pedestal" to raise the loading door in response to consumer objections to stooping so far down. Alliance estimated the retail price of such a pedestal as $250, which along with an estimated $250 retail price difference between a baseline efficiency top-loader and a comparably featured front-loader, would result in a top-loader costing consumers at least $500 less than a front-loader. Therefore, Alliance concluded that top-loading is "undeniably" a feature for consumers because of its low cost. (Alliance, Public Meeting Transcript, No. 67.4 at pp. 46–48; Alliance, No. 66.4 Letter at pp. 1–2,[9] Alliance, No. 67.8 at p. 2.) Whirlpool described a top-loading horizontal-axis RCW as a rare configuration that is not produced or sold domestically by any major manufacturers of laundry equipment, and one that does not effectively meet the needs of either top-loading or front-loading RCW consumers. According to Whirlpool, the openings of such units are small and prone to snagging of clothes. Further, Whirlpool stated that this configuration is not available in CCWs. (Whirlpool, No. 67.11 at p. 4.)

Alliance also stated that top-loading is a "feature" because of its convenience to the user. A user is not required to stoop or bend to load a top-loader, and according to Alliance most consumers prefer this convenience, though no supporting data was provided. Alliance stated that another convenience is the ability to add a garment to a clothes load in a washer which has already initiated a wash cycle. For top-loaders, such action only requires lifting the lid to drop the item in. Alliance commented that most front-loaders require time to unlock the door and possibly drain the wash water, then require the user to stoop or bend to add the garment to the washer. (Alliance, Public Meeting Transcript, No. 67.4 at pp. 48–49; Alliance, No. 66.4 Letter at p. 2; Alliance, No. 67.8 at p. 2) Finally, Alliance commented that convenient cycle times, as defined by typical top-loading washers, are important to users. According to Alliance, front-loading washers have longer cycle times because there is less mechanical action in tumbling in a front-loading design than the vigorous mechanical action imparted by an agitator in a top-loading design. Alliance cited the February 2009 edition of *Consumer Reports* magazine as stating that "front-loader cycle times are getting longer; many take more than 90 minutes per load," and that the article shows that front-loader cycle times are 70–115 minutes compared to top-loader cycle times of 30–85 minutes. Alliance noted that all front-loaders in the *Consumer Reports* article with cycle times less than 85 minutes scored poorly in Consumer Union's "wash rating" compared to front-loaders with cycle times of 85 minutes or longer, while top-loaders with cycle times of 55 minutes achieved wash ratings of "good" to "very good." Alliance concludes that top-loader door location is associated with providing consumers with their expected good washing performance at a convenient washing cycle time of around 55 minutes. (Alliance, Public Meeting Transcript, No. 67.4 at p. 49; Alliance, No. 66.4 Letter at p. 2; Alliance, No. 67.8 at p. 3) GE agreed that cycle time and cost to the consumer are very important differentiators between top-loading and front-loading CCWs which, along with consumer preference, counsel in favor of maintaining the two separate equipment classes. (GE, Public Meeting Transcript, No. 67.4 at pp. 44–45) AHAM provided a similar consumer utility rationale in support of two equipment classes, specifying level of vibration, ergonomic factors (bending), history, and experience of use, cycle interruption, and preference as consumer utilities and functions. (AHAM, No. 67.12 at p. 3) Whirlpool agreed that vibration, ergonomics, cycle time, and familiarity are factors which consumers use in selecting top-loading CCWs, and added configuration, noise, value proposition, and sour smell. (Whirlpool, No. 67.11 at p. 1) Whirlpool also commented that it does not believe high efficiency top-loaders are viable in the commercial market because clothes rollover necessary for effective washing and rinsing is not possible in an overloaded machine. Whirlpool states that overloading is a common practice by CCW users because they are paying by the load. (Whirlpool, No. 67.11 at p. 4) Alliance also commented that, for the September 21, 2009, RCW Framework public meeting, Whirlpool had stated that one-fifth of consumers who bought a front-loading washer have gone back to a top-loading washer. (Alliance, No. 66.4 Letter at p. 2)

Whirlpool commented that, in addition to the impact on the user of a standard applicable to a single equipment class, there is also an impact on the route operators[10] and multi-housing complexes, most of which have specialized in either top-loading or front-loading CCWs. According to Whirlpool, a major reinvestment in terms of technical training and parts inventories would be required for those companies that have invested in top-loading CCWs if a standard resulted in the phaseout of such machines. Whirlpool also stated that CCWs are often refurbished and moved down-market, possibly multiple times during a particular unit's lifetime, making CCWs available to many socioeconomic classes. (Whirlpool, Public Meeting Transcript, No. 67.4 at p. 45; Whirlpool, No. 67.11 at p. 1; see also AHAM, No. 67.12 at p. 3) AHAM stated that route operators have accumulated expertise on either the top-loading or front-loading platform. (AHAM, No. 67.12 at p. 3)

Whirlpool also commented that separate equipment classes would be consistent with energy conservation standards for refrigeration, which have separate classes for side-by-side, top freezer, and bottom freezer refrigerators, and room air conditioners, since the product classes reflect home configuration, consumer choice, and consumer utility. (Whirlpool, Public Meeting Transcript, No. 67.4 at p. 46; Whirlpool, No. 67.11 at pp. 1–2) Earthjustice (EJ) stated that the separation in EPCA of refrigerator by method of access was codified by Congress as two distinct standards. According to EJ, because Congress enacted a single standard for all CCWs, what it chose to do for refrigerators is not entirely applicable to the CCW rulemaking. (EJ, Public Meeting Transcript, No. 67.4 at pp. 49–50)

EJ stated that Congress has provided several examples of the product attributes that it anticipated as constituting "features" under EPCA: "automatic defrost, through the door ice, size of room air conditioners, and noise levels." H. Rep. 100–11, at 23 (1987). EJ commented that this demonstrates that Congress indicated that the fact of access is a feature (for example, through the door ice), but did not suggest that the method of access is also a feature (for example, side-by-side versus stacked configuration refrigerators) within the meaning of 42 U.S.C. 6295(o)(4). (EJ, No. 67.5 at p. 5)

EJ commented that subparagraph (B) of 42 U.S.C. 6295(q)(1) is permissive, and provides that DOE "shall" create

[9] A notation in the form "Alliance, No. 66.4 Letter at pp. 1–2" identifies pages 1–2 of a written comment submitted by Alliance entitled "Is Top-Loading a Feature Within the Meaning of EPCA?" This letter was entered as comment number 66.4 in the docket for this rulemaking, along with a written comment submitted by Alliance entitled "Response to DOE Commercial Clothes Washer SNOPR."

[10] Route operators supply laundry equipment and maintain facilities in exchange for a percentage of the laundry revenue.

separate classes for products based on the presence of "a capacity or other performance-related feature" only if "such feature justifies a [different] standard." According to EJ, EPCA then sets out very expansive criteria for DOE to apply in determining whether a given feature justifies a unique standard. EJ stated that, although DOE must consider the utility of the feature, DOE is free to supplement this consideration with any other factors it deems appropriate. (EJ, No. 67.5 at p. 3)

EJ stated that 42 U.S.C. 6295(o)(4) provides that DOE may separate covered equipment into distinct classes when necessary to prohibit the adoption of standards that eliminate certain product attributes. EJ further stated that DOE's authority to adopt standards that group all varieties of the given covered equipment into a single class is only barred when such a standard is likely to result in the unavailability of features that are substantially the same as those currently available; *i.e.,* EPCA only mandates the creation of multiple equipment classes when the failure to do so would eliminate certain truly unique equipment attributes from the market. According to EJ, this statutory scheme forecloses an interpretation that EPCA mandates the designation of distinct equipment classes for top-loading and front-loading CCWs. (EJ, No. 67.5 at pp. 3–4) EJ provided four separate reasons why it believes 42 U.S.C. 6295(o)(4) prohibits DOE from adopting standards that would treat all CCWs as a single equipment class: (1) The method of loading a CCW is not a "feature" within the meaning of 42 U.S.C. 6295(o)(4) [11]; (2) the ability to load a CCW from the front is substantially the same as the ability to load from the top; (3) maintaining a single CCW category is not likely to lead to the unavailability of top-loaders; and (4) top-loading CCWs possess no other attributes requiring protection under 42 U.S.C. 6295(o)(4). (EJ, No. 67.5 at pp. 4–8)

EJ commented that if, for the sake of argument, the method provided to access a CCW is a "feature" within the meaning of 42 U.S.C. 6295(o)(4), it did not follow that EPCA would require separate equipment classes. EJ stated that, in enacting the EPCA language, Congress was "careful to note" that the "prohibition against grouping all varieties of a covered product into a single product class was a narrow one." (EJ, No. 67.5 at p. 6)

> A valid standard may entail some minor loss of characteristics, features, sizes, etc.; for this reason, the Act requires that "substantially the same," though not necessarily identical, characteristics or features should continue to be available. [42 U.S.C. 6295(o)(4)] also does not apply to trivial effects in which a standard might result.

H. Rep. 100–11, at 23 (1987).

According to EJ, the inclusion of this "substantially the same" language shows that Congress did not intend the resulting unavailability of any and every feature to be a barrier to the imposition of strong efficiency standards, but rather a standard would be barred only if it would have a substantial impact on product utility. EJ stated that the ability to access the CCW from the top is "substantially the same" as the ability to access the unit from the front because either delivers the same basic functionality of accessing the unit for loading and unloading. Thus EJ states that DOE is not barred from maintaining a single set of efficiency standards for all CCWs, even assuming that those standards would have the consequence of eliminating all top-loading CCWs from the market. (EJ, No. 67.5 at p. 6)

EJ also did not agree with AHAM's statement that a distinction in energy use between two types of CCWs would justify a separate equipment class. According to EJ, that would be at odds with the intent of EPCA. EJ stated that whenever two examples of equipment use different amounts of energy, the intent is for a standard to eliminate the one that uses too much energy. (EJ, Public Meeting Transcript, No. 67.4 at pp. 41–42)

EJ also commented that it is sensible to adopt a strong unitary standard that applies to both top-loading and front-loading CCWs. EJ stated that it had already made the case that the method of loading is not a feature under 42 U.S.C. 6295(o)(4), but even if DOE did determine that the method of loading is a feature, a strong standard would not eliminate top-loading CCWs from the market. (EJ, Public Meeting Transcript, No. 67.4 at pp. 42–43) EJ also commented on the recent Ninth Circuit decision reversing DOE's denial of the California Energy Commission's (CEC) petition for exemption from existing energy efficiency standards for RCWs and remanding the petition for further review.[12] EJ stated that the court, while not directly addressing the "features" issue, indicated that DOE can't just look at the market today, but must assess what the market will be when the standard takes effect. EJ stated that DOE would have to find by preponderance of the evidence that a strong standard would eliminate top-loaders from the market in 2013. EJ noted that it did not believe that top-loaders would be eliminated at that time, based on the existence of very efficient top-loading RCWs currently in the market. (EJ, Public Meeting Transcript, No. 67.4 at p. 43; EJ, No. 67.5 at pp. 6–7)

EJ further commented that no other attributes of CCWs which DOE identified in the November 2009 SNOPR as possibly providing consumer utility, such as the presence or absence of agitators and the ability to interrupt cycles, require protection under 42 U.S.C. 6295(o)(4). EJ stated that DOE has neither explained why the presence or absence of agitators would provide any consumer utility, nor considered that high efficiency CCWs may still be equipped with an agitator. EJ also stated that horizontal-axis CCWs available today are often able to be interrupted mid-cycle. In addition, EJ commented that, although Alliance cited an article which discussed cycle times for top-loaders and front-loaders, Alliance did not contend that the variation in cycle time is an issue for CCWs. EJ stated that the range of cycle times for top-loaders and front-loaders broadly overlap, and because front-loaders typically have a lower ending remaining moisture content (RMC) than top-loaders, the total washing and drying times required for top-loading and front-loading CCWs are likely to be equivalent. (EJ, No. 67.5 at p. 8)

The Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas Company (the California Utilities) also supported a single equipment class, arguing for reasons similar to those articulated by EJ that the method of loading and other characteristics commonly associated with the method of loading are not features, and that a single class would not likely result in the unavailability of top-loading CCWs. (California Utilities, No. 67.10 at pp. 2–3) Further, the California Utilities stated that, although CCWs and RCWs are similar in technologies, design, and operating characteristics, a "feature" of RCWs is not necessarily a "feature" of CCWs. (California Utilities, No. 67.10 at p. 3)

[11] EJ stated that the method of loading a CCW is not a feature because: (1) DOE research on the public's valuation of clothes washer characteristics, presented in a December 2000 Technical Support Document, shows that door placement was not among the top ten most important attributes, and the value of this attribute is likely even lower now given the increased prevalence of front-loaders; (2) the FTC eliminated the distinction between top-loading and front-loading machines in its labeling requirements (65 FR 16134 (March 27, 2000)); and (3) the legislative history supports the conclusion that door placement is not a feature because examples cited suggest that while access itself may be a feature, the method of access is not. (EJ No. 67.5 at 4)

[12] California Energy Commission versus DOE, Case No. 07–71576 (October 28, 2009).

The California Utilities also asserted that the LCC savings of a single equipment class with standards at various front-loading TSLs could increase as much at $304 as compared to the LCC savings estimated for the standards proposed in the November 2009 SNOPR. According to the California Utilities and ASAP, American Council for an Energy-Efficiency Economy, American Rivers, National Consumer Law Center, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships, and Seattle Public Utilities (the Joint Comment), cost-effectiveness of standards based on a single equipment class best serves long-term public interest. (California Utilities, No. 67.10 at p. 4; Joint Comment, No. 67.6 at p. 3)

The Joint Comment commented that DOE is concerned that at the highest TSL, significant numbers of potential consumers of front-loading CCWs would choose to purchase a less efficient top-loading CCW instead. (Joint Comment, No. 67.6 at p. 2) According to ASAP and the Joint Comment, this underscores the interchangeability between top-loading and front-loading CCWs in a commercial setting and that this interchangeability could be so broad and substantial that it would facilitate potential recapture of market share by less efficient but less expensive top-loaders. ASAP stated that the real distinction between top-loaders and front-loaders is price point rather than any specific consumer utility. Therefore, ASAP and the Joint Comment recommended a single equipment class for CCWs. ASAP also stated that route operators are operating in a one equipment class environment today, and managing the issues that Whirlpool identified. (ASAP, Public Meeting Transcript, No. 67.4 at pp. 46, 99–102; Joint Comment, No. 67.6 at pp. 2–3)

ASAP and the Joint Comment stated that the standard proposed for front-loaders is already met by almost 97 percent of the front-loaders on the market, and since DOE has seldom, if ever, proposed a standard that has such a low impact on the marketplace, ASAP suggests there are some difficulties in going forward with two equipment classes. (ASAP, Public Meeting Transcript, No. 67.4 at pp. 53–54; Joint Comment, No. 67.6 at p. 2) The California Utilities estimated that a single equipment class with standards set at 2.35 MEF/4.4 WF would achieve 50 percent more energy savings and over 200 percent more water savings over the next 30 years than the standards proposed in the November 2009 SNOPR, and that additional energy and water savings would be captured in future CCW rulemakings. (California Utilities, No. 67.10 at pp. 3–4)

Regarding impacts to competition as these impacts relate to the equipment class issue, EJ stated that it would not agree with DOE if the Department determines that a single standard cannot be adopted because of impacts to the manufacturers and impacts on competition. EJ and the Joint Comment believe those impacts are overstated. (EJ, Public Meeting Transcript, No. 67.4 at pp. 30–31; Joint Comment, No. 67.6 at pp. 4–5; see also California Utilities, No. 67.10 at pp. 4–5) EJ asserted that it is not only the lessening in competition, but rather the effects of such lessening, that DOE must consider. EJ stated that the DOJ, in its letter to DOE on this rulemaking, failed to consider low barriers to entry into the CCW market in its analysis of the impacts to competition, and that consequently, it would be irrational for DOE to conclude that a single standard would result in any significant impact on competition in the CCW market. (EJ, No. 67.5 at p. 9) EJ, ASAP, and the Joint Comment also asserted that DOE must consider adopting a tiered standard, or granting Alliance a temporary waiver, as ways to minimize any impacts on competition that may result from imposition of a single standard. (EJ, No. 67.5 at 9–10; ASAP, Public Meeting Transcript, No. 67.4 at pp. 166–167; Joint Comment, No. 67.6 at p. 6; see also California Utilities, No. 67.10 at pp. 4–5)

In response to the above comments, DOE notes that EPCA provides the criteria under which DOE may define classes for covered equipment:

> A rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—
>
> • Consume a different kind of energy from that consumed by other covered products within such type (or class); or
>
> • Have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).
>
> In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

42 U.S.C. 6295(q); see also 6316(a).

As stated above, DOE concluded preliminarily in the October 2008 NOPR and the November 2009 SNOPR that separate equipment classes for top-loading and front-loading CCWs were warranted because the method of loading had been previously determined to be a "feature" under rulemakings for RCWs and a single standard would eliminate top-loading CCWs from the market. DOE analysis for this final rule, including evaluation of comments submitted by interested parties, has identified at least one consumer utility related to the method of loading clothes, specifically for CCWs, which represents a "feature" for purposes of 42 U.S.C. 6295(o)(4). Consequently, DOE has retained two equipment classes for CCWs for this standard.

Specifically, DOE believes that the longer cycle times of front-loading CCWs versus cycle times for top-loaders are likely to significantly impact consumer utility. In commercial and multi-housing settings, it is beneficial to consumers with multiple, sequential laundry loads to approximately match CCW cycle times to those of the dryers to maximize throughput and minimize wait times, and wash times of 70–115 minutes would be longer than most drying cycles. Because the longer wash cycle times for front-loaders arise from the reduced mechanical action of agitation as compared to top-loaders, DOE believes such longer cycles may be required to achieve the necessary cleaning, and thereby constitute a performance-related utility of front-loading CCWs versus top-loading CCWs under the meaning of 42 U.S.C. 6295(q).

DOE notes that access without stooping is not a consumer utility that would warrant the definition of separate equipment classes. DOE agrees that top-loaders eliminate the need for stooping, while front-loaders, in the absence of a pedestal, require such action. DOE further notes, however, that commercial clothes dryers are front-loading as well, so it believes that those consumers that dry their clothing loads are already accustomed to stooping. In addition, DOE observes that many laundromat and multi-housing applications have installed the CCWs on a platform to effect the same elevation as a manufacturer-supplied pedestal would, and that the cost of installing such a platform in the event that the owner/operator decides that preventing stooping is important is likely to be minimal.

DOE is aware that a top-loading, horizontal-axis CCW had been available previously. Due to the inherently higher efficiency of a horizontal-axis platform, it is likely that such a design could achieve a higher MEF and lower WF than the max-tech top-loading CCW

efficiency level assumed for this analysis. DOE research determined, however, that this particular washer platform was withdrawn from the market based on a lack of suitability for commercial settings. However, even if a top-loading, horizontal-axis CCW was again marketed, it is likely that such washers would have cycle times similar to those of other horizontal-axis machines and, therefore, would not likely provide substantially the same consumer utility as top-loading, vertical-axis machines.

DOE also does not consider first cost a "feature" that provides consumer utility for purposes of EPCA. DOE acknowledges that price is an important consideration to consumers, but DOE accounts for such consumer impacts in the LCC and PBP analyses conducted in support of this rulemaking.

Given the above discussion on cycle times, DOE concludes, consistent with its preliminary conclusion in the October 2007 NOPR and November 2008 SNOPR, that top-loading involves consumer utilities that, in the context of CCWs, are a feature for purposes of 42 U.S.C. 6295(o)(4). For the reasons stated in section VI.D of the preamble, DOE believes that the standards established for top-loading and front-loading CCWs achieve the maximum improvements in energy efficiency that are technologically feasible and economically justified. DOE further believes that the top-loading standard, set at the max-tech efficiency level, can be achieved by all manufacturers by the time compliance with the standards is required. Therefore, DOE concludes that top-loading CCWs would not be eliminated from the market by the amended energy conservation standards.

In response to the comments related to impacts on competition, DOE believes its analysis accurately describes the impacts of the various TSLs, including the standards established today, on the low-volume manufacturer (LVM). See section VI.C.2 of the preamble for further discussion of these impacts. In addition, EPCA does not permit DOE to establish a tiered standard for CCWs. 42 U.S.C. 6313(e)(2)(A)(ii) states that an amended standard for CCWs "shall apply to products manufactured 3 years after the date on which the final amended standard is published." DOE interprets this provision to mean that the amended standard must apply to all CCWs manufactured 3 years after the date of publication of this final rule, and that imposing some intermediate standard at that time (*i.e.,* 2013) and the final amended standard at some future date (*i.e.,* 2015) is not authorized. In contrast, 42 U.S.C. 6295(g)(4)(C) states in relevant part that amendments to the standards "shall apply to products manufactured after a date which is five years after" the effective date of the previous amendment. DOE believes that the phrase "*after* a date which is 5 years after" (emphasis added) may allow more flexibility for a tiered standard. DOE also believes that the provisions of 42 U.S.C. 7194 that allow for the grant of an exemption from an energy conservation standard promulgated by DOE are not an appropriate justification for the promulgation of a particular efficiency standard in the first instance.

B. Technology Assessment

For the technology assessment in the November 2009 NOPR analyses, DOE considered all RCW and CCW technology options that it was aware have been incorporated into working prototypes or commercially available clothes washers at the time of the analysis. DOE noted in the November 2009 SNOPR that it considered as design options many technologies that are found in both RCWs and CCWs. Of the technology options screened out, only suds-saving [13] has appeared previously as a feature in commercially available RCWs. DOE concluded in the November 2009 SNOPR that suds-savings was an RCW feature that was appropriately screened out for the CCW analysis. 74 FR 57738, 57747 (Nov. 9, 2009).

For the November 2009 SNOPR, DOE also gathered and analyzed data published by CEC, CEE, and the ENERGY STAR Program to provide an overview of the energy efficiency levels achieved in CCWs and RCWs. DOE found that all front-loading CCWs on the market at that time were more efficient than top-loading CCW models. No top-loading CCW listed in these databases had an MEF greater than 1.76, whereas the majority of front-loading CCWs were listed as having MEFs greater than 2.0. Similarly, no top-loading CCWs were rated as having a WF below 8.0, whereas the majority of front-loading CCWs had rated WFs below 7.0. In contrast, DOE research suggested that the most efficient vertical-axis RCWs achieved efficiency levels comparable to some horizontal-axis CCWs.[14] High efficiency, vertical-axis platforms that do not employ an agitator have been sold into the RCW market for several years, but have yet to be released in a CCW form. DOE noted in the November 2009 SNOPR that it expected manufacturers would continue to introduce new features first in the higher-volume residential markets before transitioning them to commercial applications. However, DOE noted that it is not aware of such technologies being incorporated in either commercially available CCWs or working CCW prototypes, and therefore did not consider them in the SNOPR analyses. DOE concluded in the November 2009 SNOPR that it believed it had adequately considered RCW technologies that may be applicable to CCWs in its technology assessment. 74 FR 57738, 57747–48 (Nov. 9, 2009).

Because DOE did not receive any comments on the technology options analyzed in the November 2009 SNOPR, DOE continues to conclude in today's final rule that it has adequately considered RCW technologies that may be applicable to CCWs in its technology assessment.

C. Engineering Analysis

The purpose of the engineering analysis is to characterize the relationship between the incremental manufacturing cost and efficiency improvements of CCWs. DOE used this cost-efficiency relationship as input to the PBP, LCC, and NES analyses. As discussed in the November 2009 SNOPR, DOE conducted the engineering analysis for this rulemaking using the efficiency-level approach, which provides the incremental costs of moving to higher energy efficiency levels, without regard to the particular design option(s) used to achieve such increases. For this analysis, DOE relied upon efficiency data published in multiple databases, including those published by CEC, CEE, and ENERGY STAR, which were supplemented with limited laboratory testing, data gained through engineering analysis, and

[13] A suds-saving feature allows water from one wash cycle to be reused in the next wash cycle. After agitation, sudsy wash water is pumped into a separate storage tub, remaining there until the next wash cycle. While the water is stored, soil settles to the bottom of the tub. During the next wash cycle, all but an inch of the water is pumped back into the washer tub for use again. Clothes washers with the suds-saving feature must be larger than typical clothes washers in order to accommodate the additional storage tub.

[14] Typically, vertical-axis clothes washers are accessed from the top (also known as "top-loaders"), while horizontal-axis clothes washers are accessed from the front (also known as "front-loaders"). However, a limited number of residential horizontal-axis clothes washers which are accessible from the top (using a hatch in the wash basket) are currently available, although DOE is unaware of any such CCWs on the market. For the purposes of this analysis, the terms "vertical-axis" and "top-loading" will be used interchangeably, as will the terms "horizontal-axis" and "front-loading." Additionally, clothes washers that have a wash basket whose axis of rotation is tilted from horizontal are considered to be horizontal-axis machines.

primary and secondary research. 74 FR 57738, 57748–51 (Nov. 9, 2009). Chapter 5 of the TSD contains a detailed discussion of the engineering analysis methodology.

1. Efficiency Levels

In the November 2009 SNOPR, DOE proposed the following efficiency levels for CCWs, shown in Table IV.1, in which the max-tech top-loading level was designated at efficiency level 2 (1.60 MEF/8.5 WF). The top-loading max-tech efficiency level representated a change from the max-tech level proposed in the October 2008 NOPR, based on DOE testing and analysis of the max-tech top-loading CCW model. No changes were made to the efficiency levels proposed in the October 2008 NOPR for front-loading CCWs in the November 2009 SNOPR.

TABLE IV.1—COMMERCIAL CLOTHES WASHER EFFICIENCY LEVELS PROPOSED FOR THE NOVEMBER 2009 SNOPR

Efficiency level	Modified energy factor, *ft³/kWh*/water factor, *gal/ft³*	
	Top-loading	Front-loading
Baseline	1.26/9.5	1.72/8.0
1	1.42/9.5	1.80/7.5
2	1.60/8.5	2.00/5.5
3	N/A	2.20/5.1
4	N/A	2.35/4.4

DOE noted in the November 2009 SNOPR that the max-tech top-loading CCW is currently marketed only to on-premise laundry facilities and is not yet offered with a coin-box or smart card reader option for laundromat or multi-housing laundry use. DOE research indicated that the max-tech CCW is based on a standard vertical-axis RCW platform (*i.e.,* one with an agitator) with similar construction and components as the CCW models marketed by that manufacturer to commercial laundromats. No proprietary technologies were observed, and, thus, DOE stated in the November 2009 SNOPR that it believes that all CCW manufacturers could market vertical-axis clothes washers with similar performance in time for the compliance date of the proposed rule. 74 FR 57738, 57749–50 (Nov. 9, 2009).

DOE research, conducted as part of the November 2009 SNOPR, also suggested that commercial acceptance depends on wash performance. DOE recognized that any amended energy conservation standard could result in a lessening of certain equipment utility and hence interviewed interested parties for the November 2009 SNOPR to better understand the potential impacts of energy efficiency strategies that manufacturers might employ in their equipment. Although interested parties suggested that the max-tech model does not provide acceptable washing and rinsing performance targets, especially when overloaded, they did not submit evidence of such performance degradation. 74 FR 57738, 57750 (Nov. 9, 2009).

EJ commented that, if top-loading CCWs are required to be retained in the commercial market under amended standards, DOE must consider a third standard level based on the performance of Alliance's best-performing top-loader.

Alliance stated that, while no industry standard performance test procedure exists for CCWs, it believes wash and rinse performance would be affected at the top-loading max-tech level, because the max-tech model does not allow true hot or warm water, unlike existing traditional CCWs which offer site-supplied hot water typically of 120 degrees Fahrenheit (°F) and above and user-acceptable 90 °F to 110 °F warm water. Alliance stated that the max-tech top-loading model only provides 108 °F to 112 °F water when the hot setting is selected, which Alliance considers to be warm water. Similarly, Alliance stated that when the user selects a warm setting on the max-tech top-loader, the unit only provides 71 °F to 73 °F wash water, which Alliance considers to be cold water. Alliance believes that CCW users that pay for hot water should receive hot water. Otherwise, CCW users could not clean clothes as well as consumers with access to RCWs. Further, Alliance commented that rinsing is minimal for the max-tech top-loader, unlike typical complete submersion of the clothes load that would allow sand, heavy sediment, or suds trapped between the layers to be properly removed. Alliance stated that the max-tech top-loading model has received almost no acceptance by the industry, based on comments it received from its top 20 multi-housing customers, and that DOE has not tested its ability to clean clothes. Therefore, Alliance believes that max-tech top-loader model is not appropriate for the commercial laundry market. (Alliance, Public Meeting Transcript, No. 67.4 at pp. 22–23, 29); Alliance, No. 66.4 at pp. 4, 7, 9; Alliance, No. 67.8 at p. 3).

Alliance stated that the front-loading max-tech efficiency level should have a WF of 5.0 rather than 4.4. Alliance stated that it tested a competitive front-loading CCW model that had a WF of 4.5 and found that it did not wet the center of the clothes load during the wash tumble portion of the cycle. Therefore, Alliance stated that consumer utility would be negatively affected. (Alliance, Public Meeting Transcript, No. 67.4 at pp. 139–140; Alliance, No. 67.8 at p. 3). Alliance further stated that consumer utility in a CCW must go beyond just getting clothes wetted, applying some mechanical action and then extraction of the moisture. Alliance commented that DOE did not assess if the proposed max-tech CCW cleans clothes to user expectations. According to Alliance, the ability of a CCW to clean clothes sufficiently is a central issue in this rulemaking, and stated that "A rulemaking will be overturned as arbitrary and capricious if 'the [agency] has failed to respond to specific challenges that are sufficiently central to its decision.'" *Horsehead Resource Dev. Co.* v. *Browner*, 16 F.3d 1246, 1263 (DC Cir 1994) (citations omitted). (Alliance, No. 66.4 at pp. 6–7).

GE commented that, while it supports the standards proposed in the November 2009 SNOPR for top-loading and front-loading CCWs, it is concerned that the max-tech top-loading CCW model is designed for on-premises laundry, which is a relatively limited segment of the commercial market. GE stated that the max-tech model has not been shown to be viable in the harsher laundromat environment where CCWs are subject to tougher conditions such as overloading. GE also requested DOE's test data on the max-tech top-loader model. (GE, Public

Meeting Transcript, No. 67.4 at p. 58; GE, No. 67.9 at pp. 1–2).

Whirlpool stated that a top-loading CCW max-tech level of 1.76 MEF/8.3 WF can be attained with sufficient investment of financial and human capital. However, Whirlpool considers this level a considerable stretch target that it has not achieved even in a prototype platform. Whirlpool believes that the front-loading CCW max-tech level could be slightly higher, since the CEE database lists a model at 2.23 MEF/4.3 WF. Whirlpool believes this level is at or near the capabilities of known technologies that are viable in the commercial environment. (Whirlpool, No. 67.11 at p. 2). Northwest Power and Conservation Council (NPCC) asked whether, because the max-tech top-loading CCW model did not meet its rated MEF and WF, DOE would consider testing units at other levels, particularly high-efficiency models, to make sure the performance is as advertised. (NPCC, Public Meeting Transcript, No. 67.4 at pp. 57–59).

In response, DOE notes that, in the absence of an accepted, standardized test procedure for CCW wash and rinse performance, it cannot evaluate the cleaning capabilities of various considered max-tech models. DOE agrees that proper wetting and distribution of the detergent and rinse water in the machine is critical for cleaning performance. However, DOE did not receive any evidence that the max-tech top-loading model does not achieve such action, only the inference that, because the unit employs spray rinse, that it would not exhibit acceptable rinse performance. DOE further notes that it did not receive any evidence that somewhat reduced water temperatures at hot and cold settings would preclude acceptable cleaning performance. DOE notes the existence of multiple wash and rinse performance standards such as AHAM HLW–1, but the industry has yet to come to a consensus regarding the minimum wash and rinse performance that an RCW or CCW should achieve. In the interim, DOE relies on manufacturers to market and sell only those products that they feel perform adequately.

DOE concluded for the November 2009 SNOPR that the performance of the top-loading CCW model was 1.63 MEF/8.4 MEF instead of the rated value of 1.76 MEF/8.3 WF on which the max-tech level for the October 2008 NOPR was based. DOE does not have evidence to suggest that any other CCWs currently on the market can achieve 1.76 MEF/8.3 WF, nor that technology exists to do so without significantly impacting cleaning performance. DOE based the selection of the top-loading max-tech level at efficiency level 2 on test results for the max-tech model and its belief that 1.60 MEF/8.5 WF represented the maximum CCW performance achievable by all manufacturers without material harm. At the time of the analysis, Alliance's highest efficiency top-loading CCW was rated at 1.55 MEF/8.6 WF. DOE believes that Alliance's model and the max-tech model incorporate similar technologies, and that the energy and water usage of the two models are not sufficiently different as to warrant the inclusion of an additional efficiency level slightly below the max-tech level. Given the constraints of the rulemaking schedule, DOE cannot evaluate an undetermined number of CCW models in order to confirm that no other unit which is rated at lower efficiencies than the proposed max-tech model could in actuality achieve higher performance, nor does DOE have any evidence, particularly regarding durability, to demonstrate that the max-tech top-loading CCW model, while designed for on-premises laundry applications, cannot be utilized successfully in other commercial laundry facilities such as laundromats or multi-family housing settings. Therefore, DOE has retained the max-tech top-loader efficiency level for today's final rule based on the max-tech top-loading CCW model proposed in the November 2009 SNOPR.

ASAP suggested that DOE should not limit consideration of max-tech models to CCWs, but that DOE should also consider clothes washer products from the residential market. According to ASAP, the distinctive nature of the CCW market has been characterized by the need for durability and resistance to overloading and misuse, which is typical of laundromats and multi-housing laundry rooms. But CCWs for on-premises laundry facilities are also being considered in this rulemaking, and they typically are subject to less harsh conditions than models destined for laundromats and multi-family housing, Thus, ASAP questioned why RCWs would not be considered for the max-tech levels if CCWs designed for on-premises laundry are. (ASAP, Public Meeting Transcript, No. 67.4 at pp. 61–62, 64–65) Southern California Gas Company (SCG) commented that DOE should consider durability as well as efficiency in selecting the max-tech models. (SCG, Public Meeting Transcript, No. 67.4 at p. 63) Additional comments regarding the applicability of RCWs in CCW application were received (along with other comments) from 20 route operators: All Valley Washer Services, Inc; Angel Coin Service, Inc.; Automatic Industries; Automatic Laundry Services Co., Inc.; B&H Coin Laundry Service; Caldwell and Gregory, LLC; CALECO; Cincinnati Coin Laundry, Inc.; Coin Meter Company; Commercial Laundries, Inc.; Continental Laundry Systems Incorporated; Excalibur Laundries, Inc.; F&B Coin Laundry Route; Family Pride Laundries; FMB Laundry, Inc.; Jetz Service Co., Inc.; Launderama, LLC; Laundry Equipment Corp.; National Coin Washer and Service Company, Inc.; and San Diego Laundry Equipment Co. (the Multiple Route Operators). These comments were originally sent to DOJ in response to the October 2008 NOPR, and were resubmitted by Alliance along with its own comments in response to the November 2009 SNOPR. Ninety-five percent of all route operators who commented on the November 2009 SNOPR stated that they did not consider RCWs suitable for CCW applications. The principal reasons given were the lack of durability, lack of resistance to vandalism, and other specified and unspecified performance issues. Most of the Multiple Route Operators expressed reluctance to try high efficiency top-loading clothes washers due to perceived wash performance issues. Additionally, several of the Multiple Route Operators stated that had tried out such washers and replaced them with regular top-loading clothes washers due to consumer complaints regarding wash performance and other issues. (Multiple Route Operators, No. 67.8, pp. 1–3 [15])

DOE notes that multiple manufacturers stated during interviews that high efficiency RCWs utilize technologies that are not suitable in harsher commercial settings such as laundromats and multi-family housing due to environmental factors such as overloading and abuse. Among these manufacturers were suppliers of high efficiency top-loading RCWs, *i.e.,* manufacturers that would face the lowest conversion costs in the industry to modify a given RCW model for CCW use. Additionally, DOE considered the comments submitted by the Multiple Route Operators with experience

[15] The Multiple Route Operators' letters were attached to the Alliance letter, comment number 67.8, in response to the November 2009 SNOPR. A notation in the form "Multiple Route Operators, No. 67.8 at pp. 1–3" identifies a written comment (1) made by some or all of the Multiple Route Operators, (2) recorded in document number 67.8 that is filed in the docket of this rulemaking (Docket No. EE–2006–STD–0127), maintained in the Resource Room of the Building Technologies Program, and (3) which appears on pages 1–3 of each of the letters submitted by the Multiple Route Operators.

utilizing high efficiency top-loading clothes washers in a commercial setting. Lastly, DOE received no evidence that all the technologies used in a max-tech top-loading RCW can be expected to be ready for inclusion in CCWs by the compliance date of today's final rule while offering similar or better wash performance, given the very different operational environments (short wash cycles, among other factors). Hence, DOE concludes that high efficiency top-loading RCW models should not be considered representative of the efficiency levels that top-loading CCWs can achieve until the technologies required to achieve such efficiency levels have been successfully demonstrated in CCWs.

For front-loaders, DOE observes that multiple models from several manufacturers, including Alliance, are rated with a WF of 4.5 or lower. DOE believes that the presence of these CCW models on the commercial market suggests that sufficient cleaning performance is able to be achieved at such WF levels. Further, DOE did not receive any evidence that the max-tech model, rated at a 4.4 WF, could not demonstrate wash performance on par with consumer utility requirements, nor if, in fact, it did not, that a WF of 5.0 would provide wash performance that would be deemed suitable, DOE notes that the max-tech level proposed in the November 2009 SNOPR had approximately 5 percent higher MEF and 2 percent higher WF than the model that Whirlpool suggests. While the proposed max-tech level therefore was slightly less stringent in terms of water consumption than the level Whirlpool suggested, DOE believes that the higher energy consumption of the proposed level is the primary factor to consider in defining a max-tech level. Therefore, DOE concluded that the max-tech levels proposed in the November 2009 SNOPR are technologically feasible, and it has retained the efficiency levels shown in Table IV.1 for today's final rule.

DOE received comments in response to the October 2008 NOPR that front-loading CCWs with electric heaters have an MEF of 1.96, which would not meet the proposed front-loading standards. According to these comments, consumers in some parts of the northern United States need such heaters to supplement their hot water supply in order to maintain proper wash temperatures despite very cold water supply temperatures. DOE indicated in the November 2009 SNOPR that it had received no data on the extent or size of this impact or of the affected population. DOE sought comment, including population and efficiency impact data, to describe this issue. 74 FR 57738, 57750 (Nov. 9, 2009)

Alliance and NPCC discussed whether a water heating CCW would be measured as having higher water heating energy consumption under the DOE clothes washer test procedure than a non-water heating CCW, given the inlet water temperature requirements. Alliance stated that the test procedure would require measurement of energy consumption with the heater on. (Alliance, Public Meeting Transcript, No. 67.4 at pp. 66–72)

Whirlpool stated that it does not produce any water heating CCWs and does not believe this is a significant segment of the market. In the absence of further data on the affected population or efficiency impacts, DOE is adopting energy conservation standards for front-loading CCWs both with and without electric heaters for the reasons discussed in section VI.D.

DOE did not receive further information regarding the market share or efficiency impact of water heating CCWs, but agrees that it likely does not represent a significant segment of the CCW market. In the absence of additional data, DOE determined that it will retain the max-tech front-loading CCW level that was proposed in the November 2009 SNOPR.

2. Manufacturing Costs

In the October 2008 NOPR, DOE presented manufacturing cost estimates based on the November 2007 ANOPR analysis, revised in response to detailed CCW manufacturer feedback obtained at the NOPR stage for equipment at each efficiency level. 73 FR 62034, 62055–56 (Oct. 17, 2008). These manufacturing costs were the basis of inputs for a number of other analyses in this rulemaking, including the LCC, national impact, and GRIM analyses.

As described in the October 2008 NOPR, DOE found that an LVM operates in both the residential and CCW markets. DOE considers this manufacturer to be low-volume because its annual shipments in the combined RCW and CCW market are significantly lower than those of its larger competitors. However, unlike its larger rivals, most of the LVM's unit shipments are in the CCW market, where the LVM has significant market share. Also unlike its diversified competitors, this company exclusively manufactures laundry equipment. A review of the Securities and Exchange Commission (SEC) 10–K documents filed by the LVM revealed that, as of 2005, this company derived 22 percent of its total revenue from the sale of front- and top-loading clothes washers and 87 percent of that income was from the commercial market.[16] As a result, the LVM could be affected disproportionately by any rulemaking concerning CCWs compared to its competitors, for whom CCWs represent less than 2 percent of total clothes washer sales. Alliance stated in response to the October 2008 NOPR that it is the LVM and that it has neither the purchasing power nor the funding to support wide-ranging research and development programs like those of its larger, more diverse rivals. As a result, the manufacturing costs for Alliance are inherently higher compared to those of its rivals. Alliance believes that the cost of compliance with the top-loading CCW standard proposed in the October 2008 NOPR would be especially high if Alliance were required to introduce non-traditional agitator designs to meet it. 74 FR 57738, 57762 (Nov. 9, 2009).

DOE research, conducted as part of the November 2009 SNOPR, suggests that the proposed efficiency level for vertical-axis clothes washers can be met with conventional, non-proprietary technology that is on the market today. Since the October 17, 2008 NOPR meeting, DOE received no further comments on the manufacturing cost curves. For the November 2009 SNOPR, DOE retained all cost estimates presented in the October 2008 NOPR at the retained efficiency levels, though each value was scaled by the Producer Price Index (PPI) multiplier for the commercial laundry equipment industry (NAICS 333312) between 2007 and 2008 to update the costs in the October 2008 NOPR to 2008$.[17] These are shown in Table IV.2.

[16] SEC documents pertaining to the LVM are available online at *http://sec.gov/*.

[17] PPI data is maintained by the Bureau of Labor Statistics and is available at http://*www.bls.gov/ppi/*

TABLE IV.2—COMMERCIAL CLOTHES WASHER INCREMENTAL MANUFACTURING COSTS PROPOSED IN NOVEMBER 2009 SNOPR

Efficiency level	Modified energy factor *ft³/kWh*/ water factor *gal/ft³*		Incremental cost $	
	Top-loading	Front-loading	Top-loading	Front-loading
Baseline	1.26/9.5	1.72/8.0	0.00	0.00
1	1.42/9.5	1.80/7.5	77.60	0.00
2	1.60/8.5	2.00/5.5	134.99	14.21
3	N/A	2.20/5.1	N/A	39.34
4	N/A	2.35/4.4	N/A	66.16

Because DOE did not receive any new information on the manufacturing cost curves, DOE retained all the incremental manufacturing costs presented in the November 2009 SNOPR at the retained efficiency levels for today's final rule. Table IV.3 shows these costs.

TABLE IV.3—COMMERCIAL CLOTHES WASHER INCREMENTAL MANUFACTURING COSTS

Efficiency level	Modified energy factor *ft³/kWh*/ water factor *gal/ft³*		Incremental cost $	
	Top-loading	Front-loading	Top-loading	Front-loading
Baseline	1.26/9.5	1.72/8.0	0.00	0.00
1	1.42/9.5	1.80/7.5	77.60	0.00
2	1.60/8.5	2.00/5.5	134.99	14.21
3	N/A	2.20/5.1	N/A	39.34
4	N/A	2.35/4.4	N/A	66.16

D. Life-Cycle Cost and Payback Period Analysis

In response to the requirements of section 325(o)(2)(B)(i) of the Act, DOE conducted LCC and PBP analyses to evaluate the economic impacts of possible amended energy conservation standards on CCW consumers. This section of the notice describes these analyses. DOE conducted the analysis using a spreadsheet model developed in Microsoft (MS) Excel for Windows 2007.

The LCC is the total consumer expense over the life of the equipment, including purchase and installation expense and operating costs (energy and water expenditures, repair costs, and maintenance costs). The PBP is the number of years it would take for the consumer to recover the increased costs of a higher-efficiency equipment through energy savings. To calculate the LCC, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the equipment. DOE measured the change in LCC and the change in PBP associated with a given efficiency level relative to a base case forecast of equipment efficiency. The base case forecast reflects the market in the absence of amended mandatory energy conservation standards. As part of the LCC and PBP analyses, DOE developed data that it used to establish equipment prices, installation costs, annual energy consumption, energy and water prices, maintenance and repair costs, equipment lifetime, and discount rates.

Commenting on DOE's use of LCC and PBP results to evaluate the economic impacts of possible amended energy conservation standards on CCW consumers, Mr. Gayer stated that if the private benefits to consumers of a more efficient CCW outweigh the private costs of a more efficient CCW, then there will be a market for high efficiency CCWs and regulation would not be necessary. He added that if consumers are unwilling to purchase a high efficiency CCW without the regulation, then this suggests they are not willing to pay the higher CCW price in order to accrue lower future energy costs. (Gayer, No. 67.7 at p. 1)

DOE agrees with the observation that many CCW purchasers are unwilling to pay the higher cost of a more efficient CCW in the face of potential operating savings benefits. DOE disagrees that this implies that it is using the wrong cost of capital in its analysis. DOE does not in general assume in its analysis that unregulated markets will equilibrate to a state where consumer decisions are perfectly aligned with private benefits and costs. DOE estimated the cost of capital based on information regarding the cost of borrowing and the opportunity cost of investment for CCW owners. Based on this cost of capital, DOE found that the operating cost benefits for many CCWs exceed the burden of increased initial costs for more efficient CCWs for many consumers who are currently using low-cost, low-efficiency CCWs. There are several possible reasons for the disparity between observed consumer behavior and the results of DOE's consumer financial analysis which may include: (1) Limited consumer information and information processing capabilities and (2) the high transaction costs of fully evaluating LCC and other characteristics of available CCWs prior to purchase or lease. In addition, there remain a number of environmental externalities that are not currently reflected in energy and water prices, which cannot be considered by consumers and which are not included in DOE's LCC and PBP analyses.. DOE did not receive or obtain sufficient information to provide a detailed explanation of why CCW purchasers tend to minimize first costs in the face of financially feasible gains that are likely to accrue from increased energy efficiency. DOE believes that its use of LCC and PBP results to evaluate the economic impacts of possible amended energy conservation standards on CCW consumers is appropriate given the information that is available.

DOE was unable to develop a survey-based consumer sample for CCWs because the U.S. Energy Information Administration's (EIA) *Commercial Building Energy Consumption Survey* (CBECS) does not provide the necessary

data to develop one.[18] Instead, DOE established the variability and uncertainty in energy and water use by defining the uncertainty and variability in the use (cycles per day) of the equipment. The variability in energy and water pricing was characterized by regional differences in energy and water prices. DOE calculated the LCC associated with a baseline CCW. To calculate the LCC savings and PBP associated with equipment meeting higher efficiency standards, DOE substituted the baseline unit with a more efficient design.

Table IV.4 summarizes the approaches and data DOE used to derive the inputs to the LCC and PBP calculations for the November 2009 SNOPR. For today's final rule, DOE did not introduce changes to either the LCC and PBP analyses methodology described in the November 2009 SNOPR or the inputs to the analysis. Chapter 8 of the TSD contains detailed discussion of the methodology utilized for the LCC and PBP analyses as well as the inputs developed for the analyses.

TABLE IV.4—SUMMARY OF INPUTS AND KEY ASSUMPTIONS IN THE LCC AND PBP ANALYSES

Inputs	November 2009 SNOPR	Changes for the final rule
Affecting Installed Costs		
Equipment Price	Derived by multiplying manufacturer cost by manufacturer, distributor markups, and sales tax.	No change.
Installation Cost	Baseline cost updated with RS Means *Mechanical Cost Data,* 2008	No change
Affecting Operating Costs		
Annual Energy and Water Use	Per-cycle energy and water use based on MEF and WF levels. Disaggregated into per-cycle machine, dryer, and water heating energy using data from DOE's 2000 TSD for residential clothes washers. Annual energy and water use determined from the annual usage (number of use cycles). Usage based on several studies including research sponsored by MLA[19] and the Coin Laundry Association[20] (CLA). Different use cycles determined for multi-family and laundromat equipment applications.	No change.
Energy and Water/Wastewater Prices	Electricity: Updated using EIA's 2007 Form 861 data Natural Gas: Updated using EIA's 2007 *Natural Gas Monthly*. Water/Wastewater: Updated using RFC/AWWA's 2006 *Water and Wastewater Survey*. Variability: Regional energy prices determined for 13 regions; regional water/wastewater price determined for four regions.	No change.
Energy and Water/Wastewater Prices Trends.	Energy: Reference Case forecast updated with EIA's *AEO 2009* April Release. High-Growth and Low-Growth forecasts updated with EIA's *AEO 2009* March Release. Water/Wastewater: Linear extrapolation of 1970–2008 historical trends in national water price index. For the four years after 2008, fixed the annual price to the value in 2008 to prevent a dip in the forecasted prices.	No change.
Repair and Maintenance Costs	Estimated annualized repair costs for each efficiency level based on half the equipment lifetime divided by the equipment lifetime.	No change.
Affecting Present Value of Annual Operating Cost Savings		
Equipment Lifetime	Based on data from various sources including the CLA. Different lifetimes established for multi-family and laundromat equipment applications. Variability and uncertainty characterized with Weibull probability distributions.	No change.
Discount Rates	Approach based on cost of capital of publicly traded firms in the sectors that purchase CCWs. Primary data source is Damodaran Online.[21]	No change.
Affecting Installed and Operating Costs		
Effective Date of New Standard	2013	No change.
Base-Case Efficiency Distributions	Analyzed as two equipment classes: top-loading and front-loading. Distributions for both classes based on the number of available models at the efficiency levels. Top-Loading: 64.8% at 1.26 MEF/9.5 WF; 33.8% at 1.42 MEF/9.5 WF; 1.4% at 1.60 MEF/8.5 WF. Front-Loading: 3.5% at 1.72 MEF/8.0 WF; 0.0% at 1.80 MEF/7.5 WF; 73.7% at 2.00 MEF/5.5 WF; 22.8% at 2.20 MEF/5.1 WF; 0.0% at 2.35 MEF/4.4 WF.	No change.

[19] Please see the following Web site for further information: *http://www.mla-online.com/.*
[20] Please see the following Web site for further information: *http://www.coinlaundry.org/.*
[21] Please see the following Web site for further information: *http://pages.stern.nyu.edu/~adamodar/.*

1. Equipment Prices

To calculate the equipment prices faced by CCW purchasers, DOE multiplied the manufacturing costs developed from the engineering analysis by the supply chain markups it developed (along with sales taxes). DOE used the same supply chain markups for today's final rule that were developed

[18] Available online at: *http://www.eia.doe.gov/emeu/cbecs/.*

for the November 2009 SNOPR. See chapter 7 of the TSD for additional information. To calculate the final installed prices, DOE added installation cost to the equipment prices.

2. Installation Cost

Installation costs include labor, overhead, and any miscellaneous materials and parts. For the November 2009 SNOPR and today's final rule, DOE used data from the RS Means *Mechanical Cost Data,* 2008 on labor requirements to estimate installation costs for CCWs.[22] DOE estimates that installation costs do not increase with equipment efficiency.

3. Annual Energy Consumption

DOE determined the annual energy and water consumption of CCWs by multiplying the per-cycle energy and water use by the estimated number of cycles per year. In the November 2009 SNOPR, DOE concluded that the use of the existing RCW test procedure provides a representative basis for rating and estimating the per-cycle energy use of CCWs. For today's final rule, DOE maintained the same approach.

4. Energy and Water Prices

a. Energy Prices

DOE derived average electricity and natural gas prices for 13 geographic areas consisting of the nine U.S. Census divisions, with four large States (New York, Florida, Texas, and California) treated separately.

For the November 2009 SNOPR and today's final rule, DOE estimated commercial electricity prices for each of the 13 geographic areas based on 2007 data from EIA Form 861, *Annual Electric Power Industry Report.*[23] DOE calculated an average commercial electricity price by first estimating an average commercial price for each utility, and then calculated a regional average price by weighting each utility with consumers in a region by the number of commercial consumers served in that region.

For the November 2009 SNOPR and today's final rule, DOE estimated average commercial natural gas prices in each of the 13 geographic areas based on 2007 data from the EIA publication *Natural Gas Monthly.* [24] DOE calculated an average natural gas price for each area by first calculating the average prices for each State, and then calculating a regional price by weighting each State in a region by its population.

To estimate the trends in electricity and natural gas prices for the November 2009 SNOPR and today's final rule, DOE used the price forecasts in the *AEO 2009* April Release.[25] To arrive at prices in future years, DOE multiplied the average prices described above by the forecast of annual average price changes. Because the *AEO* forecasts prices only to 2030, DOE followed past guidelines provided to the Federal Energy Management Program by EIA and used the average rate of change during 2020–2030 to estimate the price trends beyond 2030.

The spreadsheet tools used to conduct the LCC and PBP analysis allow users to select either the *AEO's* high-growth case or low-growth case price forecasts to estimate the sensitivity of the LCC and PBP to different energy price forecasts. The *AEO 2009* April Release provides only forecasts for the Reference Case. Therefore, for the November 2009 SNOPR and today's final rule, DOE used the *AEO 2009* March Release high-growth case or low-growth forecasts to estimate high-growth and low-growth price trends.

b. Water and Wastewater Prices

DOE obtained commercial water and wastewater price data from the *Water and Wastewater Rate Survey* conducted by Raftelis Financial Consultants (RFC) and the American Water Works Association (AWWA). For the November 2009 SNOPR and today's final rule, DOE used the 2006 *Water and Wastewater Rate Survey.*[26] The survey covers approximately 300 water utilities and 200 wastewater utilities, with each industry analyzed separately. DOE calculated values at the Census region level (Northeast, South, Midwest, and West). Edison Electric Institute (EEI) questioned why water and wastewater prices were not developed at the Census division level. (EEI, Public Meeting Transcript, No. 40.5, p. 103 and p. 178) The samples that DOE obtained of 200–300 utilities are not large enough to calculate regional prices for all U.S. Census divisions and large States. Hence, DOE was only able to capture the variability of water and wastewater prices at the Census region level.

To estimate the future trend for water and wastewater prices, DOE used data on the historic trend in the national water price index (U.S. city average) provided by the Bureau of Labor Statistics (BLS). For the October 2008 NOPR, DOE extrapolated a future trend based on the linear growth from 1970 to 2007. For the SNOPR, DOE continued to use the BLS historical data, which now provides data for the year 2008, and extrapolated the future trend based on the linear growth from 1970 to 2008. But rather than use the extrapolated trend to forecast the prices for the four years after 2008, DOE pinned the annual price to the value in 2008. Otherwise, forecasted prices for this 4-year time period would have been up to 8 percent lower than the price in 2008. Estimating prices in this manner is appropriate because it is consistent with the historical trend that demonstrates that prices do not decrease over time. Beyond the 4-year time period, DOE used the extrapolated trend to forecast prices out to the year 2043. DOE continued to use the above approach for today's final rule.

5. Repair and Maintenance Costs

Repair costs are associated with repairing or replacing components that have failed in the appliance, whereas maintenance costs are associated with maintaining the operation of the equipment. DOE was unable to gather any empirical data specific to CCWs to estimate repair and maintenance cost. For the October 2008 NOPR and the November 2009 SNOPR, DOE included increased repair costs based on an algorithm developed by DOE for central air conditioners and heat pumps and which was also used for residential furnaces and boilers.[27] This algorithm calculates annualized repair costs by dividing half of the equipment retail price over the equipment lifetime. In the absence of better data, DOE retained its approach from the November 2009 SNOPR for today's final rule.

6. Equipment Lifetime

For the November 2009 SNOPR and today's final rule, DOE used a variety of sources to establish low, average, and high estimates for equipment lifetime. The average CCW lifetime was 11.3 years for multi-family applications, and 7.1 years in laundromat applications. DOE characterized CCW lifetimes with Weibull probability distributions.

[22] Available online at: *http://www.rsmeans.com/bookstore/.*

[23] Available online at: *http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[24] Available online at: *http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm.html.*

[25] All AEO publications are available online at: *http://www.eia.doe.gov/oiaf/aeo/.*

[26] Raftelis Financial Consultants, Inc., *2006 RFC/AWWA Water and Wastewater Rate Survey, 2006,* (2006). This document is available at: *http://www.raftelis.com/ratessurvey.html.*

[27] U.S. Department of Energy, Technical Support Document: Energy Efficiency Standards for Consumer Products: Residential Central Air Conditioners and Heat Pumps (May 2002) chapter 5. This document is available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/ac_central_1000_r.html.*

7. Discount Rates

To establish discount rates for CCWs for the November 2009 SNOPR and today's final rule, DOE estimated the cost of capital of publicly traded firms in the sectors that purchase CCWs as the weighted average of the cost of equity financing and the cost of debt financing. DOE identified the following sectors purchasing CCWs: (1) Educational services; (2) hotels; (3) real estate investment trusts; and (4) personal services. DOE estimated the weighted-average cost of capital (WACC) using the respective shares of equity and debt financing for each sector that purchases CCWs. It calculated the real WACC by adjusting the cost of capital by the expected rate of inflation. To obtain an average discount rate value, DOE used additional data on the number of CCWs in use in various sectors. DOE estimated the average discount rate for companies that purchase CCWs at 5.7 percent.

8. Effective Date of the Amended Standards

The compliance date is the future date when parties subject to the requirements of a new standard must begin compliance. For the November 2009 SNOPR, DOE expected that the final rule will be published by January 1, 2010, as required by EPACT 2005, with compliance with new standards required by January 1, 2013. For today's final rule, DOE used the same date for compliance. DOE calculated the LCC for CCW consumers as if they would purchase new equipment in the year after the standard takes effect.

9. Equipment Energy Efficiency in the Base Case

For the LCC and PBP analysis, DOE analyzes higher efficiency levels relative to a baseline efficiency level. However, some consumers may already purchase equipment with efficiencies greater than the baseline equipment levels. Thus, to accurately estimate the percentage of consumers that would be affected by a particular standard level, DOE estimates the distribution of equipment efficiencies that consumers are expected to purchase under the base case (*i.e.,* the case without new energy efficiency standards). DOE refers to this distribution of equipment energy efficiencies as a base-case efficiency distribution. As discussed previously in section IV.A, DOE decided to analyze CCWs with two equipment classes—top-loading CCWs and front-loading CCWs. For the November 2009 SNOPR and today's final rule, DOE used the number of available models within each equipment class to establish the base-case efficiency distributions. Table IV.5 presents the market shares of the efficiency levels in the base case for CCWs. See chapter 8 of the TSD for further details on the development of CCW base-case market shares.

TABLE IV.5—COMMERCIAL CLOTHES WASHERS: BASE CASE MARKET SHARES

Top-loading				Front-loading			
Standard level	MEF	WF	Market share %	Standard level	MEF	WF	Market share %
Baseline	1.26	9.50	64.8	Baseline	1.72	8.00	3.5
1	1.42	9.50	33.8	1	1.80	7.50	0.0
2	1.60	8.50	1.4	2	2.00	5.50	73.7
				3	2.20	5.10	22.8
				4	2.34	4.40	0.0

10. Split Incentive Between CCW Consumers and Users

Under a split incentive situation, the party purchasing more efficient and presumably more expensive equipment (referred to as "consumers" in this notice) may not realize the operating cost savings from that equipment, because another party may pay the utility bill. Such a situation exists in segments of the CCW market. In comments on the October 2008 NOPR, Whirlpool and Alliance stated that those who own CCWs (usually route operators) often do not incur the operating costs as do, generally, laundromats and owners of multi-family dwellings. 73 FR 62067 (Oct. 17, 2008). Recognizing this, DOE evaluated the ability of CCW consumers to pass on the higher purchase costs of more expensive CCWs and concluded that few route operators would allow themselves to be held to a lease agreement that would prevent them from recovering the cost of more efficient CCW equipment. That is, DOE believes that these CCW consumers would be able to realize a significant share of the operating cost savings from more-efficient equipment. The Joint Comment stated that contracts between route operators and multi-housing property owners are subject to revision and renewal, and that the division of coin-box revenue may be renegotiated to allow for the savings achieved by more-efficient CCWs to be equitably shared between the purchasers/owners of the machines (route operators) and the parties responsible for paying electric, gas, water, and sewer bills (property owners). (Joint Comment, No. 67.6 at p. 3) DOE agrees with the above comment, and continues to conclude that CCW consumers would be able to realize a significant share of the operating cost savings from more-efficient equipment.

11. Rebound Effect

The rebound effect occurs when a piece of equipment, made more efficient and used more intensively, does not yield the expected energy savings from the efficiency improvement. In the case of more efficient clothes washers, limited research indicates that there is no rebound effect for RCWs, although the consumer may choose to purchase larger models with more features that would result in higher energy use.[28] DOE did not receive any comments from interested parties on the issue of the rebound effect for CCWs. Based on the limited research showing no rebound effect for RCWs, DOE did not include a rebound effect in its analysis of CCW standards.

12. Inputs to Payback Period Analysis

The PBP is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more efficient equipment through operating cost savings, compared to baseline equipment. The simple PBP does not account for changes in operating expense over time or the time value of money. The inputs to the PBP calculation are the total installed cost of the equipment to the consumer for each efficiency level and the annual (first-

[28] L.A. Greening, D.L. Greene, and C. Difiglio. "Energy efficiency and consumption—the rebound effect—a survey." *Energy Policy* 28 (2000) 389–401. Available for purchase at *http://www.elsevier.com/locate/enpol.*

year) operating expenditures for each efficiency level. For the November 2009 SNOPR and today's final rule, the PBP calculation uses the same inputs as the LCC analysis, except that energy price trends and discount rates are not needed.

13. Rebuttable-Presumption Payback Period

As noted above, EPCA, as amended (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a)), establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that "the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and as applicable, water) savings during the first year that the consumer will receive as a result of the standard," as calculated under the test procedure in place for that standard. For each TSL, DOE determined the value of the first year's energy savings by calculating the quantity of those savings in accordance with DOE's test procedure, and multiplying that amount by the average energy price forecast for the year in which a new standard would be first effective—in this case, 2013.

E. National Impact Analysis—National Energy Savings and Net Present Value Analysis

1. General

DOE's NIA assesses the national energy savings, as well as the national NPV of total consumer costs and savings, expected to result from new standards at specific efficiency levels. DOE applied the NIA spreadsheet to perform calculations of energy savings and NPV, using the annual energy consumption and total installed cost data from the LCC analysis. DOE forecasted the energy savings, energy cost savings, equipment costs, and NPV for each equipment class from 2013 to 2043. The forecasts provide annual and cumulative values for all four parameters. In addition, DOE incorporated into its NIA spreadsheet the capability to analyze sensitivity of the results to forecasted energy prices and equipment efficiency trends. Table IV.6 summarizes the approach and data DOE used to derive the inputs to the NES and NPV analyses for the November 2009 SNOPR. DOE made no changes to the analyses for today's final rule. (See chapter 11 of the final rule TSD for further details.)

TABLE IV.6—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE NATIONAL ENERGY SAVINGS AND NPV ANALYSES

Inputs	2009 SNOPR Description	Changes for the final rule
Shipments	Annual shipments from Shipments Model	No change.
Effective Date of Standard	2013	No change.
Base-Case Forecasted Efficiencies	Shipment-weighted efficiency (SWEF) determined in the year 2005. SWEF held constant over forecast period.	No change.
Standards-Case Forecasted Efficiencies.	Analyzed as two equipment classes. For each equipment class, roll-up scenario used for determining SWEF in the year that standards become effective for each standards case. SWEF held constant over forecast period.	No change.
Annual Energy Consumption per Unit	Annual weighted-average values as a function of SWEF	No change.
Total Installed Cost per Unit	Annual weighted-average values as a function of SWEF	No change.
Energy and Water Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy (and water) prices.	No change.
Repair Cost and Maintenance Cost per Unit.	Incorporated changes in repair costs as a function of efficiency	No change.
Escalation of Energy and Water/Wastewater Prices.	Energy Prices: Updated to *AEO 2009* April Release forecasts for the Reference Case. *AEO 2009* April Release does not provide High-Growth and Low-Growth forecasts; used *AEO 2009* March Release High-Growth and Low-Growth forecasts to estimate high- and low-growth price trends.	
	Water/Wastewater Prices: Linear extrapolation of 1970–2008 historical trends in national water price index. For the four years following 2013, fixed the annual price to the value in 2008 to prevent a dip in the forecasted prices.	No change.
Energy Site-to-Source Conversion	Conversion varies yearly and is generated by DOE/EIA's NEMS program (a time-series conversion factor; includes electric generation, transmission, and distribution losses).	No change.
Effect of Standards on Energy Prices	Determined but found not to be significant	No change.
Discount Rate	3% and 7% real	No change.
Present Year	Future expenses discounted to year 2009	No change.

2. Shipments

The shipments portion of the NIA Spreadsheet is a Shipments Model that uses historical data as a basis for projecting future shipments of the equipment that are the subject of this rulemaking. In projecting CCW shipments, DOE accounted for three market segments: (1) New construction; (2) existing buildings (*i.e.,* replacing failed equipment); and (3) retired units not replaced. DOE used the non-replacement market segment to calibrate the Shipments Model to historical shipments data. For purposes of estimating the impacts of prospective standards on equipment shipments (*i.e.,* forecasting standards-case shipments) DOE considered the combined effects of changes in purchase price, annual operating cost, and household income on the magnitude of shipments.

Table IV.7 summarizes the approach and data DOE used to derive the inputs to the shipments analysis for the November 2009 SNOPR, and the changes it made for today's final rule. The general approach for forecasting CCW shipments for today's final rule remains unchanged from the November 2009 SNOPR. That is, all CCW shipments (for both equipment classes) were estimated for the new construction, replacement, and non-replacement markets. DOE then allocated shipments to each of the two equipment classes based on the market share of each class. For the November 2009 SNOPR, DOE estimated that top-loading washers comprise 70 percent of the market while front-loading washers

comprise 30 percent. DOE estimated that the equipment class market shares would remain unchanged over the time period 2005–2043.

TABLE IV.7—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE SHIPMENTS ANALYSIS

Inputs	2009 SNOPR description	Changes for the final rule
Number of Equipment Classes.	Two: top-loading washers and front-loading washers. Shipments forecasts established for all CCWs and then disaggregated into the two equipment classes based on the market share of top- and front-loading washers. Updated market share data based on SEC 10K report of the LVM and tax credits claimed by the LVM for producing high-efficiency CCWs. Market share determined to be 70% top-loading and 30% front-loading. Equipment class market shares held constant over forecast period.	No change.
New Construction Shipments.	Determined by multiplying multi-housing forecasts by forecasted saturation of CCWs for new multi-housing. Multi-housing forecasts with *AEO 2009* April Release forecasts for the Reference Case. Verified frozen saturations with data from the U.S. Census Bureau's *American Housing Survey* (AHS) for 1997–2005.	No change.
Replacements	Determined by tracking total equipment stock by vintage and establishing the failure of the stock using retirement functions from the LCC and PBP analysis. Retirement functions revised to be based on Weibull lifetime distributions.	No change.
Retired Units not Replaced (*i.e.,* non-replacements).	Used to calibrate Shipments Model to historical shipments data. Froze the percentage of non-replacements at 15 percent for the period 2007–2043 to account for the increased saturation rate of in-unit washers in the multi-family stock between 1997 and 2005 timeframe shown by the AHS.	No change.
Historical Shipments	Data sources include AHAM data submittal, *Appliance Magazine,* and U.S. Bureau of Economic Analysis' quantity index data for commercial laundry. Relative market shares of the two equipment applications, common-area laundry facilities in multi-family housing and laundromats, estimated to be over time at 85 and 15 percent, respectively.	Conducted a sensitivity analysis based on relative market shares of 66 percent for multi-family housing and a 34-percent share for laundromats.
Purchase Price, Operating Cost, and Household Income Impacts due to efficiency standards.	Developed the "relative price" elasticity which accounts for the purchase price and the present value of operating cost savings divided by household income. Used purchase price and efficiency data specific to residential refrigerators, clothes washers, and dishwashers between 1980 and 2002 to determine a "relative price" elasticity of demand, of −0.34.	No change.
Fuel Switching	Not applicable	No change.

DOE based its Shipments Model for CCWs on the following three assumptions: (1) All equipment shipments for new construction are driven by the new multi-family housing market, (2) the relative market shares of the two equipment applications, common-area laundry facilities in multi-family housing and laundromats, are constant over time at 85 and 15 percent, respectively, and (3) the U.S. Census Bureau's quantity index data can be used to validate the shipments trend observed in the historical data.

The Joint Comment stated that DOE's assumed 85 percent to 15 percent split between sales for multi-family applications and sales for laundromat applications is not based on robust or current data, and understates the energy, water, and dollar savings that would be achieved by all of the standard levels under consideration. It cited information from Alliance's Form 10–K for 2008, which, the Joint Comment asserted, suggested that the ratio of multi-family to laundromat shipments is about 40 percent to 60 percent. It noted that because some laundromats purchase a limited number of larger capacity washers not found in multi-family settings, the commenters believe a split of roughly 45 percent for multi-family venues and 55 percent for laundromats is reasonable, and should be evaluated by DOE for the final rule. (Joint Comment, No. 67.6 at p. 3) Whirlpool commented that it believes the industry mix is not nearly as heavily weighted toward the multi-family channel as DOE assumed. (Whirlpool, No. 67.11 at p. 4). In contrast, Alliance stated that it believes that the split of the distribution channels of laundromat versus multi-family housing common-area laundry rooms of 15 percent and 85 percent respectively is generally representative of the industry. (Alliance, No. 67.8 at p. 2)

In response, DOE believes that the interpretation by the Joint Comment of information from Alliance's Form 10–K for 2008 understates the importance of equipment other than CCWs. The total 2008 revenues from Alliance's sales to the commercial laundry industry are $338 million, and sales to laundromats and multi-family housing amount to $240 million. However, based on data gathered for its MIA, DOE estimated that the total sales of CCWs by Alliance amount to only $73 million. Therefore, it seems evident that a large fraction of the sales to laundromats and multi-family housing are accounted for by equipment other than CCWs. This unaccounted-for equipment would include clothes dryers in addition to washer-extractors and tumblers, which are large-capacity, higher-performance washing machines, and matching large-capacity dryers, respectively. Laundromats account for much more of the larger equipment than multi-family housing, and this type of equipment is more expensive than CCWs. Therefore, the laundromat share of sales to the North American commercial laundry industry by Alliance is as high as it is primarily due to sales of larger equipment. Thus, the revenue share between the multi-family and laundromat markets is not a good indicator of the share of laundromats in sales of CCWs.

The CCW unit shipment shares of 85 percent for multi-family housing and 15 percent for laundromats used in the SNOPR were based upon the input of industry experts consulted in a comprehensive study conducted by the Consortium for Energy Efficiency in

1998.[29] Although the report was conducted over 10 years ago, it was the most reliable data source for developing a market split for CCW shipments that was available. DOE notes that Alliance believes that this split is generally representative of the industry. However, because the assumed shares of laundromats and multi-family housing in shipments have a significant effect on the NIA results, DOE conducted a sensitivity analysis in which it used the data in Alliance's 2008 10K report, coupled with a number of assumptions and input from Whirlpool, to estimate the shares of laundromats and multi-family housing in shipments of CCWs in 2008. The analysis, which is described in appendix 11C of the final rule TSD, yields an estimate of a 66 percent share for multi-family housing and a 34 percent share for laundromats. Using these shares increases national energy savings by approximately 9 percent (compared to the savings when using the 15 percent and 85 percent shares), and increases the NPV of consumer benefit by approximately 12 percent under TSLs 3, 4, and 5.

a. New Construction Shipments

To determine new construction shipments, DOE used a forecast of new housing coupled with equipment market saturation data for new housing. For new housing completions and mobile home placements, DOE adopted the projections from EIA's *AEO 2009* April Release Reference Case through 2030 for the November 2009 SNOPR and today's final rule. For CCWs, DOE relied on new construction market saturation data from the above-mentioned CEE report.

b. Replacements and Non-Replacements

DOE estimated replacements using equipment retirement functions developed from equipment lifetimes. For the November 2009 SNOPR and today's final rule, DOE used retirement functions based on Weibull distributions. DOE determined that the growth of in-unit washer saturations in the multi-family stock over the last 10 years was likely caused by conversions of rental property to condominiums, resulting in the gradual phase-out or non-replacement of failed CCWs in common-area laundry facilities. As a result, DOE used the average percent of non-replacements over the period between 1999 and 2005 (18 percent) and maintained it over the entire forecast period. The effect of maintaining non-replacements at 18 percent results in forecasted CCW shipments staying relatively flat during the forecast period.

c. Impacts of Standards on Shipments

To estimate the combined effects on CCW shipments from increases in equipment purchase price and decreases in equipment operating costs due to amended efficiency standards, DOE relied on a literature review and a statistical analysis that it has conducted on a limited set of appliance price, efficiency, and shipments data. DOE used purchase price and efficiency data specific to residential refrigerators, clothes washers, and dishwashers between 1980 and 2002 to conduct regression analyses. DOE's analysis suggests that the "relative" short-run price elasticity of demand, averaged over the three appliances, is -0.34. Because DOE's forecast of shipments and impacts due to standards spans over 30 years, DOE also considered how the relative price elasticity is affected once a new standard takes effect. After the purchase price change, price elasticity becomes more inelastic over the years until it reaches a terminal value. DOE incorporated a change in relative price elasticity change that resulted in a terminal value of approximately one-third of the short-run elasticity. In other words, DOE determined that consumer purchase decisions, in time, become less sensitive to the initial change in the equipment's relative price.

NPCC suggested that it might be useful for DOE to compare the relative price elasticity approach used for CCWs with the shipments model that was used in the previous rulemaking for RCWs. (NPCC, Public Meeting Transcript, No. 67.4 at pp. 97–98) The approach that was used in the previous rulemaking for RCWs modeled consumer purchase decisions in terms of probabilities that typically depend on the type of stock, the age of the clothes washer, the incremental cost of the decision, and market conditions. The dependence of decision probabilities on price and market conditions was given by a standard econometric logic equation. In the present rulemaking for CCWs, DOE did not use such an approach, in part because it requires detailed information on consumer decision making, which is not available in the case of CCWs.

For its November 2009 SNOPR as well as today's final rule, DOE estimated that price increases due to standards would lead to reductions in unit shipments for both top-loading and front-loading CCWs. DOE analyzed the impacts of increased purchase prices for each equipment class independently of the other. Because the price impacts for more efficient top-loaders are higher than those for more efficient front-loaders, DOE estimated that sales would decrease more for top-loading CCWs than for front-loaders.

DOE did not explicitly model potential switching between top-loaders and front-loaders due to lack of information on the appropriate cross-price elasticity. Whirlpool commented that there are considerable between-class switching costs which would act against class switching by purchasers of commercial clothes washers. (Whirlpool, No. 67.11 at p. 2) DOE notes the comment by Whirlpool but it believes that there is uncertainty regarding the extent of switching that could result from changes in the price differential between top-loaders and front-loaders.

3. Other Inputs

a. Base-Case Forecasted Efficiencies

A key input to the calculations of NES and NPV are the energy efficiencies that DOE forecasts for the base case (without new standards). The forecasted efficiencies represent the annual shipment-weighted energy efficiency (SWEF) of the equipment under consideration over the forecast period (*i.e.,* from the estimated effective date of a new standard to 30 years after that date).

For the November 2009 SNOPR, DOE first determined the distribution of equipment efficiencies currently in the marketplace to develop a SWEF for each equipment class for 2005. Using the SWEF as a starting point, DOE developed base-case efficiencies based on estimates of future efficiency increase. From 2005 to 2013 (2013 being the estimated effective date of a new standard), DOE estimated that there would be no change in the SWEF (*i.e.,* no change in the distribution of equipment efficiencies). Because there are no historical data to indicate how equipment efficiencies have changed over time, DOE estimated that forecasted efficiencies would remain at the 2013 level until the end of the forecast period. DOE recognizes the possibility that equipment efficiencies may change over time (*e.g.,* due to voluntary efficiency programs such as ENERGY STAR). But without historical information, DOE had no basis for estimating how much the equipment efficiencies may change. For today's final rule, DOE maintained its estimate that the SWEF would remain constant from 2005 through the end of the forecast period.

[29] Consortium for Energy Efficiency, *Commercial Family-Sized Washers: An Initiative Description of the Consortium for Energy Efficiency* (1998). This document is available at: *http://www.cee1.org/com/cwsh/cwsh-main.php3.*

b. Standards-Case Forecasted Efficiencies

For its determination of each of the cases with alternative standard levels ("standards cases"), DOE used a "roll-up" scenario in the November 2009 SNOPR to establish the SWEF for 2013. In a roll-up scenario, equipment efficiencies in the base case which do not meet the standard level under consideration are projected to roll-up to meet the new standard level. Further, all equipment efficiencies in the base case that are above the standard level under consideration are not affected by the standard. The same scenario is used for the forecasted standards-case efficiencies as for the base-case efficiencies, namely, that forecasted efficiencies remained at the 2013 efficiency level until the end of the forecast period, as DOE has no data to reasonably estimate how such efficiency levels might change over the next 30 years. By maintaining the same rate of increase for forecasted efficiencies in the standards case as in the base case (*i.e.,* no change), DOE retained a constant efficiency difference between the two cases over the forecast period. Although the no-change trends may not reflect what would happen to base-case and standards-case equipment efficiencies in the future, DOE believes that maintaining a constant efficiency difference between the base case and standards case provides a reasonable estimate of the impact that standards have on equipment efficiency. It is more important to accurately estimate the efficiency difference between the standards case and base case, than to accurately estimate the actual equipment efficiencies in the standards and base cases. DOE retained the approach used in the November 2009 SNOPR for today's final rule.

c. Annual Energy Consumption

The annual energy consumption per unit depends directly on equipment efficiency. For the November 2009 SNOPR and today's final rule, DOE used the SWEFs associated with the base case and each standards case, in combination with the annual energy data, to estimate the shipment-weighted average annual per-unit energy consumption under the base case and standards cases. The national energy consumption is the product of the annual energy consumption per unit and the number of units of each vintage, which depends on shipments.

As noted above in section IV.D, DOE used a relative price elasticity to estimate standards-case shipments for CCWs. As a result, shipments forecasted under the standards cases are lower than under the base case. To avoid the inclusion of energy savings from reduced shipments, DOE used the standards-case shipments projection and the standards-case stock to calculate the annual energy consumption in the base case. For CCWs, any drop in shipments caused by standards is estimated to result in the purchase of used machines. As a result, the standards-case forecast explicitly accounted for the energy and water consumption of new standard-compliant CCWs and also used machines coming into the market due to the drop in new equipment shipments.

DOE retained the use of the base-case shipments to determine the annual energy consumption in the base case and the approach used in the November 2009 SNOPR for today's final rule.

d. Site-to-Source Conversion

To estimate the national energy savings expected from appliance standards, DOE uses a multiplicative factor to convert site energy consumption (energy use at the location where the appliance is operated) into primary or source energy consumption (the energy required to deliver the site energy). For the November 2009 SNOPR and today's final rule, DOE used annual site-to-source conversion factors based on the version of NEMS that corresponds to the *AEO 2009* March Release version. These conversion factors account for natural gas losses from pipeline leakage and natural gas used for pumping energy and transportation fuel. For electricity, the conversion factors vary over time due to projected changes in generation sources (*i.e.,* the power plant types projected to provide electricity to the country). Since the *AEO* does not provide energy forecasts that go beyond 2030, DOE used conversion factors that remain constant at the 2030 values throughout the remainder of the forecast.

In response to a request from the DOE, Office of Energy Efficiency and Renewable Energy (EERE), the National Research Council (NRC) appointed a committee on "Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards" to conduct a study called for in section 1802 of EPACT 2005.[30] The fundamental task before the committee was to evaluate the methodology used for setting energy efficiency standards and to comment on whether site (point-of-use) or source (full-fuel-cycle) measures of energy efficiency better support rulemaking to achieve energy conservation goals. The NRC committee defined site (point-of-use) energy consumption as reflecting the use of electricity, natural gas, propane, and/or fuel oil by an appliance at the site where the appliance is operated, based on specified test procedures. Full-fuel-cycle energy consumption was defined as including, in addition to site energy use, the energy consumed in the extraction, processing, and transport of primary fuels such as coal, oil, and natural gas; energy losses in thermal combustion in power-generation plants; and energy losses in transmission and distribution to homes and commercial buildings.

In evaluating the merits of using point-of-use and full-fuel-cycle measures, the NRC committee noted that DOE uses what the committee referred to as "extended site" energy consumption to assess the impact of energy use on the economy, energy security, and environmental quality. The extended site measure of energy consumption includes the generation, transmission, and distribution but, unlike the full-fuel-cycle measure, does not include the energy consumed in extracting, processing, and transporting primary fuels. A majority of members on the NRC committee believe that extended site energy consumption understates the total energy consumed to make an appliance operational at the site. As a result, the NRC committee's primary general recommendation is for DOE to consider moving over time to use of a full-fuel-cycle measure of energy consumption for assessment of national and environmental impacts, especially levels of greenhouse gas emissions, and to providing more comprehensive information to the public through labels and other means, such as an enhanced Web site. For those appliances that use multiple fuels (*e.g.,* water heaters), the NRC committee believes that measuring full-fuel-cycle energy consumption would provide a more complete picture of energy used, allowing comparison across many different appliances as well as an improved assessment of impacts. The NRC committee also acknowledged the complexities inherent in developing a full-fuel-cycle measure of energy use and stated that a majority of the committee recommended a gradual transition to that expanded measure and eventual replacement of the currently used extended site measure. To improve consumers' understanding, the

[30] The National Academies, Board on Energy and Environmental Systems, Letter to Dr. John Mizroch, Acting Assistant Secretary, U.S. DOE, Office of EERE from James W. Dally, Chair, Committee on Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards, May 15, 2009.

committee recommended that DOE and the Federal Trade Commission could evaluate potential indices of energy use and its impacts and could explore various options for label design and content using established consumer research methods.

DOE acknowledges that its site-to-source conversion factors do not capture the energy consumed in extracting, processing, and transporting primary fuels. DOE also agrees with the NRC committee's conclusion that developing site-to-source conversion factors that capture the energy associated with the extraction, processing, and transportation of primary fuels is inherently complex and difficult. As a result, DOE will evaluate whether moving to a full-fuel-cycle measure will enhance its ability to set energy-efficiency standards.

DOE also notes that the NRC committee's recommendation to use a full-fuel-cycle measure was especially focused on appliances using multiple fuels. For single-fuel appliances, the committee recommended that the current practice of basing energy efficiency requirements on the site measure of energy consumption should be retained. Although CCWs utilize heated water from both electric and natural gas water heaters and are credited with improved performance by reducing the energy used in electric and gas clothes dryers, the energy efficiency metric with which they are regulated, the MEF, is expressed in terms of electrical energy usage (cubic feet per kWh). As a result, for labeling and enforcement purposes, CCWs are a single-fuel appliance. Therefore, although a full-fuel-cycle measure may provide a better assessment of national and environmental impacts, it is not necessary for providing energy use comparisons among CCW models.

e. Energy Used in Water and Wastewater Treatment and Delivery

In the October 2008 NOPR and the November 2009 SNOPR, DOE did not include the energy required for water treatment and delivery in its analysis. It stated that EPCA defines "energy use" to be "the quantity of energy directly consumed by a consumer product at point of use, determined in accordance with test procedures under section 6293 of [42 U.S.C.]." (42 U.S.C. 6291(4)) Based on the definition of "energy use," DOE concluded that it does not have the authority to consider embedded energy (*i.e.,* the energy required for water treatment and delivery) in the analysis. It added that, even if DOE had the authority, it does not believe adequate analytical tools exist to conduct such an evaluation.[31]

In response, the California Utilities stated that DOE should account for energy savings associated with energy embedded in water. (California Utilities, No. 67.10 at p. 5) For the reason stated above, DOE did not include the energy required for water treatment and delivery in its analysis of energy savings from amended CCW standards.

EJ commented that two of the additional rationales provided by DOE for not including the energy required for water treatment and delivery in its analysis were not convincing. In reference to DOE's statement that "Inclusion of the embedded energy associated with water and wastewater service, would, for completeness, also require inclusion of the energy associated with all other aspects of the installation and operation of the equipment, *e.g.* the manufacture, distribution, and installation of the equipment;" EJ stated that DOE has offered no explanation for why consideration of the energy embedded in the water used in equipment's operation would mandate this much wider expansion of the Department's analysis. Regarding DOE's contention that its analysis already reflects the cost of the energy embedded in water because the cost of the energy used in treating and delivering water is a component of the cost of water for clothes washer consumers, EJ stated that the outcome of the life-cycle cost analysis is not the only factor DOE must consider in determining whether a standard level is economically justified, and DOE must consider, to the maximum extent practicable, "the total projected amount of energy * * * savings likely to result directly from the imposition of the standard." 42 U.S.C. 6295(o)(2)(B)(i)(III). (EJ, No. 67.5 at p. 12)

In response, DOE notes that neither of the additional rationales on which EJ commented is central to its conclusion that it does not have the authority to consider the energy required for water treatment and delivery in the analysis. In the first instance, DOE was simply pointing out that it is difficult to select what should be included once one deviates from the aforementioned EPCA definition of "energy use." In the second instance, DOE was noting that its analysis does include some aspects of the energy embedded in water delivered to CCWs. DOE agrees that the outcome of the life-cycle cost analysis is not the only factor DOE must consider in determining whether a standard level is economically justified; however, it believes that in considering the energy savings likely to result directly from the imposition of the standard, the appropriate course is to follow the EPCA definition of "energy use."

f. Total Installed Costs and Operating Costs

The increase in total annual installed cost is equal to the difference in the per-unit total installed cost between the base case and standards case, multiplied by the shipments forecasted in the standards case. The annual operating cost savings per unit includes changes in energy, water, repair, and maintenance costs. For the November 2009 SNOPR and today's final rule, DOE forecasted energy prices using data from *AEO 2009* April Release. For today's final rule, DOE maintained the approach it used to develop repair and maintenance costs for more efficient CCWs in the November 2009 SNOPR.

Commenting on valuation of energy savings, the California Utilities urged DOE to assess the energy impacts from the proposed standard such that the analysis captures the value of energy over time. It noted that California has developed an energy costing analysis for standards, called Time-Dependent Valuation of savings (TDV), which places a high value on energy savings that occur during high-cost times of the day and year. It added that water and wastewater can also have time-dependent values, which should be accounted for in DOE's analysis. (California Utilities, No. 67.10 at p. 6) In response, DOE acknowledges that the approach suggested by the California Utilities has merits, but it believes that the amount of effort and time required to develop time-dependent values of energy savings (as well as water and wastewater savings) at a diversity of locations across the nation would it make it impossible to implement this approach within the context of the present rulemaking.

g. Discount Rates

DOE multiplies monetary values in future years by the discount factor to determine the present value. DOE estimated national impacts using both a

[31] An analytical tool equivalent to EIA's NEMS would be needed to properly account for embedded energy impacts on a national scale, including the embedded energy due to water and wastewater savings. This new version of NEMS would need to analyze spending and energy use in dozens, if not hundreds, of economic sectors. This version of NEMS also would need to account for shifts in spending in these various sectors to account for the marginal embedded energy differences among these sectors. 72 FR 64432, 64498–99 (Nov. 15, 2007). DOE does not have access to such a tool or other means to accurately estimate the source energy savings impacts of decreased water or wastewater consumption and expenditures.

3-percent and a 7-percent real discount rate, in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis (OMB Circular A–4 (Sept.17, 2003), section E, "Identifying and Measuring Benefits and Costs").[32]

The California Utilities stated that DOE should give primary weight to calculations based on the 3-percent discount rate for its national impact analysis. (California Utilities, No. 67.10 at p. 6) In response, DOE notes that OMB Circular A–4 references an earlier Circular A–94, which states that a real discount rate of 7 percent should be used as a base case for regulatory analysis. The 7-percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. It approximates the opportunity cost of capital, and, according to Circular A–94, it is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector. OMB later found that the average rate of return to capital remains near the 7-percent rate estimated in 1992. Circular A–4 also states that when regulation primarily and directly affects private consumption, a lower discount rate is appropriate: "The alternative most often used is sometimes called the social rate of time preference * * * the rate at which "society" discounts future consumption flows to their present value." It suggests that the real rate of return on long-term government debt may provide a fair approximation of the social rate of time preference, and states that over the last 30 years, this rate has averaged around 3 percent in real terms on a pre-tax basis. Circular A–4 concludes that "for regulatory analysis, [agencies] should provide estimates of net benefits using both 3 percent and 7 percent." Consistent with OMB's guidance, DOE did not give primary weight to results derived using a 3-percent discount rate.

h. Effects of Standards on Energy Prices

For the October 2008 NOPR, DOE conducted an analysis of the impact of reduced energy demand associated with possible standards on CCWs on prices of natural gas and electricity. The analysis found that gas and electric demand reductions resulting from max-tech standards for CCWs would have no detectable change on the U.S. average wellhead natural gas price or the average user price of electricity. Therefore, DOE concluded that CCW standards will not provide additional economic benefits resulting from lower energy prices. For today's final rule, DOE has made no change to its conclusions about the effects of CCW standards on energy prices.

F. Consumer Subgroup Analysis

For the November 2009 SNOPR and today's final rule, DOE analyzed the potential effects of CCW standards on two subgroups: (1) Consumers not served by municipal water and sewer providers, and (2) small businesses. For consumers not served by water and sewer, DOE analyzed the potential impacts of standards by conducting the analysis with well and septic system prices, rather than water and wastewater prices based on RFC/AWWA data. For small businesses, DOE analyzed the potential impacts of standards by conducting the analysis with different discount rates, because small businesses do not have the same access to capital as larger businesses. DOE estimated that for businesses purchasing CCWs, the average discount rate for small companies is 3.5 percent higher than the industry average. Due to the higher costs of conducting business, as evidenced by their higher discount rates, the benefits of CCW standards for small businesses will be lower than for the general population of CCW owners.

More details on the consumer subgroup analysis can be found in chapter 12 of the final rule TSD.

G. Manufacturer Impact Analysis

DOE performed an MIA to estimate the financial impact of amended energy conservation standards on CCW manufacturers, and to calculate the impact of such standards on domestic manufacturing employment and capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the GRIM—an industry-cash-flow model customized for this rulemaking. The GRIM inputs are data characterizing the industry cost structure, shipments, and revenues. The key output is the INPV. Different sets of assumptions (scenarios) will produce different results. The qualitative part of the MIA addresses factors such as equipment characteristics, characteristics of particular firms, and market and equipment trends, and it also includes an assessment of the impacts of standards on subgroups of manufacturers. DOE outlined its methodology for the MIA in the October 2008 NOPR. 73 FR 62034, 62075–81 (Oct. 17, 2008). The complete MIA for the October 2008 NOPR is presented in chapter 13 of the NOPR TSD.

For the November 2009 SNOPR, DOE updated the MIA results based on several changes to other analyses that impact the MIA. The total shipments and efficiency distributions were updated using the new estimates outlined in the SNOPR NIA. The SNOPR MIA also used the same analysis period as in the NIA (2013–2043) and updated the base year to 2009. DOE also updated the manufacturer production costs and the capital and equipment conversion costs to 2008$ using the producer price index for commercial laundry equipment manufacturing (NAICS 333312). Additionally, DOE updated the GRIM to allow the inclusion of Federal production tax credits. 74 FR 57738, 57762 (Nov. 9, 2009).

For today's final rule, DOE continued to use the GRIM and revised the MIA results from the November 2009 SNOPR. For details of the MIA, see chapter 13 of the TSD. The following sections describe the revisions made to the MIA for today's final rule.

For the November 2009 SNOPR, DOE used publicly available information, recent SEC filings, and the information published in chapter 13 and appendix 13A of the October 2008 NOPR to estimate the likely Federal production tax credits for which the CCW industry would be eligible. 74 FR 57738, 57764 (Nov. 9, 2009). For today's final rule, DOE used tax and earnings information published in SEC filings for the LVM and the same methodology described in appendix 13C to revise the estimated Federal production tax credits for 2009 and 2010. For details on the Federal production tax credits, see appendix 13C of the TSD.

For the November 2009 SNOPR, DOE received a number of comments from interested parties in response to the distribution and usage patterns for commercial laundry, which affect the shipment analysis. In response, DOE modeled a sensitivity analysis to account for the slightly different shipment results. Shipments affect MIA results because they directly influence the value of the INPV estimated in the GRIM. For today's final rule, the GRIM was revised to include an alternative shipment scenario based on the sensitivity analysis. See appendix 11C for details on the sensitivity analysis, including the INPV results from the analysis.

DOE received a number of comments from interested parties in response to the MIA analysis presented in the November 2009 SNOPR. At the SNOPR public meeting and in its written comments, Alliance stated that DOE's belief that all manufacturers can achieve

[32] OMB circulars are available online at: *http://www.whitehouse.gov/omb/circulars/.*

a top-loading standard greater than or equal to 1.60 MEF and a water factor less than or equal to 8.5 is flawed. (Alliance, No. 66.4 at p. 5 [33]; Alliance, Public Meeting Transcript, No. 67.4 at pp. 24, 57) SCG also inquired if manufacturers can comply with the revised standard proposed in the November 2009 SNOPR. (SCG, Public Meeting Transcript, No. 67.4 at p. 57) Alliance stated that while it currently markets a top-loading CCW that is close to meeting the proposed top-loading standard in the November 2009 SNOPR, that model was developed to allow some customers to earn an ENERGY STAR rating and a CEE rebate. Alliance stated that this model is not accepted by all customers, as some reject the water-saving features required to achieve its rated efficiency level. Since all CCWs currently marketed at or near the proposed top-loading energy conservation standard use similar water-saving techniques, Alliance stated that it would not be appropriate to set a minimum efficiency standard at the level proposed in the November 2009 SNOPR and proposed setting the standard at 1.42 MEF/9.5 WF for top-loading CCWs instead. (Alliance, Public Meeting Transcript, No. 67.4 at p. 139; Alliance, No. 66.4 at p. 9) Whirlpool and GE stated that they are supportive of all standard levels proposed for CCWs in the November 2009 SNOPR. However, Whirlpool also stated that energy and water consumption levels more restrictive than 1.60 MEF/8.5 WF for top-loading CCWs and 2.20 MEF/5.5 WF for front-loading CCWs would likely lead to poor wash performance, poor rinse performance, or both. GE noted that its max-tech top-loading CCW (which meets the proposed top-loading standard) was designed for the on-premise laundry market, a relatively small sub-segment of the CCW market and said that model has not yet demonstrated viability in laundromats. (Whirlpool, No. 67.11 at p. 3 and GE, No. 67.9 at p. 1) Many of the Multiple Route Operators stated opposition to any efficiency level above the baseline for CCWs on the basis of poor wash performance. Additionally, most of the Multiple Route Operators stated that they had experimented with high efficiency top-loading CCWs (*i.e.,* agitator-less models) and encountered sufficient operational and wash performance issues to abandon such models and replace them with traditional top-loading CCWs. Additionally, most of the Multiple Route Operators stated that they would be reluctant to utilize high efficiency top-loading CCWs based on reports of consumer dissatisfaction with such units. Lastly, the Multiple Route Operators strongly oppose the top-loading standard level proposed in the October 2008 NOPR (*i.e.,* 1.76 MEF/8.3 WF) (Multiple Route Operators, No. 67.8 at pp. 1–3).

DOE proposed a 1.60 MEF/8.5 WF standard for top-loading CCWs in the November 2009 SNOPR in response to these and other concerns voiced by interested parties. For the November 2009 SNOPR, DOE stated it believed the proposed top-loading level could be met by all competitors because the unit would be based on a standard top-loading platform that uses a traditional agitator and no proprietary technology. 74 FR 57738, 57762–63 (Nov. 9, 2009). The model that the LVM references in its comment meets a 1.55 MEF/8.6 WF, and DOE research suggests that this model could be modified to meet the amended energy conversation standard. DOE notes that the LVM has not refuted that this model could be modified to meet the amended energy conservation standard, and while a manufacturer may develop higher efficiency models in order to qualify for energy star, tax credits, and similar rebates, DOE believes it is unlikely that a manufacturer would purposely risk its reputation and release a non-functional product onto the market. DOE has noted throughout the rulemaking that the heavy concentration of earnings from CCWs relative to its total clothes washer business, its overall focus on commercial laundry, and its relatively low revenue base compared to its principal CCW competitors would lead to the LVM being impacted disproportionately by any amended efficiency standard for CCWs. DOE also notes that TSL 3 avoids requiring manufacturers, including the LVM, to make concurrent, substantial investments in both top-loading and front-loading platforms. DOE continues to believe that the benefits of the amended energy conservation standard outweigh the burdens, including the negative impacts on manufacturers (see section VI.D).

Alliance stated that its most recent SEC 10–Q for the quarter ending September 30, 2009, shows that its long-term debt bank covenants limit additional borrowing to $19.2 million, that its current credit facility must be refinanced before January 27, 2011, and that it expects tighter credit terms. Alliance estimates that an $18.4 million investment would be required to modify its facilities to manufacture top-loading CCWs at the max-tech efficiency level, double the total annual capital expenditures for the entire company. Alliance stated that, even if the funds were available for a dramatic redesign of its top-loading CCWs, it would not be approved for funding by its investors regardless of the method used to calculate the financial payback because the equipment does not meet customers' minimum requirements. (Alliance, No. 66.4 at p. 5; Alliance, Public Meeting Transcript, No. 67.4 at pp. 24–25) Alliance also stated that it would need to redesign the inner and outer tubs to match the max-tech top-loading CCW's larger capacity. These changes might not be possible to its existing tub fabrication cells while simultaneously meeting demand, and could require a new building due to lack of space to "shoe-horn" fabrication and to avoid shutting down. Alliance stated that its customers do not want larger capacity washers because its tub size has been designed to match commercial laundry users' needs and load sizes, as evidenced by decades of sales and customer experience. (Alliance, No. 67.8 at p. 4)

DOE estimates that the total conversion costs for the industry to meet the top-loading amended energy conservation standard will be approximately $16.6 million. DOE research thus suggests that the LVM's production facilities could be modified at a more modest cost than projected by the LVM to make a sufficient number of top-loading CCWs that would meet the amended energy conservation standards. DOE estimates that the majority of the conversion costs will consist of product development, engineering, testing, marketing, and other costs required to make equipment designs comply with energy conservation standards while addressing consumer acceptance issues raised by the LVM. As of December 31, 2008, Alliance stated in its SEC filings that its principal line of credit was limited to an additional $16.2 million of borrowing and that a substantial portion of its long term debt is due concurrently with the compliance date of the final rule. DOE agrees with the LVM that the company's current debt structure makes it more difficult to finance additional product development and capital expense. In response to these and other concerns voiced by the LVM, DOE revised the proposed top-loading CCW energy conservation standard to a level which a current top-loading LVM model

[33] A notation in the form "Alliance, No. 66.4 at p. 5" identifies page 5 of a written comment submitted by Alliance entitled "Response to DOE Commercial Clothes Washer SNOPR." This document was entered as comment number 66.4 in the docket for this rulemaking, along with a letter submitted by Alliance entitled "Is Top-Loading a Feature Within the Meaning of EPCA?"

almost attains. Thus, the negative impacts on the LVM have been weighed in DOE's consideration of the amended energy conservation standard.

Alliance stated that the standards proposed in the November 2009 SNOPR place 292 union laborers in its Ripon, WI plant at risk of losing their jobs. Of these 292 laborers, 150 union laborers are attributed to CCW production and 142 laborers are associated with companion commercial clothes dryers. The standards proposed in the November 2009 SNOPR could also eliminate an additional 40 non-production jobs. (Alliance, Public Meeting Transcript, No. 67.4 at p. 25; Alliance, No. 66.4 at p. 8)

For the October 2008 NOPR, DOE calculated the direct employment impacts using the GRIM and information gathered from interviews with manufacturers. DOE estimated that there would be positive employment impacts among domestic CCW manufacturers for TSL 1 through TSL 5. Because the LVM had previously stated it could be eliminated from the commercial market, DOE also specifically investigated the LVM employment using its CCW revenues and additional employment estimates. DOE estimated that if the LVM ceased to produce soft-mount dryers and CCWs that this would lead to a loss of 292 production jobs. DOE estimated that a complete closure of the Ripon, WI facility would result in the dismissal of approximately 600 factory employees. 73 FR 60234, 62102–03 (Oct. 17, 2008). For the November 2009 SNOPR, DOE stated that it believes that the proposed energy conservation standard would allow the LVM to continue to produce top-loading CCWs, mitigating any potential closure of its domestic manufacturing facility. 74 FR 57738, 57763 (Nov. 9, 2009). DOE did not receive any additional comments that suggest technical barriers would prevent manufacturers from meeting the energy conservation standards and notes that two competitors support the proposed amended energy conservation standards for top-loading CCWs. Thus, for today's final rule, DOE estimates that the LVM would be able to continue to produce top-loading CCWs, and that significant impacts on LVM manufacturing employment due to today's final rule are hence unlikely. Further discussion of the LVM and the potential impacts on direct employment for the CCW industry is presented in chapter 13 of the TSD.

ASAP stated that much of the SNOPR analysis was driven by DOE's concern for the precarious position of the LVM. ASAP stated that it remains somewhat unconvinced that the numbers are as stark as presented in the revised MIA. (ASAP, Public Meeting Transcript, No. 67.4 at p. 33) ASAP and the Joint Comment questioned DOE's estimates of the potential impacts on the LVM if the market were to shift entirely to front-loading CCWs. ASAP and the Joint Comment stated that the green-field assumption in this analysis was not valid, especially considering that the LVM is already making a substantial number of front-loading washers, and since new buildings are costly and depreciate over a much longer schedule than new equipment. The Joint Comment argues that these assumptions disproportionately increase the annualized financial cost of conversion. (ASAP, Public Meeting Transcript, No. 67.4 at pp. 140–142; Joint Comment, No. 67.6 at pp. 5–6) ASAP also inquired if a shift to only front-loading production would involve a green-field manufacturing facility even if top-loading production is ceasing. (ASAP, Public Meeting Transcript, No. 67.4 at p. 143) ASAP and the Joint Comment stated that a shift to only front-loading washer production would not force the LVM to completely redesign washers nor incur expenses such as research and development. Both ASAP and the Joint Comment argue that, because front-loading washers currently represent 25 to 30 percent of the LVM's unit shipments, the LVM will have the operating experience to gradually reduce production costs and improve production designs without a complete redesign. (ASAP, Public Meeting Transcript, No. 67.4 at p. 146; Joint Comment, No. 67.6 at p. 5)

DOE research confirms that the LVM has been gradually increasing its production of front-loading CCWs. However, the LVM's production of top-loading CCWs still heavily outweighs its production of front-loading CCWs. DOE believes a complete shift to front-loading CCWs would represent a radical departure from the much more gradual market transition that has been occurring. As illustrated in chapter 13 of the TSD, such a market disruption would disproportionately impact the LVM since the LVM would have to increase front-loader manufacturing capacity by multiples, while its competitors would have to increase their overall front-loader manufacturing capacity by less than 5 percent to fully transition their CCW production to only front-loading washers. Since top-loaders and front-loaders share few parts and require separate assembly lines, sub-assembly stations, etc., DOE concluded that the LVM would have to build an annex to house the expanded front-loader fabrication and assembly lines as long as top-loading clothes washer production continues. For example, the LVM could continue to manufacture top-loading RCWs even after ceasing top-loading CCW production. While some equipment and space could potentially be re-purposed towards fabricating front-loader components (*i.e.,* large presses, machining centers, etc.), DOE research suggests that much of the space currently occupied by hard-tooled top-loading clothes washer assembly lines in the LVM facility will remain unavailable until the LVM ceases to produce top-loading clothes washers altogether. DOE expects the LVM to continue to produce top-loading clothes washers as long as it can to fulfill customer demand. Consequently, the space currently occupied by the top-loading clothes washer lines will likely continue to be occupied on the compliance date of today's final rule, necessitating an annex in which to house expanded front-loader assembly and fabrication. Alliance agreed that its existing facility could not accommodate the new equipment for front-loading production and continue to produce its current volumes of top-loading washers. (Alliance, Public Meeting Transcript, No. 67.4 at pp. 145–146) As illustrated in chapter 13 of the TSD, a complete transition to front-loading CCWs would likely lead to a market disruption since switching costs for customers would be minimized. Consequently, DOE research suggests that the LVM would be required to redesign its front-loader platform to become more cost-competitive.

In appendix 13C of the SNOPR TSD, DOE estimated that the LVM would be eligible for about $4.1 million in Federal production tax credits between 2007 and 2010. ASAP and the Joint Comment questioned DOE's conclusion that additional tax credits in 2010 are unlikely. The Joint Comment estimated that additional credits in 2010 are likely as production of front-loaders ramps up further (ASAP, Public Meeting Transcript, No. 67.4 at pp. 126–129; Joint Comment, No. 67.6, at p. 6) ASAP questioned if DOE believed that the LVM was reaching a limit on the number of front-loading washers that it could sell or produce. (ASAP, Public Meeting Transcript, No. 67.4 at pp. 126–129) ASAP also asked if there was an analysis to support the estimate of the cap on machines that would qualify for the Federal production tax credit, and if such tax credits for 2007 were included in the analysis. (ASAP, Public Meeting Transcript, No. 67.4 at p. 129, 135)

Finally, the Joint Comment stated that, even though DOE's analysis of the Federal production tax credits has relatively little impact on the industry as a whole, the Federal production tax credits will mitigate a significant portion of the conversion costs borne by the LVM to convert their entire production to front-loading washers. (Joint Comment, No. 67.6 at p. 6). Alliance stated, while it has earned tax credits for qualifying washers, these tax credits have not been used for a cash benefit. (Alliance, No. 67.8 at p. 4)

For the November 2009 SNOPR, DOE accounted for the impacts of the Federal production tax credits updated by The Energy Improvement and Extension Act of 2008 (Pub. L. 110–343; EIEA 2008). Because only the LVM produces qualifying CCWs, DOE based its estimates of the potential benefits to the CCW industry by estimating the potential Federal production tax credits that the LVM could receive. Using publicly available information, recent SEC filings, and the information published in chapter 13 and appendix 13A of the October 2008 NOPR, DOE estimated the LVM's front-loading CCW shipment projections to 2010 and calculated the Federal production tax credits for qualifying shipments. In the November 2009 SNOPR, DOE estimated that the LVM would likely not qualify for any Federal production tax credits in 2010. 74 FR 57738, 57763–64 (Nov. 9, 2009) DOE's estimate was not based on a cap on the number of qualifying washers the LVM could sell or produce; rather, it was based on statements in the LVM's 10–Q filing for the quarter ending March 31, 2009. The 10–Q at that time suggested that the LVM's front-loading production in 2010 would not increase significantly to qualify for additional Federal production tax credits.

For today's final rule, DOE updated its estimates using the most recent, publicly available information to calculate the likely benefit to the LVM from the tax credit provisions. DOE updated the assumptions for the estimated Federal production tax credit for 2009 and 2010 based on the LVM's recent SEC filings. The LVM's 10–Q filing for the quarter ending September 30, 2009, reported higher tax benefits from the energy efficiency tax program compared to the 10–Q filing for the quarter ending March 31, 2009. DOE revised its figures for 2009 based on this new information and used the LVM's most recent historical estimate for the growth rate of the commercial laundry industry to estimate LVM shipments for 2010.[34] The revised estimates suggest that the LVM will collect approximately $4.0 million in Federal production tax credits from 2008–2010 from the provisions updated by EIEA 2008 and a total of $5.3 million from the program from 2007–2010. The revised estimate for today's final rule is approximately $1.2 million higher than the estimate published in the November 2009 SNOPR.

In the GRIM, DOE accounts for the Federal production tax credit as a direct cash benefit in the base and standards cases that directly increases INPV. Because 2009 is the base year to which industry cash flows are discounted, any Federal production tax credit from 2007 and 2008 is not counted towards the INPV analysis because it falls outside the analysis period. However, any tax benefit in 2009 and 2010 falls within the analysis period and hence increases industry value (potentially decreasing the impacts on manufacturers due to energy conservation standards). DOE's revised Federal production tax credit estimates for the LVM are approximately $1.2 million and $0.4 million for 2009 and 2010, respectively. These revised figures do not significantly impact the INPV calculated by DOE nor do they come close to paying for a facility conversion to front-load only CCW production. DOE estimates that a wholesale conversion to only front-loading CCW production would cost the LVM approximately 12 times the total Federal production tax credit benefit DOE expects the LVM to collect over the life of the program. (See chapter 13 of the TSD for further details.) While DOE research suggests that Federal production tax credits could help the LVM implement gradual changes to its production facilities, such tax credits would not substantially defray wholesale plant conversion costs.

Whirlpool commented that the ability of a manufacturer to use an earned tax credit is a function of the earnings situation for that manufacturer and that many manufacturers cannot use earned tax credits in some years due to current economic conditions. (Whirlpool, No. 67.11 at p. 3) Because the LVM reported earnings from the tax credit and stated that it expected to earn a benefit from the tax credits in 2009, DOE calculated the expected tax credits for the LVM in 2009 and 2010 and assumed that the LVM would benefit in those years. Whirlpool agreed with DOE's conclusion that the past tax credits have only offset a small fraction of the costs necessary to produce high efficiency equipment. Whirlpool also stated that if tax credits were offered in between the issuance of the final rule and the compliance date, they could have an impact on the ability of individual manufacturers to make the capital investment in new product platforms. (Whirlpool, No. 67.11 at p. 3)

DOE agrees that tax credits that were effective between the issuance of the final rule and the compliance date of the amended standards could have an impact on the ability of manufacturers to fund capital investments. However, because most of the benefit from the EIEA 2008 takes place outside of the analysis period, DOE believes it is unlikely that manufacturers could use the credits to fund much of their capital conversion costs.

EJ recommended that DOE review its Federal production tax credit projections for 2010 if it adopts a strong standard that applies to all CCWs. EJ added that such a standard would likely cause manufacturers to ramp up production of qualifying washers over time, not just beginning in 2013. (EJ, Public Meeting Transcript, No. 67.4 at pp. 137–138)

For today's final rule, DOE revised its Federal production tax credit projections for 2010 using the LVM's most recent SEC filings. Based on the LVM's 10–Q for the quarter ending September 30, 2009, DOE revised its estimates to include Federal production tax credits for 2010. DOE continues to believe that it is unlikely that manufacturers would shift their clothes washer production to exclusively manufacture front-loading washers in response to the Federal production tax credits or the energy conservation standards in today's final rule. Thus, DOE relied on the forward-looking projections published by the LVM to estimate CCW sales that qualify for the production tax credits.

Alliance and White & Case (W&C) cited DOJ's letter in response to the October 2008 NOPR that stated there appeared to be a real risk that at least one manufacturer could not meet the proposed amended energy conservation standard for top-loading CCWs. Both Alliance and W&C stated that DOE's response in the November 2009 SNOPR ignored DOJ's conclusion that DOE should consider keeping the existing standard in place for top-loading CCWs to maintain competition. (Alliance, No. 66.4 at p. 3; W&C, Public Meeting Transcript, No. 67.4 at pp. 26–27) Alliance stated that DOJ's recommendation to keep the existing standard in place for top-loading CCWs was the appropriate course of action for

[34] See *http://www.comlaundry.com/investors/relations/sec-filings.asp* for a list of Alliance Laundry System's SEC filings.

this rulemaking. (Alliance, No. 66.4 at p. 9; Alliance, Public Meeting Transcript, No. 67.4 at pp. 29–30) In addition, Multiple Route Operators stated they were concerned that the standards proposed in the October 2008 NOPR could force Alliance to exit the manufacture of top-loading CCWs, which would cause them significant harm because they would pay more for washers. Multiple Route Operators urged DOE to adopt a standard that would enable Alliance to remain the lowest-cost CCW provider. (Multiple Route Operators, No. 67.8 at pp. 1–3)

In the October 2008 NOPR, DOE proposed amended standards of 1.76 MEF/8.3 WF for top-loading CCWs. 73 FR 62034, 62036 (Oct. 17, 2008). In response, DOJ found that there was a real risk that one or more CCW manufacturers could not meet the proposed standard for top-loading CCWs. DOJ stated that it was concerned that meeting the proposed standards could require substantial investment in the development of new technology that some suppliers of top-loading CCWs might not find economically justifiable. 74 FR 57738, 57802 (Nov. 9, 2009). In response to the concerns raised by DOJ and other concerns raised by interested parties, DOE proposed a top-loading CCW standard of 1.60 MEF/8.5 WF in the November 2009 SNOPR. 74 FR 57738, 57763 (Nov. 9, 2009). In today's final rule, DOE determined that 1.60 MEF/8.5 WF is the maximum top-loading CCW efficiency level that is economically justified and technologically feasible while being sensitive to concerns raised by DOJ and the LVM.

EJ stated that DOE failed to consider the low barriers to entry in the CCW market in its analysis of the competition issue. While there are currently only three CCW manufacturers, if the departure of any of these manufacturers increases markups significantly, higher profits would allow RCW manufacturers or small players to expand into the commercial market. EJ asserted that, because these manufacturers would not have to design completely new equipment or construct a new manufacturing facility to begin selling CCWs, it would be "irrational" for DOE to contend that there would be any significant adverse impact on competition in the commercial market. EJ stated that DOE must explain why new entrants would be unable to gain a foothold in the CCW market by taking advantage of this disturbance in the *status quo* if one manufacturer exited the market. (EJ, No. 67.5 at. pp. 8–9; Public Meeting Transcript, No. 67.4 at p. 138) Multiple Route Operators believe they would face higher prices if Alliance were eliminated from the market. (Multiple Route Operators, No. 67.8 at pp. 1–3)

In response to the October 2008 NOPR, DOJ found that there was a real risk that one or more of the manufacturers could not meet the proposed standard for top-loading CCWs. 74 FR 57738, 57802 (Nov. 9, 2009) DOE revised its proposed standards in part to ease these competitive concerns raised by the DOJ and other interested parties. 74 FR 57738, 57763 (Nov. 9, 2009).

In chapter 13 of the TSD, DOE offers multiple reasons why it believes the LVM has succeeded in the CCW market despite low overall production volumes: (1) Well-depreciated machinery and legacy design; (2) effective customer and service networks; (3) a large installed base of top-loading CCWs; and (4) stock of repair parts that ensures a large market for replacement machines. Multiple Route Operators confirmed many of these advantages, stating that they believe Alliance offers CCWs with the lowest total cost of ownership because its washers have the longest functional life. In addition, Multiple Route Operators stated that the quality, service, and unique products with CCW features separate Alliance from other manufacturers. (Multiple Route Operators, No. 67.8 at pp. 1–3) DOE believes that route operators' and distributors' large inventory of service parts and repair knowledge represent a significant switching cost, discouraging customers from adopting rival platforms. As long as the LVM can continue to produce replacement top-loading CCWs, DOE does not believe the LVM will be placed at a substantial disadvantage relative to its larger competitors. However, due to the relatively small stock of front-loading clothes washers installed in the CCW market, DOE believes that a wholesale conversion of the CCW market to front-loading machines would eliminate most of the LVM's advantages that have allowed it to remain competitive.

DOE research suggests that, while the cost of entering the CCW market may be construed as low, statements by multiple manufacturers indicate that actual success in the CCW market depends on many factors. For example, DOE notes that a top-loading, horizontal-axis clothes washer used to be marketed into the CCW market but that it was withdrawn for a number of reasons. Additionally, converting residential platforms for commercial use is not as simple as adding a coin box; substantial investments are required to integrate a variety of payment systems. Custom user interfaces are required, both for compliance with the Americans with Disabilities Act, and to facilitate consumer education. Resultant conversion costs have to be amortized across a much lower production volume than is typically found in the residential market, and critical parts and service personnel have to be present in the territory of any route operator that is going to consider a rival. Hence, while entering the CCW market may not represent significant technical hurdles, the operational and financial challenges are sufficient to limit the market to a small number of competitors.

DOE also received comment regarding its characterization of Alliance as an LVM. The Joint Comment argued that DOE's characterization of Alliance as an LVM is a significant misnomer, as the LVM reported revenues equivalent to approximately half of the total CCW industry revenue and claims to be the leading manufacturer of stand-alone commercial laundry equipment in North America. (Joint Comment, No. 67.6 at p. 5)

For the October 2008 NOPR, DOE presented a separate analysis of the LVM. 73 FR 62034, 62103–04 (Oct. 17, 2008). Although DOE continues to agree with the Joint Comment that the LVM has a significant share of the CCW industry based on reported revenues, DOE maintains that the LVM does not have the same overall clothes washer manufacturing scale as its competitors (for both residential products and commercial equipment) and should hence be characterized as an LVM in the context of this rulemaking. DOE notes that most CCWs on the market in the United States are based largely on RCW platforms that are upgraded selectively. Some investments (such as the controllers) are CCW-specific but only comprise part of the total unit cost. The majority of capital expenditures related to tooling, equipment, and other machinery in a plant can typically be applied to the residential as well as the commercial market. Thus, overall (both RCW and CCW) manufacturing scale has a significant impact on the cost-effectiveness of potential platform upgrades. A manufacturer with a high-volume residential line can cost justify much more capital-intensive solutions if they are applicable in both markets, whereas an LVM could lack the scale and capital to make such investments. Thus, an LVM may be required to purchase upgrade options from third-party vendors instead of developing in-house solutions that reduce costs at higher volumes. In the CCW market, the most direct competitor to the LVM has over 60 times the overall shipment

volumes of the LVM. This scale difference also affects purchasing power because a large, diversified appliance manufacturer can use its production scale to achieve better prices for raw materials and commonly purchased components such as controllers, motors, belts, switches, sensors, and wiring harnesses. Even if a large company purchases fewer items of a certain component, its overall revenue relationship with a supplier may still enable it to achieve better pricing than a smaller competitor, even if that competitor buys certain components in higher quantities. Lastly, high-volume manufacturers benefit from being able to source their components through sophisticated supply chains on a worldwide basis. Therefore, DOE concludes that an LVM is unlikely to be able to compete solely on manufacturing cost.

H. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts include direct and indirect impacts. Direct employment impacts are changes in the number of employees for manufacturers of equipment subject to standards, their suppliers, and related service firms. The MIA addresses these impacts.

Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to: (1) Reduced spending by end users on energy (electricity, gas (including liquefied petroleum gas), and oil); (2) reduced spending on new energy supply by the utility industry; (3) increased spending on the purchase price of new equipment; and (4) the effects of those three factors throughout the economy. DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity to affect the demand for labor in the short term, as explained below.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sectoral employment statistics developed by the BLS. The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital intensive and less labor intensive than other sectors. (See Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System* (RIMS II), Washington, DC, U.S. Department of Commerce, 1992.) Efficiency standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and manufacturing sectors). Thus, based on the BLS data alone, DOE believes net national employment will increase due to shifts in economic activity resulting from standards for CCWs.

In developing the November 2009 SNOPR, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies (ImSET).[35] ImSET is a special-purpose version of the "U.S. Benchmark National Input-Output" (I–O) model designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model with structural coefficients to characterize economic flows among 188 sectors most relevant to industrial, commercial, and residential building energy use. The Joint Comment stated that DOE must consider its projections that an increase in employment will result from the adoption of standards in weighing the economic costs and benefits of strong efficiency standards. (Joint Comment, No. 44 at p. 13) As described in section VI.C.3 below, DOE takes into consideration the indirect employment impacts estimated using ImSET when evaluating alternative standard levels. Direct employment impacts on the manufacturers that produce CCWs are analyzed in the MIA, as discussed in section IV.G. For today's final rule, DOE has made no change to its method for estimating employment impacts. For further details, see chapter 15 of the final rule TSD.

[35] More information regarding ImSET is available online at: *http://www.pnl.gov/main/publications/external/technical_reports/PNNL-15273.pdf*

I. Utility Impact Analysis

The utility impact analysis estimates the change in the forecasted power generation capacity for the Nation that would be expected to result from adoption of new standards. For the November 2009 SNOPR and today's final rule, DOE calculated this change using the NEMS–BT computer model. NEMS–BT models certain policy scenarios such as the effect of reduced energy consumption by fuel type. The analysis output provides a forecast for the needed generation capacities at each TSL. The estimated net benefit of the standard in today's final rule is the difference between the forecasted generation capacities by NEMS–BT and the *AEO 2009* April Release Reference Case. DOE obtained the energy savings inputs associated with efficiency improvement on CCW energy consumption electricity and natural gas from the NIA. These inputs reflect the effects of both fuel (natural gas) and electricity consumption savings. Chapter 14 of the final rule TSD presents results of the utility impact analysis.

In its November 2009 SNOPR, DOE did not estimate impacts on water and wastewater utilities because the water and wastewater utility sector exhibits a high degree of geographic variability produced by a large diversity of water resource availability, institutional history, and regulatory context. 73 FR 62034, 62082 (Oct. 17, 2008). EJ commented that given the water supply and water and wastewater infrastructure concerns that are affecting and will continue to affect many parts of the country, it would be arbitrary and capricious for the Department to fail to address the impact on water and wastewater utilities of reduced water consumption resulting from commercial clothes washer standards. (EJ, No. 67.5 at p. 13)

In response, DOE refers again to the diversity of the water and wastewater utility sector. Whereas in the case of the electric utility sector DOE has a tool and data set that allows estimation of impacts on infrastructure (in terms of installed generation capacity), DOE does not have (and is not aware of) a comparable tool and data set that would allow estimation of impacts on infrastructure in the water and wastewater utility sector resulting from commercial clothes washer standards. Therefore, for today's final rule, DOE did not estimate impacts to the water and wastewater utility sector.

J. Environmental Assessment

Pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) 42 U.S.C. 6295(o)(2)(B)(i)(VI), DOE prepared a draft environmental assessment (EA) of the potential impacts of the standards for CCWs in today's final rule, which it has included as chapter 16 of the TSD. DOE found that the environmental effects associated with the standards for CCWs were not significant. Therefore, DOE is issuing a Finding of No Significant Impact (FONSI), pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

In the EA, DOE estimated the reduction in power sector emissions of CO_2, NO_X, and Hg using the NEMS–BT computer model. Because the on-site operation of CCWs requires use of fossil fuels and results in emissions of CO_2 and NO_X, DOE also accounted for the reduction in these emissions due to the standards.

In the EA, NEMS–BT is run similarly to the *AEO* NEMS, except that CCW energy use is reduced by the amount of energy saved (by fuel type) due to the TSLs. The inputs of national energy savings come from the NIA analysis; the output is the forecasted physical emissions. The estimated net benefit of the standard in today's final rule is the difference between the forecasted emissions by NEMS–BT at each TSL and the *AEO 2009* April Release Reference Case. NEMS–BT tracks CO_2 emissions using a detailed module that provides results with broad coverage of all sectors and inclusion of interactive effects.

DOE has determined that sulfur dioxide (SO_2) emissions from affected Electric Generating Units (EGUs) are subject to nationwide and regional emissions cap and trading programs that create uncertainty about the impact of energy conservation standards on SO_2 emissions. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for all affected EGUs. SO_2 emissions from 28 eastern States and the District of Columbia (D.C.) are also limited under the Clean Air Interstate Rule (CAIR, published in the **Federal Register** on May 12, 2005; 70 FR 25162 (May 12, 2005), which creates an allowance-based trading program that will gradually replace the Title IV program in those States and D.C. (The recent legal history surrounding CAIR is discussed below.) The attainment of the emissions caps is flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Energy conservation standards could lead EGUs to trade allowances and increase SO_2 emissions that offset some or all SO_2 emissions reductions attributable to the standard. DOE is not certain that there will be reduced overall SO_2 emissions from the standards. The NEMS–BT modeling system that DOE uses to forecast emissions reductions currently indicates that no physical reductions in power sector emissions would occur for SO_2. The above considerations prevent DOE from estimating SO_2 reductions from standards at this time.

Even though DOE is not certain that there will be reduced overall emissions from the standard, there may be an economic benefit from reduced demand for SO_2 emission allowances. Electricity savings from standards decrease the generation of SO_2 emissions from power production, which can lessen the need to purchase emissions allowance credits, and thereby decrease the costs of complying with regulatory caps on emissions.

Much like SO_2 emissions, NO_X emissions from 28 eastern States and the District of Columbia (D.C.) are limited under the CAIR. Although CAIR has been remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), it will remain in effect until it is replaced by a rule consistent with the Court's July 11, 2008, opinion in *North Carolina* v. *EPA.* 531 F.3d 896 (D.C. Cir. 2008); see also *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008). These court positions were taken into account in the November 2009 SNOPR and in today's final rule. Because all States covered by CAIR opted to reduce NO_X emissions through participation in cap and trade programs for electric generating units, emissions from these sources are capped across the CAIR region.

In the 28 eastern States and D.C. where CAIR is in effect, DOE's forecasts indicate that no NO_X emissions reductions will occur due to energy conservation standards because of the permanent cap. Energy conservation standards have the potential to produce an economic impact in the form of lower prices for NO_X emissions allowances, if their impact on electricity demand is large enough. However, DOE has concluded that the standards in today's final rule will not have such an effect because the estimated reduction in electricity demand in States covered by the CAIR cap would be too small to affect allowance prices for NO_X under the CAIR.

New or amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by the CAIR. DOE used the NEMS–BT to forecast emission reductions from the CCW standards in today's final rule.

Similar to emissions of SO_2 and NO_X, future emissions of Hg would have been subject to emissions caps. The Clean Air Mercury Rule (CAMR) would have permanently capped emissions of Hg from new and existing coal-fired plants in all States beginning in 2010 (70 FR 28606). The CAMR was vacated by the D.C. Circuit in its decision in *New Jersey* v. *Environmental Protection Agency* prior to the publication of the October 2008 NOPR. 517 F 3d 574 (D.C. Cir. 2008). However, the NEMS–BT model DOE initially used to estimate the changes in emissions for the proposed rule assumed that Hg emissions would be subject to CAMR emission caps. Thus, after CAMR was vacated, DOE was unable to use the NEMS–BT model to estimate any changes in the physical quantity of Hg emissions that would result from standard levels it considered in the October 2008 NOPR. Instead, DOE used an Hg emission rate (in metric tons of Hg per energy produced) based on the *AEO 2008.* Because virtually all Hg emitted from electricity generation is from coal-fired power plants, DOE based the emission rate on the metric tons of Hg emitted per TWh of coal-generated electricity. To estimate the reduction in Hg emissions, DOE multiplied the emission rate by the reduction in coal-generated electricity associated with the standard levels considered. DOE continued to use the above approach, updated for the *AEO 2009* April Release, to estimate the Hg emission reductions due to standards for the SNOPR. For today's final rule, however, DOE used the latest version of NEMS–BT, which reflects CAMR being vacated and does not incorporate CAMR emission caps, to estimate the reduction in Hg emissions.

In addition to electricity generation, the operation of gas-fired CCWs results in emissions of CO_2 and NO_X at the sites where the appliances are used. NEMS–BT provides no means for estimating such emissions. Therefore, DOE calculated separate estimates of the effect of the potential standards on site emissions of CO_2 and NO_X based on emissions factors derived from the literature. Because natural gas combustion does not yield SO_2 emissions, DOE did not report in either the November 2009 SNOPR or today's final rule the effect of the proposed standards on site emissions of SO_2.

For its November 2009 SNOPR, DOE conducted a separate analysis of wastewater discharge impacts as part of

the environmental assessment for commercial clothes washers. 73 FR 62034, 62112–13 (Oct. 17, 2008). For today's final rule, DOE retained the same analysis method for estimating wastewater discharge impacts.

EJ commented that given the water supply concerns that are affecting and will continue to affect many parts of the country, it would be arbitrary and capricious for the Department to fail to address the environmental benefits of reduced water consumption resulting from commercial clothes washer standards. (EJ, No. 67.5 at p. 13) In response, DOE notes that the environmental impacts of reduced water use are highly variable across the country. DOE has neither an analytical tool that could estimate such impacts nor sufficient information to draw definitive conclusions about such impacts. Therefore, it was not able to account for potential environmental benefits of reduced water consumption resulting from the commercial clothes washer standards considered for today's final rule.

K. Monetizing Carbon Dioxide and Other Emissions Impacts

For the November 2009 SNOPR, DOE calculated the possible monetary benefit of CO_2, NO_X, and Hg reductions. Cumulative monetary benefits were determined using discount rates of 3 and 7 percent. DOE monetized reductions in CO_2 emissions due to standards based on a range of monetary values drawn from studies that attempt to estimate the present value of the marginal economic benefits (based on the avoided marginal social cost of carbon) likely to result from reducing greenhouse gas emissions. The marginal social cost of carbon is an estimate of the monetary value to society of the environmental damages of CO_2 emissions.

In the October 2008 NOPR, DOE used the range $0 to $20 per ton CO_2 for reductions in the year 2007 in 2007$. These estimates were intended to represent the lower and upper bounds of the costs and benefits likely to be experienced in the United States. The lower bound was based on an assumption of no benefit and the upper bound was based on an estimate of the mean value of worldwide impacts due to climate change that was reported by the Intergovernmental Panel on Climate Change (IPCC) in its "Fourth Assessment Report." For the November 2009 SNOPR and today's final rule, DOE is relying on a new set of values recently developed by an interagency process that conducted a thorough review of existing estimates of the social cost of carbon (SCC).

The SCC is intended to be a monetary measure of the incremental damage resulting from greenhouse gas (GHG) emissions, including, but not limited to, net agricultural productivity loss, human health effects, property damages from sea level rise, and changes in ecosystem services. Any effort to quantify and to monetize the harms associated with climate change will raise serious questions of science, economics, and ethics. But with full regard for the limits of both quantification and monetization, the SCC can be used to provide estimates of the social benefits of reductions in GHG emissions.

For at least three reasons, any single estimate of the SCC will be contestable. First, scientific and economic knowledge about the impacts of climate change continues to grow. With new and better information about relevant questions, including the cost, burdens, and possibility of adaptation, current estimates will inevitably change over time. Second, some of the likely and potential damages from climate change—for example, the value society places on adverse impacts on endangered species—are not included in all of the existing economic analyses. These omissions may turn out to be significant in the sense that they may mean that the best current estimates are too low. Third, controversial ethical judgments, including those involving the treatment of future generations, play a role in judgments about the SCC (see in particular the discussion of the discount rate, below).

To date, regulations have used a range of values for the SCC. For example, a regulation proposed by the U.S. Department of Transportation (DOT) in 2008 assumed a value of $7 per ton CO_2 (2006$) for 2011 emission reductions (with a range of $0–$14 for sensitivity analysis). Regulation finalized by DOE used a range of $0–$20 (2007$). Both of these ranges were designed to reflect the value of damages to the United States resulting from carbon emissions, or the "domestic" SCC. In the final Model Year 2011 Corporate Average Fuel Economy rule, DOT used both a domestic SCC value of $2/t CO_2 and a global SCC value of $33/t CO_2 (with sensitivity analysis at $80/t CO_2), increasing at 2.4 percent per year thereafter.

In recent months, a variety of agencies have worked to develop an objective methodology for selecting a range of interim SCC estimates to use in regulatory analyses until improved SCC estimates are developed. The following summary reflects the initial results of these efforts and proposes ranges and values for interim social costs of carbon used in this rule. It should be emphasized that the analysis described below is preliminary. These complex issues are of course undergoing a process of continuing review. Relevant agencies will be evaluating and seeking comment on all of the scientific, economic, and ethical issues before establishing final estimates for use in future rulemakings.

The interim judgments resulting from the recent interagency review process can be summarized as follows: (a) DOE and other Federal agencies should consider the global benefits associated with the reductions of CO_2 emissions resulting from efficiency standards and other similar rulemakings, rather than continuing the previous focus on domestic benefits; (b) these global benefits should be based on SCC estimates (in 2007$) of $55, $33, $19, $10, and $5 per ton of CO_2 equivalent emitted (or avoided) in 2007 (in calculating the benefits reported in this notice, DOE has escalated the 2007$ values to 2008$ for consistency with other dollar values presented in this notice); (c) the SCC value of emissions that occur (or are avoided) in future years should be escalated using an annual growth rate of 3 percent from the current values); and (d) domestic benefits are estimated to be approximately 6 percent of the global values. These interim judgments are based on the following considerations.

1. *Global and domestic estimates of SCC.* Because of the distinctive nature of the climate change problem, estimates of both global and domestic SCC values should be considered, but the global measure should be "primary." This approach represents a departure from past practices, which relied, for the most part, on measures of only domestic impacts. As a matter of law, both global and domestic values are permissible; the relevant statutory provisions are ambiguous and allow the agency to choose either measure. (It is true that Federal statutes are presumed not to have extraterritorial effect, in part to ensure that the laws of the United States respect the interests of foreign sovereigns. But use of a global measure for the SCC does not give extraterritorial effect to Federal law and hence does not intrude on such interests.)

It is true that under OMB guidance, analysis from the domestic perspective is required, while analysis from the international perspective is optional. The domestic decisions of one nation are not typically based on a judgment about the effects of those decisions on other nations. But the climate change

problem is highly unusual in the sense that it involves (a) a global public good in which (b) the emissions of one nation may inflict significant damages on other nations and (c) the United States is actively engaged in promoting an international agreement to reduce worldwide emissions.

In these circumstances, the global measure is preferred. Use of a global measure reflects the reality of the problem and is expected to contribute to the continuing efforts of the United States to ensure that emission reductions occur in many nations.

Domestic SCC values are also presented. The development of a domestic SCC is greatly complicated by the relatively few region- or country-specific estimates of the SCC in the literature. One potential estimate comes from the DICE (Dynamic Integrated Climate Economy, William Nordhaus) model. In an unpublished paper, Nordhaus (2007) produced disaggregated SCC estimates using a regional version of the DICE model. He reported a U.S. estimate of $1/t CO_2 (2007 value, 2007$), which is roughly 11 percent of the global value.

An alternative source of estimates comes from a recent EPA modeling effort using the FUND (Climate Framework for Uncertainty, Negotiation and Distribution, Center for Integrated Study of the Human Dimensions of Global Change) model. The resulting estimates suggest that the ratio of domestic to global benefits varies with key parameter assumptions. With a 3-percent discount rate, for example, the U.S. benefit is about 6 percent of the global benefit for the "central" (mean) FUND results, while, for the corresponding "high" estimates associated with a higher climate sensitivity and lower global economic growth, the U.S. benefit is less than 4 percent of the global benefit. With a 2-percent discount rate, the U.S. share is about 2 to5 percent of the global estimate.

Based on this available evidence, a domestic SCC value equal to 6 percent of the global damages is used in this rulemaking. This figure is in the middle of the range of available estimates from the literature. It is recognized that the 6 percent figure is approximate and highly speculative and alternative approaches will be explored before establishing final values for future rulemakings.

2. *Filtering existing analyses.* There are numerous SCC estimates in the existing literature, and it is legitimate to make use of those estimates to produce a figure for current use. A reasonable starting point is provided by the meta-analysis in Richard S. J. Tol's, "The Social Cost of Carbon: Trends, Outliers, and Catastrophes, Economics: The Open-Access, Open-Assessment E-Journal," Vol. 2, 2008-25. *http://www.economics-ejournal.org/economics/journalarticles/2008–25* (2008). With that starting point, it is proposed to "filter" existing SCC estimates by using those that (1) are derived from peer-reviewed studies; (2) do not weight the monetized damages to one country more than those in other countries; (3) use a "business as usual" climate scenario; and (4) are based on the most recent published version of each of the three major integrated assessment models (IAMs): FUND, DICE and PAGE (Policy Analysis of the Greenhouse Effect).

Proposal (1) is based on the view that those studies that have been subject to peer review are more likely to be reliable than those that have not been. Proposal (2) is based on a principle of neutrality and simplicity; it does not treat the citizens of one nation differently on the basis of speculative or controversial considerations. Proposal (3) stems from the judgment that as a general rule, the proper way to assess a policy decision is by comparing the implementation of the policy against a counterfactual state where the policy is not implemented. A departure from this approach would be to consider a more dynamic setting in which other countries might implement policies to reduce GHG emissions at an unknown future date, and the United States could choose to implement such a policy now or in the future.

Proposal (4) is based on three complementary judgments. First, the FUND, PAGE, and DICE models now stand as the most comprehensive and reliable efforts to measure the damages from climate change. Second, the latest versions of the three IAMs are likely to reflect the most recent evidence and learning, and hence they are presumed to be superior to those that preceded them. It is acknowledged that earlier versions may contain information that is missing from the latest versions. Third, any effort to choose among them, or to reject one in favor of the others, would be difficult to defend at this time. In the absence of a clear reason to choose among them, it is reasonable to base the SCC on all of them.

The agency is keenly aware that the current IAMs fail to include all relevant information about the likely impacts from greenhouse gas emissions. For example, ecosystem impacts, including species loss, do not appear to be included in at least two of the models. Some human health impacts, including increases in food-borne illnesses and in the quantity and toxicity of airborne allergens, also appear to be excluded. In addition, there has been considerable recent discussion of the risk of catastrophe and of how best to account for worst-case scenarios. It is not clear whether the three IAMs take adequate account of these potential effects.

3. *Use a model-weighted average of the estimates at each discount rate.* At this time, there appears to be no scientifically valid reason to prefer any of the three major IAMs (FUND, PAGE, and DICE). Consequently, the estimates are based on an equal weighting of estimates from each of the models. Among estimates that remain after applying the filter, the average of all estimates within a model is derived. The estimated SCC is then calculated as the average of the three model-specific averages. This approach ensures that the interim estimate is not biased towards specific models or more prolific authors.

4. *Apply a 3-percent annual growth rate to the chosen SCC values.* SCC is assumed to increase over time, because future emissions are expected to produce larger incremental damages as physical and economic systems become more stressed as the magnitude of climate change increases. Indeed, an implied growth rate in the SCC is produced by most studies that estimate economic damages caused by increased GHG emissions in future years. But neither the rate itself nor the information necessary to derive its implied value is commonly reported. In light of the limited amount of debate thus far about the appropriate growth rate of the SCC, applying a rate of 3 percent per year seems appropriate at this stage. This value is consistent with the range recommended by IPCC (2007) and close to the latest published estimate (Hope, 2008).

For climate change, one of the most complex issues involves the appropriate discount rate. OMB's current guidance offers a detailed discussion of the relevant issues and calls for discount rates of 3 percent and 7 percent. It also permits a sensitivity analysis with low rates for intergenerational problems. ("If your rule will have important intergenerational benefits or costs you might consider a further sensitivity analysis using a lower but positive discount rate in addition to calculating net benefits using discount rates of 3 and 7 percent.") The SCC is being developed within the general context of the current guidance.

The choice of a discount rate, especially over long periods of time, raises highly contested and exceedingly difficult questions of science,

economics, philosophy, and law. See, *e.g.,* William Nordhaus, "The Challenge of Global Warming (2008); Nicholas Stern, The Economics of Climate Change" (2007); "Discounting and Intergenerational Equity" (Paul Portney and John Weyant, eds., 1999). Under imaginable assumptions, decisions based on cost-benefit analysis with high discount rates might harm future generations—at least if investments are not made for the benefit of those generations. (See Robert Lind, "Analysis for Intergenerational Discounting," *id.* at 173, 176–177.) At the same time, use of low discount rates for particular projects might itself harm future generations, by ensuring that resources are not used in a way that would greatly benefit them. In the context of climate change, questions of intergenerational equity are especially important.

Reasonable arguments support the use of a 3-percent discount rate. First, that rate is among the two figures suggested by OMB guidance, and hence it fits with existing National policy. Second, it is standard to base the discount rate on the compensation that people receive for delaying consumption, and the 3-percent rate is close to the risk-free rate of return, proxied by the return on long term inflation-adjusted U.S. Treasury Bonds. (In the context of climate change, it is possible to object to this standard method for deriving the discount rate.) Although these rates are currently closer to 2.5 percent, the use of 3 percent provides an adjustment for the liquidity premium that is reflected in these bonds' returns.

At the same time, other arguments support use of a 5-percent discount rate. First, that rate can also be justified by reference to the level of compensation for delaying consumption, because it fits with market behavior with respect to individuals' willingness to trade off consumption across periods as measured by the estimated post-tax average real returns to private investment (*e.g.,* the Standard & Poor's 500 Index). In the climate setting, the 5-percent discount rate may be preferable to the riskless rate because it is based on risky investments and the return to projects to mitigate climate change is also risky. In contrast, the 3-percent riskless rate may be a more appropriate discount rate for projects where the return is known with a high degree of confidence (*e.g.,* highway guardrails).

Second, 5 percent, and not 3 percent, is roughly consistent with estimates implied by reasonable inputs to the theoretically derived Ramsey equation, which specifies the optimal time path for consumption. That equation specifies the optimal discount rate as the sum of two components. The first reflects the fact that consumption in the future is likely to be higher than consumption today (even accounting for climate impacts), so diminishing marginal utility implies that the same monetary damage will cause a smaller reduction of utility in the future. Standard estimates of this term from the economics literature are in the range of 3 to 5 percent. The second component reflects the possibility that a lower weight should be placed on utility in the future, to account for social impatience or extinction risk, which is specified by a pure rate of time preference (PRTP). A conventional estimate of the PRTP is 2 percent. (Some observers believe that a principle of intergenerational equity suggests that the PRTP should be close to zero.) It follows that a discount rate of 5 percent is within the range of values which are able to be derived from the Ramsey equation, albeit at the low end of the range of estimates usually associated with Ramsey discounting.

It is recognized that the arguments above—for use of market behavior and the Ramsey equation—face objections in the context of climate change, and of course there are alternative approaches. In light of climate change, it is possible that consumption in the future will not be higher than consumption today, and if so, the Ramsey equation will suggest a lower figure. Some people have suggested that a very low discount rate, below 3 percent, is justified in light of the ethical considerations calling for a principle of intergenerational neutrality. See Nicholas Stern, "The Economics of Climate Change" (2007); for contrary views, see William Nordhaus, "A Question of Balance" (2008); Martin Weitzman, "*Review* of the *Stern Review* on the Economics of Climate Change," *Journal of Economic Literature,* 45(3): 703–724 (2007). Additionally, some analyses attempt to deal with uncertainty with respect to interest rates over time; a possible approach enabling the consideration of such uncertainties is discussed below. Richard Newell and William Pizer, "Discounting the Distant Future: How Much Do Uncertain Rates Increase Valuations?" J. Environ. Econ. Manage. 46 (*2003*) 52–71.

The application of the methodology outlined above yields estimates of the SCC that are reported in Table IV.8. These estimates are reported separately using 3-percent and 5-percent discount rates. The cells are empty in rows 10 and 11 because these studies did not report estimates of the SCC at a 3-percent discount rate. The model-weighted means are reported in the final or summary row; they are $33 per t CO_2 at a 3-percent discount rate and $5 per t CO_2 with a 5-percent discount rate.

TABLE IV.8—GLOBAL SOCIAL COST OF CARBON (SCC) ESTIMATES ($/t CO_2 IN 2007 IN 2007$), BASED ON 3% AND 5% DISCOUNT RATES *

	Model	Study	Climate scenario	3%	5%
1	FUND	Anthoff et al. 2009	FUND default	6	−1
2	FUND	Anthoff et al. 2009	SRES A1b	1	−1
3	FUND	Anthoff et al. 2009	SRES A2	9	−1
4	FUND	Link and Tol 2004	No THC	12	3
5	FUND	Link and Tol 2004	THC continues	12	2
6	FUND	Guo et al. 2006	Constant PRTP	5	−1
7	FUND	Guo et al. 2006	Gollier discount 1	14	0
8	FUND	Guo et al. 2006	Gollier discount 2	7	−1
			FUND Mean	8.25	0
9	PAGE	Wahba & Hope 2006	A2-scen	57	7
10	PAGE	Hope 2006			7
11	DICE	Nordhaus 2008			8

TABLE IV.8—GLOBAL SOCIAL COST OF CARBON (SCC) ESTIMATES ($/t CO_2 IN 2007 IN 2007$), BASED ON 3% AND 5% DISCOUNT RATES *—Continued

	Model	Study	Climate scenario	3%	5%
Summary			Model-weighted mean	33	5

* The sample includes all peer reviewed, non-equity-weighted estimates included in Tol (2008), Nordhaus (2008), Hope (2008), and Anthoff et al. (2009), that are based on the most recent published version of FUND, PAGE, or DICE and use business-as-usual climate scenarios. All values are based on the best available information from the underlying studies about the base year and year dollars, rather than the Tol (2008) assumption that all estimates included in his review are 1995 values in 1995$. All values were updated to 2007 using a 3-percent annual growth rate in the SCC, and adjusted for inflation using GDP deflator.

DOE used the model-weighted mean values of $33 and $5 per ton (2007$), as these represent the estimates associated with the 3-percent and 5-percent discount rates, respectively. The 3-percent and 5-percent estimates have independent appeal and at this time a clear preference for one over the other is not warranted. These values were then escalated to 2008$ and rounded to $34 and $5. Thus, DOE has also included—and centered its current attention on—the average of the estimates associated with these discount rates, which is approximately $20 (in 2008$). (Based on the $20 global value, the domestic value would be approximately $1 per ton of CO_2 equivalent.)

It is true that there is uncertainty about interest rates over long time horizons. Recognizing that point, Newell and Pizer have made a careful effort to adjust for that uncertainty. See Newell and Pizer, *supra.* This is a relatively recent contribution to the literature.

There are several concerns with using this approach in this context. First, it would be a departure from current OMB guidance. Second, an approach that would average what emerges from discount rates of 3 percent and 5 percent reflects uncertainty about the discount rate, but based on a different model of uncertainty. The Newell-Pizer approach models discount rate uncertainty as something that evolves over time; in contrast, one alternative approach would assume that there is a single discount rate with equal probability of 3 percent and 5 percent.

Table IV.9 reports on the application of the Newell-Pizer adjustments. The precise numbers depend on the assumptions about the data generating process that governs interest rates. Columns (1a) and (1b) assume that "random walk" model best describes the data and uses 3-percent and 5-percent discount rates, respectively. Columns (2a) and (2b) repeat this, except that it assumes a "mean-reverting" process. As Newell and Pizer report, there is stronger empirical support for the random walk model.

TABLE IV.9—GLOBAL SOCIAL COST OF CARBON ESTIMATES ($/t CO_2 IN 2007 IN 2007$),* USING NEWELL & PIZER ADJUSTMENT FOR FUTURE DISCOUNT RATE UNCERTAINTY **

	Model	Study	Climate scenario	Random-walk model		Mean-reverting model	
				3%	*5%*	*3%*	*5%*
				(1a)	(1b)	(2a)	(2b)
1	FUND	Anthoff et al. 2009	FUND default	10	0	7	−1
2	FUND	Anthoff et al. 2009	SRES A1b	2	0	1	−1
3	FUND	Anthoff et al. 2009	SRES A2	15	0	10	−1
4	FUND	Link and Tol 2004	No THC	20	6	13	4
5	FUND	Link and Tol 2004	THC continues	20	4	13	2
6	FUND	Guo et al. 2006	Constant PRTP	9	0	6	−1
7	FUND	Guo et al. 2006	Gollier discount 1	14	0	14	0
8	FUND	Guo et al. 2006	Gollier discount 2	7	−1	7	−1
			FUND Mean	12	1	9	0
9	PAGE	Wahba & Hope 2006	A2-scen	97	13	63	8
10	PAGE	Hope 2006			13		8
11	DICE	Nordhaus 2008			15		9
Summary			Model-weighted mean	55	10	36	6

* The sample includes all peer reviewed, non-equity-weighted estimates included in Tol (2008), Nordhaus (2008), Hope (2008), and Anthoff et al. (2009), that are based on the most recent published version of FUND, PAGE, or DICE and use business-as-usual climate scenarios. All values are based on the best available information from the underlying studies about the base year and year dollars, rather than the Tol (2008) assumption that all estimates included in his review are 1995 values in 1995$. All values were updated to 2007 using a 3-percent annual growth rate in the SCC, and adjusted for inflation using GDP deflator.

** Assumes a starting discount rate of 3 percent. Newell and Pizer (2003) based adjustment factors are not applied to estimates from Guo et al. (2006) that use a different approach to account for discount rate uncertainty (rows 7–8).

The resulting estimates of the social cost of carbon are necessarily greater. When the adjustments from the random walk model are applied, the estimates of the social cost of carbon are $10 and $55, with the 3-percent and 5-percent discount rates, respectively. The application of the mean-reverting adjustment yields estimates of $6 and $36 (2007$). Since the random walk model has greater support from the data, DOE also used the SCC values of $10 and $55 (2007$). When escalated to 2008$, these values are approximately $10 and $56.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used values based on a social cost of carbon of approximately $5, $10, $20, $34 and $56 per metric ton avoided in 2007 (values expressed in 2008$). DOE also calculated the domestic benefits based on a value of approximately $1 per metric ton avoided in 2007. To value the CO_2 emissions reductions expected to result from amended standards for CCWs in 2013–2043, DOE escalated the above values for 2007 using a 3-percent escalation rate. As indicated in the discussion above, estimates of SCC are assumed to increase over time since future emissions are expected to produce larger incremental damages as physical and economic systems become more stressed as the magnitude of climate change increases. Although most studies that estimate economic damages caused by increased GHG emissions in future years produce an implied growth rate in the SCC, neither the rate itself nor the information necessary to derive its implied value is commonly reported. However, applying a rate of 3 percent per year is consistent with the range recommended by IPCC (2007).

DOE also investigated the potential monetary benefit of reduced NO_X and Hg emissions from the TSLs it considered. As noted above, new or amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by CAIR, in addition to the reduction in site NO_X emissions nationwide. DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's final rule based on environmental damage estimates from the literature. Available estimates suggest a very wide range of monetary values for NO_X emissions, ranging from $370 per ton to $3,800 per ton of NO_X from stationary sources, measured in 2001$ (equivalent to a range of $442 to $4,540 per ton in 2008$). Refer to the OMB, Office of Information and Regulatory Affairs, "2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities," Washington, DC, for additional information.

For Hg emissions reductions, DOE estimated the national monetized values resulting from the TSLs considered for today's rule based on environmental damage estimates from the literature. The impact of mercury emissions from power plants on humans is considered highly uncertain. However, DOE identified two estimates of the environmental damage of Hg based on estimates of the adverse impact of childhood exposure to methyl mercury on IQ for American children, and subsequent loss of lifetime economic productivity resulting from these IQ losses. The high-end estimate of $1.3 billion per year in 2000$ (which works out to $33.3 million per ton emitted per year in 2008$) is based on an estimate of the current aggregate cost of the loss of IQ in American children that results from exposure to Hg of U.S. power plant origin.[36] DOE's low-end estimate of $0.66 million per ton emitted in 2004$ ($0.745 million per ton in 2008$) was derived from an evaluation of mercury control that used different methods and assumptions from the first study, but was also based on the present value of the lifetime earnings of children exposed to Hg.[37]

As previously stated, DOE's analysis assumed the presence of nationwide emission caps on SO_2 and caps on NO_X emissions in the 28 States covered by CAIR. In the presence of these caps, the NEMS–BT modeling system that DOE used to forecast emissions reduction indicated that no physical reductions in power sector emissions would occur (although there remains uncertainty about whether physical reduction of SO_2 will occur), but that the standards could put slight downward pressure on the prices of emissions allowances in cap-and-trade markets. Estimating this effect is very difficult because factors such as credit banking can change the trajectory of prices. From its modeling to date, DOE is unable to estimate a benefit from energy conservation standards on the prices of emissions allowances at this time. See the environmental assessment in the final rule TSD for further details.

V. Discussion of Other Comments

Since DOE opened the docket for this rulemaking, it has received more than 44 written comments from a diverse set of parties, including manufacturers and their representatives, wholesalers and distributors, energy conservation advocates, State officials and agencies, and electric utilities. Section IV of this preamble discusses comments DOE received on the analytic methodologies it used. Additional comments DOE received in response to the November 2009 SNOPR addressed the burdens and benefits associated with new energy efficiency standards, the information DOE used in its analyses, results of and inferences drawn from the analyses, impacts of standards, the merits of the different TSLs and standards options DOE considered, other issues affecting adoption of standards for CCWs, and the DOE rulemaking process. DOE addresses these comments in this section.

A. Proposed Trial Standard Levels (TSLs) for Commercial Clothes Washers

For the October 2008 NOPR, DOE based the TSLs on efficiency levels explored in the November 2007 ANOPR, and selected the TSLs on consideration of economic factors and current market conditions. ASAP suggested that DOE set TSLs based upon industry benchmarks such as current and forthcoming ENERGY STAR qualification levels and pending Federal tax incentive performance levels. (ASAP, Public Meeting Transcript, No. 40.5 at p. 33 and pp. 148–149) EIEA 2008 provided an Energy Efficient Appliance Credit to manufacturers for any RCW or CCW (front-loading or top-loading) produced domestically through 2010 with an efficiency level of at least 2.0 MEF/6.0 WF, or a larger credit for one that achieves 2.2 MEF/4.5 WF. The legislation also provides a separate tax credit for any top-loading RCW that achieves an efficiency level of at least 1.72 MEF/8.0 WF or a larger credit for one that exceeds 1.8 MEF/7.5 WF. DOE considered the impacts of these tax credits on the CCW industry in detail as part of the MIA. DOE accounts for the Federal tax credit as a direct cash benefit in the base and standards cases that increases the INPV. See section IV.G of today's supplemental notice and appendix 13C of the SNOPR TSD for further discussion of this issue.

B. Proposed Standards for Commercial Clothes Washers

For the November 2009 SNOPR, DOE made the preliminary determination that the standards for top-loading and front-loading CCWs listed in Table II.1 are technologically feasible and economically justified, and invited comment on these proposed standard levels.

In response, Alliance stated that it opposes the standard proposed for top-loading CCWs, noting that it is based on a "residential construction" product with almost no acceptance in the marketplace, instead of a true "commercial construction" product meeting the needs of the U.S.

[36] Trasande, L., *et al.,* "Applying Cost Analyses to Drive Policy that Protects Children," 1076 Ann. N.Y. Acad. Sci. 911 (2006).

[37] Ted Gayer and Robert Hahn, "Designing Environmental Policy: Lessons from the Regulation of Mercury Emissions," Regulatory Analysis 05–01, AEI-Brookings Joint Center for Regulatory Studies, Washington, DC (2004). A version of this paper was published in the *Journal of Regulatory Economics* in 2006. The estimate was derived by back-calculating the annual benefits per ton from the net present value of benefits reported in the study.

commercial clothes washer market segment. It stated that the proposed standard is inappropriate because equipment meeting the standard would not provide true hot water (120 °F or greater), true warm water (80 °F to 120 °F), or adequate rinsing. Alliance commented that WEB Service Company, California's largest multi-housing route operator, deployed an all-spray-rinse top-loading CCW in the late 1990's and was forced to take back all deployed units because they didn't meet the needs of the users. It stated that it could support a top-loading class standard of MEF ≥ 1.42/WF ≤ 9.5 (TSL 2), and that it supports the proposed standard for front-loading CCWs. (Alliance, No. 66.4 at p. 4; Alliance, No. 67.8 at pp. 1, 4)

Whirlpool commented that it supports both the top-loading and front-loading standards proposed in the November 2009 SNOPR. It stated that energy and water consumption levels that are more restrictive than these will likely lead to poor wash performance, poor rinse performance, or both. (Whirlpool, No. 67.11 at p. 3) AHAM and GE stated support for the proposed MEF and water factor levels that DOE proposed for front-loading CCWs. (AHAM, No. 67.12 at p. 3; GE, No. 67.9 at p. 1) GE added that it supports DOE's proposed MEF and WF requirements for front-load commercial clothes washers. In addition, GE expressed support for DOE's proposed MEF and WF requirements for top-load commercial clothes washers, but stated its concern that the max-tech model on which this level is based is designed for a relatively limited segment of the market (the on-premises laundry commercial segment), and that this model has not yet been demonstrated as sustainable in the harsher environment of laundromats, where the units are subject to tougher conditions such as overloading. (GE, No. 67.9 at p. 1)

EJ and the California Utilities advocated adoption of a single set of energy and water efficiency standards for all commercial clothes washers, which will deliver greater energy and water savings than separate standards for top-loading and front-loading commercial washers. The California Utilities stated that its preliminary analysis suggests that over the next 30 years, DOE could save as much as 50 percent more in energy savings and over 200 percent more in water savings with a single equipment class standard (set at levels of MEF 2.35/WF 4.4) than the standard that DOE has proposed in the SNOPR. (EJ, No. 67.5 at pp. 10–11; California Utilities, No. 67.10 at pp. 3–4) EJ stated that the proposed separate standards for front-loaders would increase the installed price differential between front-loaders and top-loaders, which could result in increased energy and water consumption to the extent that the increased installed price differential would encourage the market to shift from front-loaders to less efficient top-loaders. It noted that the modest energy and water savings that DOE has estimated for its proposed separate front-loader standards could be exceeded by that standard's impact on the relative shipments of top-loading and front-loading washers. It added that if DOE's standards were to necessitate design changes to top-loaders exclusively, the resulting increase in installed costs for top-loaders would foster the market's transition to front-loaders, increasing the net energy and water savings produced by the standard. (EJ, No. 67.5 at pp. 10–11)

EJ and the California Utilities also noted the availability of flexible regulatory approaches that would facilitate adoption of a strong, uniform set of standards for all commercial washers and also minimize any adverse impacts on competition. They stated that DOE could adopt a tiered approach to standards, maintaining a 2013 compliance date for initial energy and water efficiency standards, while phasing in stronger requirements later. This approach, they said, would give the LVM (Alliance) and other manufacturers additional time to raise needed capital and to optimize product designs and manufacturing processes to meet strong standards at a lower cost. (EJ, No. 67.5 at pp. 9–10; California Utilities, No. 67.10 at pp. 4–5) EJ added that alternatively, DOE could accommodate Alliance's key concerns by granting a temporary waiver from compliance with revised standards. This would enable DOE to adopt effective standards while giving Alliance an extended compliance period in which to raise needed capital and optimize its product designs and manufacturing processes. (EJ, No. 67.5 at p. 9–10)

The Joint Comment stated that DOE's proposed rule establishing two product classes for CCWs is not satisfactory for either of the proposed classes, as it would require manufacturers to make substantial investments to achieve modest improvements in the efficiency of a protected class of inherently less-efficient top-loaders, while establishing a standard for front-loaders that 97 percent of the front-loading models on the market today already meet. It noted that a stronger standard for front-loaders would widen the price differential between front-loaders and top-loaders, which would encourage a portion of the market to shift from front-loaders back to less efficient top-loaders. The Joint Comment recommended that a standard be set for CCWs as a single product class, with performance levels that are readily achievable by today's high-efficiency front-loading washers. It stated that the highest standard level identified for front-loaders (MEF 2.35/WF 4.4) maximizes energy and life-cycle cost savings when applied to all commercial washers, and thus should be the strongest candidate for adoption. Regarding the problems that the recommended standards could pose for the LVM (*i.e.,* Alliance), the Joint Comment stated that the standard should take effect in stages, allowing most capital conversion costs to be deferred for an additional two years. It added that the manufacturer hardship waiver process in current law remains open to Alliance should unforeseen circumstances arise making compliance impossible. (Joint Comment, No. 67.6 at p. 1)

In considering standards for today's final rule, DOE first notes that it has retained separate equipment classes for top-loading and front-loading CCWs, for reasons discussed in section IV.A. DOE has retained the analyses of standards for both equipment classes that it conducted for the SNOPR, which are described in section IV. Section VI presents a discussion of DOE's reasons for adopting the standard levels in today's final rule.

VI. Analytical Results and Conclusions

A. Trial Standard Levels

DOE analyzed the benefits and burdens of a number of TSLs for the CCWs that are the subject of today's final rule. As discussed in section IV.A, for the October 2008 NOPR, DOE based the TSLs on efficiency levels explored in the November 2007 ANOPR, and selected the TSLs on consideration of economic factors and current market conditions. As also discussed in section IV.C.1.a, DOE eliminated the maximum technologically efficiency level of 1.76 MEF/8.3 WF for the top-loading equipment class in the November 2009 SNOPR. For today's final rule, DOE considered the same TSLs it considered for the November 2009 SNOPR.

Table VI.1 presents the TSLs analyzed for today's final rule and the efficiency levels (consisting of a combination of MEF and WF) within each TSL for each class of equipment. In all, DOE has considered five TSLs. TSL 1 corresponds to the first candidate standard level from each equipment class and represents the efficiency level for each class with the least significant design change. TSL 2 represents the

second candidate standard level for front-loading washers while keeping top-loading washers at its first candidate standard level. Over 96 percent of the front-loading CCW equipment Stock Keeping Units (SKUs) currently on the market either meet or exceed the second candidate standard level for front-loading washers. In the case of the second candidate standard level for top-loading washers, a significant percentage of the market, over 35 percent, also meets or exceeds this efficiency level. Therefore, TSL 2 corresponds to the candidate standard levels for each equipment class that still represent a significant share of the market. TSL 3 represents the second candidate standard level for top-loading washers (the maximum efficiency level for this class), and keeps front-loading washers at the second candidate standard level. For TSL 3, front-loading washers were held to the second candidate standard level in order to minimize the equipment price difference between the two equipment classes. For TSL 4, top-loading washers are retained at their maximum efficiency level while front-loading washers are incremented to their third candidate standard level. Finally, TSL 5 corresponds to the maximum technologically feasible level for each equipment class. In progressing from TSL 1 to TSL 5, the LCC savings, NES, and NPV all increase. TSL 5 represents the level with the minimum LCC and maximum NES and NPV.

TABLE VI.1—TRIAL STANDARD LEVELS FOR COMMERCIAL CLOTHES WASHERS

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Top-Loading:					
MEF	1.42	1.42	1.60	1.60	1.60
WF	9.5	9.5	8.5	8.5	8.5
Front-Loading:					
MEF	1.80	2.00	2.00	2.20	2.35
WF	7.5	5.5	5.5	5.1	4.4

B. Significance of Energy Savings

To estimate the energy savings through 2043 due to amended energy conservation standards, DOE compared the energy consumption of equipment under the base case to energy consumption of this equipment under each TSL that DOE considered for CCWs. Table VI.2 shows DOE's NES estimates (and national water savings results) for each TSL. The table also shows the magnitude of the savings if they are discounted at 7-percent and 3-percent discount rates. Discounted energy savings represent a policy perspective where energy savings further in the future are less significant than energy savings closer to the present. Each TSL considered in this rulemaking would result in significant energy savings, and the amount of savings increases with higher energy conservation standards (ranging from an estimated 0.04 quads to 0.12 quads, undiscounted, for TSLs 1 through 5).

TABLE VI.2—SUMMARY OF CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR CCWS

[Savings for Units Sold from 2013 to 2043]

Trial standard level	Undiscounted		3% Discounted		7% Discounted	
	National energy savings, *quads*	National water savings, *trillion gallons*	National energy savings, *quads*	National water savings, *trillion gallons*	National energy savings, *quads*	National water savings, *trillion gallons*
1	0.04	0.00	0.02	0.00	0.01	0.00
2	0.04	0.01	0.02	0.00	0.01	0.00
3	0.10	0.14	0.06	0.08	0.03	0.04
4	0.11	0.16	0.06	0.09	0.03	0.04
5	0.12	0.21	0.07	0.11	0.03	0.06

C. Economic Justification

1. Economic Impacts on Commercial Customers

a. Life-Cycle Cost and Payback Period

To evaluate the net economic impact of standards on CCW customers, DOE conducted LCC and PBP analyses for each TSL. More efficient CCWs affect customers in two ways: (1) Purchase price is expected to increase; and (2) annual operating expense is expected to decrease. DOE analyzed the net effect by calculating the LCC. Inputs used for calculating the LCC include total installed costs, annual energy savings, average electricity prices, energy price trends, repair and maintenance costs, equipment lifetime, and discount rates.

Table VI.3 and Table VI.4 show the LCC and PBP results for each CCW application for the top-loading equipment class, and Table VI.5 and Table VI.6 show the results for the front-loading equipment class. DOE's LCC and PBP analyses provided five outputs for each considered TSL. The first three outputs are the percentages of standard-compliant machine purchases that would result in (1) a net LCC increase, (2) no impact, or (3) a net LCC savings for the customer. The fourth output is the average net LCC savings from standard-compliant equipment. The fifth output is the average PBP for the customer purchasing a design that complies with the TSL.

For the top-loading equipment class, the highest average LCC savings and shortest PBP occur at TSLs 3, 4, and 5. At these TSLs, 85 percent of multi-family customers have a net benefit, and 96 percent of laundromat customers have a net benefit. For the front-loading equipment class, the highest average LCC savings occur at TSL 5, and the PBP is lower than at TSL 4. TSLs 1 through 3 have little impact because most of the market is already at or above this level in the base case.

TABLE VI.3—COMMERCIAL CLOTHES WASHERS, TOP-LOADING, MULTI-FAMILY APPLICATION: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

TSL	MEF/WF	Life-cycle cost			Life-cycle cost savings				Payback period years	
		Average installed price $	Average operating cost $	Average LCC $	Average savings $	Customers with			Median	Average
						Net cost %	No impact %	Net benefit %		
Baseline	1.26/9.50	760	3,263	4,023	.....	.....	.....	.....	.....	.....
1, 2	1.42/9.50	883	3,153	4,036	−8.1	43.3	35.3	21.5	11.7	17.3
3, 4, 5	1.60/8.50	974	2,873	3,847	178.6	13.8	1.2	85.0	4.6	5.6

TABLE VI.4—COMMERCIAL CLOTHES WASHERS, TOP-LOADING, LAUNDROMAT APPLICATION: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

TSL	MEF/WF	Life-cycle cost			Life-cycle cost savings				Payback period years	
		Average installed price $	Average operating cost $	Average LCC $	Average savings $	Customers with			Median	Average
						Net cost %	No impact %	Net benefit %		
Baseline	1.26/9.50	760	3,422	4,182	.....	.....	.....	.....	.....	.....
1, 2	1.42/9.50	883	3,326	4,209	−17.7	51.4	35.3	13.3	7.9	9.1
3, 4, 5	1.60/8.50	974	3,025	3,999	190.0	2.9	1.2	95.9	2.8	3.0

TABLE VI.5—COMMERCIAL CLOTHES WASHERS, FRONT-LOADING, MULTI-FAMILY APPLICATION: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

TSL	MEF/WF	Life-cycle cost			Life-cycle cost savings				Payback period years	
		Average installed price $	Average operating cost $	Average LCC $	Average savings $	Customers with			Median	Average
						Net cost %	No impact %	Net benefit %		
Baseline	1.72/8.00	1,365	2,855	4,220	.....	.....	.....	.....	.....	.....
1	1.80/7.50	1,365	2,855	4,091	4.7	0.0	96.3	3.7	0.0	0.0
2, 3	2.00/5.50	1,388	2,726	3,690	19.5	0.0	96.3	3.7	0.4	0.4
4	2.20/5.10	1,428	2,302	3,596	91.5	1.4	23.1	75.5	3.0	3.2
5	2.35/4.40	1,470	2,168	3,484	202.7	1.1	0.0	98.9	2.9	3.1

TABLE VI.6—COMMERCIAL CLOTHES WASHERS, FRONT-LOADING, LAUNDROMAT APPLICATION: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

TSL	MEF/WF	Life-cycle cost			Life-cycle cost savings				Payback period years	
		Average installed price $	Average operating cost $	Average LCC $	Average savings $	Customers with			Median	Average
						Net cost %	No impact %	Net benefit %		
Baseline	1.72/8.00	1,365	2,014	4,380	.....	.....	.....	.....	.....	.....
1	1.80/7.50	1,365	3,014	4,240	5.2	0.0	96.3	3.7	0.0	0.0
2, 3	2.00/5.50	1,388	2,874	3,787	22.0	0.0	96.3	3.7	0.2	0.2
4	2.20/5.10	1,428	2,400	3,695	93.4	0.0	23.1	76.9	1.8	1.9
5	2.35/4.40	1,470	2,267	3,572	216.1	0.0	0.0	100.0	1.6	1.7

b. Commercial Consumer Subgroup Analysis

Using the LCC spreadsheet model, DOE estimated the impact of the considered TSLs on the following CCW customer subgroups: (1) Small business owners, and (2) customers without municipal water and sewer.

For customers without municipal water and sewer, the LCC impacts and PBPs are similar to the LCC impacts and PBPs for the full sample of CCW customers. But for small business owners (small multi-family property owners and small laundromats), the LCC impacts and PBPs are different from those associated with the general population.

For the top-loading equipment class, Table VI.7 shows the LCC impacts and PBPs for small multi-family property owners and small laundromats, while Table VI.8 shows the same for the front-loading equipment class. For all TSLs for both equipment classes, both sets of small business owners, on average, realize LCC savings similar to the general population. The difference between the small business population and the general population occurs in the percentage of each population that realizes LCC savings from standards. With the exception of TSL 1 for top-loading washers, an overwhelming majority of the small business and general populations benefit from standards at each TSL. But for both equipment classes, a larger percentage of the general population benefits from

standards than do small business owners. This occurs because small businesses do not have the same access to capital as larger businesses. As a result, smaller businesses have a higher average discount rate than the industry average. Because of the higher discount rates, smaller businesses do not value future operating costs savings from more efficient CCWs as much as the general population. But to emphasize, in spite of the higher discount rates, a majority of small businesses still benefit from higher CCW standards at all TSLs, with the exception of TSL 1 for the top-loading equipment class.

TABLE VI.7—COMMERCIAL CLOTHES WASHERS, TOP-LOADING: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR SMALL BUSINESS OWNERS

TSL	MEF/WF	Life-cycle cost			Life-cycle cost savings				Payback period *years*	
		Average installed price $	Average operating cost $	Average LCC $	Average savings $	Households with			Median	Average
						Net cost $	No impact %	Net benefit %		
Multi-Family Application										
Baseline	1.26/9.50	760	2,659	3,419	.....	.....	.....	.....	.....	.....
1, 2	1.42/9.50	883	2,569	3,452	(22.0)	50.7	35.6	13.7	11.7	17.7
3, 4, 5	1.60/8.50	974	2,341	3,315	112.6	21.2	1.5	77.4	4.5	5.6
Laundromat Application										
Baseline	1.26/9.50	760	2,963	3,723	.....	.....	.....	.....	.....	.....
1, 2	1.42/9.50	883	2,880	3,764	(26.1)	58.6	35.6	5.8	7.8	9.2
3, 4, 5	1.60/8.50	974	2,620	3,594	140.9	5.6	1.5	92.9	2.8	3.0

Note: Numbers in parentheses indicate negative values.

TABLE VI.8—COMMERCIAL CLOTHES WASHERS, FRONT-LOADING: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR SMALL BUSINESS OWNERS

TSL	MEF/WF	Life-cycle cost			Life-cycle cost savings				Payback period *years*	
		Average installed price $	Average operating cost %	Average LCC $	Average savings $	Households with			Median	Average
						Net cost %	No impact %	Net benefit %		
Multi-Family Application										
Baseline	1.72/8.00	1,365	2,327	3,693	.....	.....	.....	.....	.....	.....
1	1.80/7.50	1,365	2,327	3,587	3.7	0.0	96.4	3.6	0.0	0.0
2, 3	2.00/5.50	1,388	2,222	3,265	14.9	0.0	96.4	3.6	0.4	0.5
4	2.20/5.10	1,428	1,877	3,196	69.1	4.1	22.2	73.7	3.0	3.2
5	2.35/4.40	1,470	1,768	3,113	151.7	4.2	0.0	95.8	2.9	3.1
Laundromat Application										
Baseline	1.72/8.00	1,365	1,643	3,977	.....	.....	.....	.....	.....	.....
1	1.80/7.50	1,365	2,611	3,855	4.2	0.0	96.4	3.6	0.0	0.0
2, 3	2.00/5.50	1,388	2,490	3,467	17.6	0.0	96.4	3.6	0.2	0.2
4	2.20/5.10	1,428	2,079	3,392	75.9	0.0	22.2	77.7	1.8	1.9
5	2.35/4.40	1,470	1,964	3,291	176.4	0.0	0.0	100.0	1.6	1.7

c. Rebuttable-Presumption Payback

As discussed above, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6295(o)(2)(B)(iii)) DOE calculated a rebuttable-presumption PBP for each TSL to determine whether DOE could presume that a standard at that level is economically justified. Table VI.9 shows the rebuttable-presumption PBPs for CCWs. As required by EPCA, DOE based the calculation on the assumptions in the DOE test procedures for CCWs. (42 U.S.C. 6295(o)(2)(B)(iii)) As a result, DOE calculated a single rebuttable-presumption payback value, and not a distribution of PBPs, for each TSL.

TABLE VI.9—REBUTTABLE-PRESUMPTION PAYBACK PERIODS FOR COMMERCIAL CLOTHES WASHERS

TSL	Payback period, *years*			
	Top-loading		Front-loading	
	Multi-family application	Lauundromat application	Multi-family application	Laundromat application
1	>100	>100	0	0
2	>100	>100	1.2	1.3

TABLE VI.9—REBUTTABLE-PRESUMPTION PAYBACK PERIODS FOR COMMERCIAL CLOTHES WASHERS—Continued

TSL	Payback period, *years*			
	Top-loading		Front-loading	
	Multi-family application	Lauundromat application	Multi-family application	Laundromat application
3	24.0	>100	1.2	1.3
4	24.0	>100	9.4	17.3
5	24.0	>100	10.0	17.6

With the exception of TSLs 1 to 3 for front-loading CCWs, the TSLs in Table VI.9 do not have rebuttable-presumption PBPs of less than 3 years. As stated above, in addition to calculating the rebuttable-presumption PBP DOE routinely conducts a thorough economic analysis that considers the full range of impacts, including those to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this full analysis serve as the basis for DOE to definitively determine the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification.) Section IV.D provides a complete discussion of how DOE considered the range of impacts to select the standards in today's final rule.

2. Economic Impacts on Manufacturers

For the November 2009 SNOPR, DOE used the INPV in the MIA to compare the financial impacts of different TSLs on CCW manufacturers. 74 FR 57738, 57773–76 (Nov. 9, 2009). The INPV is the sum of all net cash flows discounted by the industry's cost of capital (discount rate). DOE used the GRIM to compare the INPV of the base case (no new energy conservation standards) to that of each TSL for the CCW industry. To evaluate the range of cash-flow impacts on the CCW industry, DOE constructed different scenarios using different assumptions for shipments that correspond to the range of anticipated market responses. Each scenario results in a unique set of cash flows and corresponding industry value at each TSL. These steps allowed DOE to compare the potential impacts on the industry as a function of TSLs in the GRIM. The difference in INPV between the base case and the standards case is an estimate of the economic impacts that implementing that standard level would have on the entire industry. For today's final rule notice, DOE continues to use the above methodology and presents the results in the subsequent sections. See chapter 13 of the TSD for additional information on MIA methodology and results.

a. Industry Cash-Flow Analysis Results

Using scenarios based on two shipment projections from the NIA, DOE estimated the impact of amended energy conservation standards for CCWs on the INPV of the CCW industry. The impact consists of the difference between INPV in the base case and INPV in the standards case. INPV is the primary metric used in the MIA, and represents one measure of the fair value of the industry in today's dollars. DOE calculated the INPV by summing all of the net cash flows, discounted at the CCW industry's cost of capital or discount rate.

As discussed in section IV.G of today's final rule, DOE also considered the impact of Federal production tax credits on the CCW industry. DOE does not include the benefit of these tax credits in its results shown below. DOE includes these results in appendix 13C of the TSD. DOE estimated that the total benefit of these Federal production tax credits to the CCW industry from 2007 through 2010 would be approximately $5.3 million. Because DOE discounts the industry cash flows to the 2009 base year, DOE estimates that approximately $1.6 million of the total benefit from the tax credits will occur during the analysis period. In the scenario that considers the benefits of the tax credits, the base case INPV increases by approximately $1.6 million. As previously stated, although the base-case and standards-case INPV increase as a result of Federal production tax credits, the benefits do not significantly mitigate possible impacts due to standards. For additional information on the assumptions and calculations of Federal production tax credits for CCWs, see appendix 13C of the TSD.

Also discussed in section IV.G of today's final rule, DOE incorporated a sensitivity analysis from the NIA that impacts shipments in the MIA. The methodology and subsequent INPV results from the sensitivity analysis are found in appendix 11C of the TSD.

To assess the lower end of the range of potential impacts for the CCW industry, DOE considered a scenario wherein unit shipments will not be impacted regardless of new energy conservation standards—this scenario is called the base-case shipments scenario. To assess the higher end of the range of potential impacts for the CCW industry, DOE considered a scenario in which total industry shipments would decrease due to the combined effects of increases in purchase price and decreases in operating costs due to new energy conservation standards—this scenario is called the price elasticity of demand scenario. In both scenarios, it is assumed that manufacturers will be able to maintain the same gross margins (as a percentage of revenues) that are currently obtained in the base case. Table VI.10 through Table VI.11 show the changes in INPV that DOE estimates would result from the TSLs DOE considered for this final rule.

TABLE VI.10—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL CLOTHES WASHERS WITH BASE-CASE SHIPMENTS. NOT INCLUDING DOE'S ESTIMATES OF FEDERAL PRODUCTION TAX CREDITS

[Preservation of gross margin percentage markup with base-case shipments]

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	*2008$ millions*	62	65	63	57	54	41
Change in INPV	*2008$ millions**		4	1	(5)	(8)	(20)

TABLE VI.10—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL CLOTHES WASHERS WITH BASE-CASE SHIPMENTS. NOT INCLUDING DOE'S ESTIMATES OF FEDERAL PRODUCTION TAX CREDITS—Continued

[Preservation of gross margin percentage markup with base-case shipments]

	Units	Base case	Trial standard level				
			1	2	3	4	5
	%		5.97	2.24	−7.81	−12.73	−33.09
Amended Energy Conservation Standards Equipment Conversion Expenses.	*2008$ millions*		0.00	3.12	18.72	22.56	35.87
Amended Energy Conservation Standards Capital Investments.	*2008$ millions*		0.00	0.62	1.66	2.44	5.09
Total Investment Required	*2008$ millions*		0.0	3.7	20.4	25.0	41.0

* Parentheses indicate negative (−) values.

TABLE VI.11—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL CLOTHES WASHERS WITH BASE-CASE SHIPMENTS. PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP WITH BASE-CASE SHIPMENTS

[Not including DOE's estimates of Federal production tax credits]

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	*2008$ millions*	62	64	62	55	51	39
Change in INPV	*2008$ millions**		2.8	0.5	(7.0)	(10.2)	(23.0)
	%		4.50	0.76	−11.39	−16.57	−37.30
Amended Energy Conservation Standards Equipment Conversion Expenses.	*2008$ millions*		0.00	3.12	18.72	22.56	35.87
Amended Energy Conservation Standards Capital Investments.	*2008$ millions*		0.00	0.62	1.66	2.44	5.09
Total Investment Required	*2008$ millions*		0.0	3.7	20.4	25.0	41.0

* Parentheses indicate negative (−) values.

The November 2009 SNOPR discusses the estimated impact of amended CCW standards on INPV for each equipment class. 74 FR 57738, 57775–76 (Nov. 9, 2009). See chapter 13 of the TSD for details.

b. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden.

DOE recognizes that each regulation can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can reduce manufacturers' profits and possibly cause manufacturers to exit from the market. DOE did not identify any additional DOE regulations that would affect the manufacturers of CCW apart from the ones discussed in the October 2008 NOPR. 73 FR 62034, 62104 (Oct. 17, 2008). These included other DOE regulations, State regulations, and international standards. For further information about the cumulative regulatory burden on the CCW industry, see chapter 13 of the TSD.

c. Impacts on Employment

To quantitatively assess the impacts of energy conservation standards on CCW manufacturing employment, DOE used the GRIM to estimate the domestic labor expenditures and number of employees in the base case and at each TSL from 2009 through 2043 for the CCW industry. DOE used statistical data from the U.S. Census Bureau's 2006 *Annual Survey of Manufactures* [38] (*2006 ASM*) and 2006 *Current Industry Report* [39] (*2006 CIR*), the results of the engineering analysis, and interviews with manufacturers to estimate the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels.

Using the GRIM, DOE calculates that there are 188 U.S. production workers in the CCW industry. Using the *CIR* data, DOE estimates that approximately 81 percent of CCWs sold in the United States are manufactured domestically. Today's final rule estimates the impacts on U.S. production workers in the CCW industry impacted by energy conservation standards as shown in Table VI.12.

TABLE VI.12—CHANGE IN TOTAL NUMBER OF DOMESTIC PRODUCTION EMPLOYEES IN 2013 IN THE COMMERCIAL CLOTHES WASHER INDUSTRY

	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Total Number of Domestic Production Workers in 2013	188	204	204	222	224	228
Change in Total Number of Domestic Production Workers in 2013		16	16	33	36	40

[38] The 2006 *Annual Survey of Manufactures* is available online at: *http://www.census.gov/mcd/asmhome.html.*

[39] The 2006 *Current Industry Report* is available online at: *http://www.census.gov/cir/www/alpha.html.*

The November 2009 SNOPR discussed the estimated impacts of amended CCW standards on manufacturing employment. 74 FR 57738, 57776–77 (Nov. 9, 2009). A further discussion of the potential impacts of amended energy conservation standards on manufacturing employment for the CCW industry at each TSLs are presented in chapter 13 of the TSD.

d. Impacts on Manufacturing Capacity

According to the majority of CCW manufacturers, amended energy conservation standards could potentially impact manufacturers' production capacity depending on the efficiency level required. For today's final rule, DOE continues to believe manufacturers will be able to maintain manufacturing capacity levels and continue to meet market demand under amended energy conservation standards as long as manufacturers can continue to offer top-loading and front-loading CCWs.

As stated in the November 2009 SNOPR, a very high efficiency standard for top-loading CCWs could potentially cause one or more manufacturer(s) to abandon further manufacture of top-loading CCWs after the compliance date (due to concerns about wash quality, for example). Instead of manufacturing top-loading CCWs, manufacturers could elect to switch their entire production over to front-loading CCWs. Since top-loading and front-loading CCWs share few, if any parts, are built on completely separate assembly lines, and are built at very different production volumes, a manufacturer may not be able to make a platform switch from top-loading to front-loading CCWs without significant impacts on equipment development and capital expenses, along with capacity constraints. 74 FR 57738, 57777 (Nov. 9, 2009). However, for today's final rule, DOE estimates that the energy conservation standard in today's final rule for top-loading CCWs mitigates that risk.

As reported in the November 2009 SNOPR, multiple manufacturers stated during interviews that front-loading CCWs represent a relatively small segment of their total production volumes. Depending on the manufacturer, front-loading production capacity may need to be substantially expanded to meet the demand that top-loading production lines currently meet. This expansion could possibly affect capacity until new production lines come on-line to service demand. In addition, manufacturers stated that the higher prices of front-loading washers could lead to a decrease in shipments. This could lead to a permanently lower production capacity as machines are repaired and the equipment lifetime of existing washers is extended. 74 FR 57738, 57777 (Nov. 9, 2009). DOE research continues to suggest that the energy conservation standards in today's final rule can be achieved by all manufacturers using existing platforms and technologies; hence, there appears little reason for the market to wholly transition to front-loading CCWs.

A further discussion of the potential impacts of amended energy conservation standards on manufacturing capacity for the CCW industry is presented in chapter 13 of the TSD.

e. Impacts on Subgroups of Manufacturers

As discussed in the November 2009 SNOPR, 74 FR 57738, 57777 (Nov. 9, 2009), DOE evaluated the impacts of amended energy conservation standards on subgroups of manufacturers. As outlined earlier, an LVM that concentrates on building laundry equipment will be affected disproportionately by any energy efficiency regulation regarding CCWs. The LVM's business is focused mostly on the commercial laundry market segment and its total production volume is many times lower than its diversified competitors. Due to this combination of market concentration and size, the LVM is at greater risk of material harm to its business due to any regulation that affects commercial laundry products than its competitors, regardless of the TSL chosen.

For today's final rule, DOE reevaluated the CCW energy conservation standards proposed in the November 2009 SNOPR in response to comments received from interested parties. DOE continues to believe that the energy conservation standards adopted in today's final rule greatly lessen the potential disadvantages faced by the LVM. Further details of the separate analysis of the impacts on the LVM are found in chapter 13 of the TSD.

3. National Impact Analysis

a. Amount and Significance of Energy Savings

To estimate the energy savings through 2043 that would be expected to result from amended CCW energy conservation standards, DOE compared the projected energy consumption of CCWs under the base case to energy consumption of this equipment under each of the considered TSLs. The energy consumption calculated in the NIA takes into account energy losses in the generation and transmission of electricity as discussed in section VI.B.

Table VI.13 and Table VI.14 show the forecasted national energy and water savings at each TSL for top-loading and front-loading CCWs, respectively. In addition to undiscounted savings, the tables show the magnitude of the estimated energy and water savings if the savings are discounted at 7-percent and 3-percent discount rates. Each TSL considered in this rulemaking would result in significant energy and water savings, and the amount of savings increases with higher energy conservation standards. See chapter 11 of the TSD for details of the NIA.

TABLE VI.13—SUMMARY OF CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR TOP-LOADING COMMERCIAL CLOTHES WASHERS (2013 TO 2043)

Trial standard level	Undiscounted		Discounted at 3%		Discounted at 7%	
	National energy savings, *quads*	National water savings, *trillion gallons*	National energy savings, *quads*	National water savings, *trillion gallons*	National energy savings, *quads*	National water savings, *trillion gallons*
1	0.04	0.00	0.02	0.00	0.01	0.00
2	0.04	0.00	0.02	0.00	0.01	0.00
3	0.10	0.14	0.05	0.08	0.03	0.04
4	0.10	0.14	0.05	0.08	0.03	0.04
5	0.10	0.14	0.05	0.08	0.03	0.04

TABLE VI.14—CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR FRONT-LOADING COMMERCIAL CLOTHES WASHERS (2013 TO 2043)

Trial standard level	Undiscounted		3% Discounted		7% Discounted	
	National energy savings, *quads*	National water savings, *trillion gallons*	National energy savings, *quads*	National water savings, *trillion gallons*	National energy savings, *quads*	National water savings, *trillion gallons*
1	0.00	0.00	0.00	0.00	0.00	0.00
2	0.00	0.01	0.00	0.00	0.00	0.00
3	0.00	0.01	0.00	0.00	0.00	0.00
4	0.01	0.03	0.01	0.01	0.00	0.01
5	0.02	0.07	0.01	0.04	0.01	0.02

b. Net Present Value of Customer Costs and Benefits

The NPV of customer costs and benefits is a measure of the cumulative impact of energy conservation standards. In accordance with the OMB's guidelines on regulatory analysis (OMB Circular A–4, section E, Sept. 17, 2003), DOE calculated an estimated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy, and reflects the returns on real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, since recent OMB analysis has found the average rate of return to capital to be near this rate. DOE also used the 3-percent rate to capture the potential effects of standards on private consumption (*e.g.,* through higher prices for equipment and the purchase of reduced amounts of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years.

Table VI.15 shows the forecasted NPV at each TSL for CCWs. At both 7-percent and 3-percent discount rates, TSLs 1 through 5 show positive cumulative NPVs. The highest NPV is provided by TSL 5: $0.51 billion with 7-percent discount rate, and $1.25 billion with 3-percent discount rate.

TABLE VI.15—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR COMMERCIAL CLOTHES WASHERS (IMPACTS FOR UNITS SOLD FROM 2013 TO 2043)

TSL	NPV, *billion 2008$*					
	Top-loading		Front-loading		Total	
	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate
1	0.01	0.07	0.00	0.01	0.01	0.08
2	0.01	0.07	0.01	0.03	0.02	0.10
3	0.34	0.86	0.01	0.03	0.36	0.89
4	0.34	0.86	0.07	0.17	0.41	1.03
5	0.34	0.86	0.17	0.39	0.51	1.25

c. Impacts on Employment

In addition to considering the direct employment impacts for the manufacturers of equipment covered by this rulemaking (discussed above,) DOE develops estimates of the indirect employment impacts of proposed standards in the economy in general. As noted previously, DOE expects energy conservation standards for CCWs to reduce energy bills for commercial customers, with the resulting net savings being redirected to other forms of economic activity. The impacts concern a variety of businesses not directly involved in the decision to make, operate, or pay the utility bills for CCWs. Thus, they are "indirect."

To estimate these indirect employment impacts, DOE used an input/output model of the U.S. economy using BLS data (described in section IV.H). In this input/output model, the spending of the money saved on utility bills when more efficient CCWs are deployed is centered in economic sectors that create more jobs than are lost in electric utilities when spending is shifted from electricity to other products and services. As Table VI.16 shows, DOE estimates that net indirect employment impacts from the considered TSLs are likely to be very small. Furthermore, neither the BLS data nor the input/output model DOE uses include the quality or wage level of the jobs.

TABLE VI.16—NET NATIONAL INDIRECT EMPLOYMENT IMPACTS UNDER COMMERCIAL CLOTHES WASHER TSLS

TSL	Net national change in jobs in 2043, *thousands*
1	0.07
2	0.08
3	0.46
4	0.52
5	0.62

4. Impact on Utility or Performance of Equipment

As indicated in section II.G.1.d of the November 2009 SNOPR, the amended standards DOE is adopting today will not lessen the utility or performance of equipment under consideration in this

rulemaking. 74 FR 57738, 57745 (Nov. 9, 2009).

5. Impact of Any Lessening of Competition

As discussed in the November 2009 SNOPR, 74 FR 57738, 57779 (Nov. 9, 2009), and in section III.D.1.e of this preamble, DOE considers any lessening of competition likely to result from standards. The Attorney General determines the impact, if any, of any lessening of competition.

DOE carefully considered the determination received from DOJ in response to the October 2008 NOPR, and accordingly chose efficiency levels for the November 2009 SNOPR that appear achievable by all CCW manufacturers using existing equipment platforms and technologies. As such, DOE stated that there should be minimal impact on the CCW market and hence its manufacturers. To assist the Attorney General in making a determination for the November 2009 SNOPR, DOE provided DOJ with copies of the supplemental notice and the TSD for review. The DOJ did not provide a response to the November 2009 SNOPR. Therefore, DOE considers the impact of any lessening of competition for today's final rule based, in part, on the Attorney General's earlier response, which is reprinted at the end of today's rulemaking.

6. Need of the Nation to Conserve Energy

Improving the energy efficiency of CCWs, where economically justified, would likely improve the security of the Nation's energy system by reducing overall demand for energy, potentially reducing the Nation's reliance on foreign sources of energy. Reduced electricity demand would also likely improve the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, DOE expects the energy savings from the adopted standards to eliminate the need for approximately 0.010 gigawatts (GW) of generating capacity by 2043.

The energy savings from the standards for CCWs also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production, and with use of fossil fuels at sites where CCWs are used. Table VI.17 provides DOE's estimate of cumulative CO_2, NO_X, and Hg emissions reductions that would result from the TSLs considered in this rulemaking. In the environmental assessment (chapter 16 of the TSD), DOE reports estimated annual changes in CO_2, NO_X, and Hg emissions attributable to each TSL.

TABLE VI.17—CUMULATIVE EMISSIONS REDUCTIONS UNDER COMMERCIAL CLOTHES WASHER TSLS (IN 2013 TO 2043)

Emissions	TSL				
	1	2	3	4	5
CO_2, *Mt*	2.36	2.39	5.07	5.66	6.11
NO_X, *kt*	1.43	1.45	3.04	3.39	3.66
Hg, *t*	0.0002	0.0002	0.0003	0.0004	0.0004

Mt = million metric tons.
kt = thousand metric tons.
t = metric tons.

As discussed in section IV.J of this final rule, DOE does not report SO_2 emissions reductions from power plants because there is uncertainty about the effect of energy conservation standards on the overall level of SO_2 emissions in the United States due to SO_2 emissions caps. DOE also did not include NO_X emissions reduction from power plants in States subject to CAIR because an energy conservation standard would likely not affect the overall level of NO_X emissions in those States due to the emissions caps mandated by CAIR.

Table VI.18 presents the estimated wastewater discharge reductions due to the TSLs for CCWs. In chapter 16 of the TSD, DOE reports annual changes in wastewater discharge attributable to each TSL.

TABLE VI.18—CUMULATIVE WASTEWATER DISCHARGE REDUCTIONS UNDER COMMERCIAL CLOTHES WASHER TRIAL STANDARD LEVELS

[For 2013–2043]

	TSL				
	1	2	3	4	5
Wastewater Discharge Reduction, *trillion gallons*	0.00	0.01	0.14	0.16	0.21

As discussed in section IV.J of this final rule, DOE estimated the cumulative monetary value of the economic benefits associated with CO_2 emissions reductions expected to result from amended standards for CCWs. In considering the potential global benefits resulting from reduced CO_2 emissions, DOE used values based on a social cost of carbon of approximately $5, $10, $20, $34 and $56 per metric ton avoided in 2007 (values expressed in 2008$). DOE also calculated the domestic benefits based on a value of approximately $1 per metric ton avoided in 2007. To value the CO_2 emissions reductions expected to result from amended standards for CCWs in 2013–2043, DOE escalated the above values for 2007 using a 3-percent escalation rate. Table VI.19 and Table VI.20 present the cumulative monetary value for each TSL using 7-percent and 3-percent discount rates, respectively.

TABLE VI.19—ESTIMATES OF VALUE OF CO_2 EMISSIONS REDUCTIONS UNDER COMMERCIAL CLOTHES WASHER TRIAL STANDARD LEVELS AT 7-PERCENT DISCOUNT RATE

TSL	Estimated cumulative CO_2 emission reductions, *Mt*	Value of CO_2 emission reductions, *million 2008$* *					
		Domestic	Global				
		CO_2 Value $1/metric ton CO_2	CO_2 Value $5/metric ton CO_2	CO_2 Value $10/metric ton CO_2	CO_2 Value $20/metric ton CO_2	CO_2 Value $34/metric ton CO_2	CO_2 Value $56/metric ton CO_2
1	2.36	1	6	12	22	39	65
2	2.39	1	6	12	23	40	66
3	5.07	3	13	25	48	84	140
4	5.66	3	14	28	54	93	156
5	6.11	3	15	31	58	101	168

* Unit values are approximate and are based on escalating 2007$ to 2008$ for consistency with other values presented in this notice.

TABLE VI.20—ESTIMATES OF VALUE OF CO_2 EMISSIONS REDUCTIONS UNDER COMMERCIAL CLOTHES WASHER TRIAL STANDARD LEVELS AT 3-PERCENT DISCOUNT RATE

TSL	Estimated cumulative CO_2 emission reductions, *Mt*	Value of CO_2 emission reductions, *million 2008$**					
		Domestic	Global				
		CO_2 Value $1/metric ton CO_2	CO_2 Value $5/metric ton CO_2	CO_2 Value $10/metric ton CO_2	CO_2 Value $20/metric ton CO_2	CO_2 Value $34/metric ton CO_2	CO_2 Value $56/metric ton CO_2
1	2.36	3	13	26	49	84	141
2	2.39	3	13	26	49	86	143
3	5.07	6	28	55	105	182	303
4	5.66	7	31	61	117	202	337
5	6.11	8	33	66	126	219	364

* Unit values are approximate and are based on escalating 2007$ to 2008$ for consistency with other values presented in this notice.

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this rule the most recent values and analyses resulting from the ongoing interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with NO_X and Hg emissions reductions anticipated to result from amended standards for CCWs. The dollar per ton values that DOE used are discussed in section IV.J of this final rule. Table VI.21 and Table VI.22 present the estimates calculated using 7-percent and 3-percent discount rates, respectively.

TABLE VI.21—ESTIMATES OF VALUE OF REDUCTIONS OF NO_X AND HG EMISSIONS UNDER COMMERCIAL CLOTHES WASHER TRIAL STANDARD LEVELS AT A 7-PERCENT DISCOUNT RATE

Commercial clothes washer TSL	Cumulative NO_X emission reductions, *kt*	Value of NO_X emission reductions, *million 2008$*	Cumulative Hg emission reductions, *t*	Value of Hg emission reductions, *million 2008$*
1	1.43	0.19 to 1.96	0.0002	0.00 to 0.03.
2	1.45	0.19 to 1.99	0.0002	0.00 to 0.03.
3	3.04	0.41 to 4.17	0.0003	0.00 to 0.06.
4	3.39	0.45 to 4.64	0.0004	0.00 to 0.07.
5	3.66	0.49 to 5.01	0.0004	0.00 to 0.08.

TABLE VI.22—ESTIMATES OF VALUE OF REDUCTIONS OF NO_X AND HG EMISSIONS UNDER COMMERCIAL CLOTHES WASHER TRIAL STANDARD LEVELS AT A 3-PERCENT DISCOUNT RATE

Commercial clothes washer TSL	Cumulative NO_X emission reductions, *kt*	Value of NO_X emission reductions, *million 2008$*	Cumulative Hg emission reductions, *t*	Value of Hg emission reductions, *million 2008$*
1	1.43	0.38 to 3.92	0.0002	0.00 to 0.03.

TABLE VI.22—ESTIMATES OF VALUE OF REDUCTIONS OF NO_X AND HG EMISSIONS UNDER COMMERCIAL CLOTHES WASHER TRIAL STANDARD LEVELS AT A 3-PERCENT DISCOUNT RATE—Continued

Commercial clothes washer TSL	Cumulative NO_X emission reductions, *kt*	Value of NO_X emission reductions, *million 2008$*	Cumulative Hg emission reductions, *t*	Value of Hg emission reductions, *million 2008$*
2	1.45	0.39 to 3.98	0.0002	0.00 to 0.03.
3	3.04	0.81 to 8.36	0.0003	0.00 to 0.06.
4	3.39	0.91 to 9.31	0.0004	0.00 to 0.07.
5	3.66	0.98 to 10.04	0.0004	0.00 to 0.07.

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table VI.23 presents the NPV values for CCWs that would result if DOE were to add the low-end and high-end estimates of the potential benefits resulting from reduced CO_2, NO_X, and Hg emissions to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. For CO_2, only the low and high global benefit values are used for these tables ($5 and $56 in 2008$).

Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, please note the following: (1) The national consumer savings are domestic U.S. consumer monetary savings found in market transactions, while the values of emissions reductions are based on ranges of estimates of imputed marginal social costs, which, in the case of CO_2, are meant to reflect global benefits; and (2) the assessments of consumer savings and emission-related benefits are performed with different computer models, leading to different time frames for the analyses. For CCWs, the present value of national consumer savings is measured for the period in which units shipped from 2013 to 2043 continue to operate. However, the time frames of the benefits associated with the emission reductions differ. For example, the value of CO_2 emissions reductions is meant to reflect the present value of all future climate-related impacts, even those beyond 2065.

TABLE VI.23—ESTIMATES OF ADDING NPV OF CONSUMER SAVINGS TO NPV OF LOW- AND HIGH-END GLOBAL MONETIZED BENEFITS FROM CO_2, NO_X, AND HG EMISSIONS REDUCTIONS AT ALL TSLS FOR COMMERCIAL CLOTHES WASHERS

TSL	CO_2 Value of $5/metric ton CO_2* and low values for NO_X and Hg** *billion 2008$*	CO_2 Value of $56/metric ton CO_2* and high values for NO_X and Hg*** *billion 2008$*		
		7-percent discount rate	3-percent discount rate	7-percent discount rate
1	0.02	0.09	0.08	0.22
2	0.03	0.11	0.09	0.25
3	0.37	0.92	0.50	1.20
4	0.42	1.06	0.57	1.38
5	0.53	1.28	0.68	1.62

* These values per ton represent the global negative externalities of CO_2.
** Low Values correspond to $442 per ton of NO_X emissions and $0.745 million per ton of Hg emissions.
*** High Values correspond to $4,540 per ton of NO_X emissions and $33.3 million per ton of Hg emissions.

7. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 6316(a)) In adopting today's amended standards, the Secretary found no relevant factors other than those identified elsewhere in today's final rule.

D. Conclusion

EPCA contains criteria for prescribing new or amended energy conservation standards. It provides that any such standard for CCWs must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6316(a)) As stated above, in determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standards exceed its burdens considering the seven factors discussed in section II.B. A determination of whether a standard level is economically justified is not made based on any one of these factors in isolation. The Secretary must weigh each of these seven factors in total in determining whether a standard is economically justified. Further, the Secretary may not establish an amended standard if such standard would not result in "significant conservation of energy," or "is not technologically feasible or economically justified." (42 U.S.C. 6295(o)(3)(B) and 42 U.S.C. 6316(a))

In selecting today's energy conservation standards for CCWs, DOE started by examining the maximum technologically feasible levels, and determined whether those levels were economically justified. If DOE determined that the maximum technologically feasible level was not justified, DOE then analyzed the next lower TSL to determine whether that level was economically justified. DOE repeated this procedure until it identified an economically justified TSL.

To aid the reader in understanding the benefits and/or burdens of each TSL, Table VI.24 summarizes the quantitative analytical results for each TSL, based on the assumptions and methodology

discussed above. These tables present the results—or, in some cases, a range of results—for each TSL. The range of values reported in these tables for industry impacts represents the results for the different markup scenarios that DOE used to estimate manufacturer impacts.

In addition to the quantitative results, DOE also considers other burdens and benefits that affect economic justification.

In sum, today's standard levels for the equipment that is the subject of this rulemaking reflect DOE's careful balancing of the relevant statutory factors under EPCA.

TABLE VI.24—SUMMARY OF RESULTS FOR COMMERCIAL CLOTHES WASHERS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Primary Energy Saved, *quads*	0.04	0.04	0.10	0.11	0.12
7% Discount Rate	0.01	0.01	0.03	0.03	0.03
3% Discount Rate	0.02	0.02	0.06	0.06	0.07
Primary Water Saved, *trillion gallons*	0.00	0.01	0.14	0.16	0.21
7% Discount Rate	0.00	0.00	0.04	0.04	0.06
3% Discount Rate	0.00	0.00	0.08	0.09	0.11
Generation Capacity Reduction, *gigawatts***	0.005	0.005	0.010	0.011	0.012
NPV of Customer Benefit, *2008$ billion:*					
7% Discount Rate	0.01	0.02	0.36	0.41	0.51
3% Discount Rate	0.08	0.10	0.89	1.03	1.25
Industry Impacts:					
Industry NPV, *2008$ million*	4–3	1–0	(5)–(7)	(8)–(10)	(20)–(23)
Industry NPV, *% change*	6.0–4.5	2.2–0.8	(7.8)–(11.4)	(12.7)–(16.6)	(33.1)–(37.3)
Emissions Impacts: †					
CO_2, *Mt*	2.36	2.39	5.07	5.66	6.11
NO_X, *kt*	1.43	1.45	3.04	3.39	3.66
Hg, *t*	0.0002	0.0002	0.0003	0.0004	0.0004
Value of Emission Reductions:					
CO_2, *2008$ million:*††					
7% Discount Rate	6–65	6–66	13–140	14–156	15–168
3% Discount Rate	13–141	13–143	28–303	31–337	33–364
NO_X, *2008$ million:*					
7% Discount Rate	0.2–2.0	0.2–2.0	0.4–4.2	0.5–4.6	0.5–5.0
3% Discount Rate	0.4–3.9	0.4–4.0	0.8–8.4	0.9–9.3	1.0–10.0
Hg, *2008$ million:*					
7% Discount Rate	0.00–0.03	0.00–0.03	0.00–0.06	0.00–0.07	0.00–0.08
3% Discount Rate	0.00–0.03	0.00–0.03	0.00–0.06	0.00–0.07	0.00–0.07
Wastewater Discharge Impacts, *trillion gallons*	0.00	0.01	0.14	0.16	0.21
Mean LCC Savings,* *2008$:*					
Top-Loading, Multi-Family	(8.1)	(8.1)	179	179	179
Top-Loading, Laundromat	(17.7)	(17.7)	190	190	190
Front-Loading, Multi-Family	4.7	19.5	19.5	91	203
Front-Loading, Laundromat	5.2	22.0	22.0	93	216
Median PBP, *years:*					
Top-Loading, Multi-Family	11.7	11.7	4.6	4.6	4.6
Top-Loading, Laundromat	7.9	7.9	2.8	2.8	2.8
Front-Loading, Multi-Family	0.0	0.4	0.4	3.0	2.9
Front-Loading, Laundromat	0.0	0.2	0.2	1.8	1.6
LCC Customer Impacts:					
Top-Loading:					
Multi-Family:					
Net Cost, %	43.3	43.3	13.8	13.8	13.8
No Impact, %	35.3	35.3	1.2	1.2	1.2
Net Benefit, %	21.5	21.5	85.0	85.0	85.0
Laundromat:					
Net Cost, %	51.4	51.4	2.9	2.9	2.9
No Impact, %	35.3	35.3	1.2	1.2	1.2
Net Benefit, %	13.3	13.3	95.9	95.9	95.9
Front-Loading:					
Multi-Family:					
Net Cost, %	0.0	0.0	0.0	1.4	1.1
No Impact, %	96.3	96.3	96.3	23.1	0.0
Net Benefit, %	3.7	3.7	3.7	75.5	98.9
Laundromat:					
Net Cost, %	0.0	0.0	0.0	0.0	0.0
No Impact, %	96.3	96.3	96.3	23.1	0.0
Net Benefit, %	3.7	3.7	3.7	76.9	100.0

* Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.
** Changes in installed generation capacity by 2043 based on *AEO 2009* April Release Reference Case.
† Emissions impacts include physical reductions at power plants and at buildings where the appliance is being used.
†† Range of the economic value of CO_2 reductions based on global estimates of the benefit of reduced CO_2 emissions.

First, DOE considered TSL 5, the max-tech level. TSL 5 would likely save 0.12 quads of energy and 0.21 trillion gallons of water through 2043, an amount DOE considers significant. DOE projects that TSL 5 would result in a net increase of $0.51 billion in NPV of customer benefits using a discount rate of 7 percent, and of $1.25 billion using a discount rate of 3 percent. The emissions reductions at TSL 5 are 6.11 Mt of CO_2, 3.66 kt of NO_X, and 0.0004 t of Hg. At TSL 5, the estimated benefit of reducing CO_2 emissions based on global estimates of the value of CO_2 ranges from $15 million to $168 million at a 7-percent discount rate, and $33 million to $364 million at a 3-percent discount rate. Total generating capacity in 2043 is estimated to decrease compared to the reference case by 0.012 GW under TSL 5.

At TSL 5, DOE projects that the average top-loading CCW customer would experience a decrease in LCC of $179 in multi-family applications and $190 in laundromats. DOE also estimates an LCC decrease for an overwhelming majority of customers that purchase top-loading CCWs—85 percent of customers in multi-family applications and 96 percent of customers in laundromats. The median PBP of the average consumer at TSL 5 in multi-family applications and in laundromats is projected to be 4.6 years and 2.8 years, respectively.

At TSL 5, DOE projects that the average front-loading CCW consumer would experience a decrease in LCC of $203 in multi-family applications and $216 in laundromats. DOE also estimates an LCC decrease for an overwhelming majority of customers that purchase front-loading CCWs—99 percent of customers in multi-family applications and 100 percent of customers in laundromats. The median PBP of the average consumer at TSL 5 in multi-family applications and in laundromats is projected to be 2.9 years and 1.6 years, respectively.

At TSL 5, DOE estimated the projected change in INPV ranges from a total decrease of $20.4 million for both equipment classes to a total decrease of $23.0 million. At TSL 5, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced shipments are realized. TSL 5 could result in a net loss as high as 37.3 percent in INPV to CCW manufacturers. Also, DOE is especially sensitive to the potentially severe impacts to the LVM of CCWs. Because the LVM's clothes washer revenue is so dependent on CCW sales, DOE is concerned that TSL 5 will cause material harm to the LVM.

Although DOE recognizes the increased economic benefits that could result from TSL 5, DOE has concluded that the benefits of a standard at TSL 5 would be outweighed by the potential for disincentivizing customers from purchasing more efficient front-loading CCWs. At TSL 5, front-loading CCWs are highly efficient but have a purchase price estimated to be $497 more expensive than top-loading CCWs. With such a large price differential between the two types of CCWs, and with less than 2 percent of the front-loading market at TSL 5, DOE is concerned that significant numbers of potential customers of front-loading CCWs would choose to purchase a less efficient top-loading unit.

As described in section IV.E.2.c, DOE did analyze the impacts of increased purchase prices for each equipment class, but considered each independently of the other. Because the price impacts for more efficient top-loaders are higher than those for more efficient front-loaders, DOE estimated that top-loading CCW sales would decrease slightly more rapidly than for front-loaders. But DOE did not have sufficient data to estimate the cross-price elasticity of demand between the two equipment classes to determine the extent to which customers of front-loadings CCWs would switch to less expensive top-loaders.

If potential front-loading CCW customers did decide to switch to less expensive top-loading washers, the NES and NPV realized from TSL 5 would be diminished. DOE notes that in developing the energy savings and water savings estimates for TSL 5, it effectively held constant the ratio of front-loading to top-loading CCW shipments across the various TSLs. Particularly at TSL 3 to TSL 5, the differences in these estimates are small, especially at a 7-percent discount rate. DOE believes that the values in Table VI.24 represent the high end of the potential energy and water savings for these TSLs. Taking into account cross-price elasticity of demand could affect the anticipated energy and water savings of the various TSLs, and it could potentially result in a change in the TSL with the highest projected energy/water savings level.

In addition, TSL 5 would adversely impact manufacturers' INPV to a significant extent. Not only does the industry face a potential significant loss in industry INPV, but manufacturers would also need to make significant capital investments for both types of CCWs in order to produce both top-loading and front-loading washers at the maximum technologically feasible levels.

After carefully considering the analysis and weighing the benefits and burdens of TSL 5, the Secretary has reached the following conclusion: At TSL 5, the benefits of energy savings, economic benefit, and emissions reductions would be outweighed by the potential for giving customers less incentive to purchase high efficiency front-loading CCWs and the large capital conversion costs that could result in a substantial reduction in INPV for manufacturers.

Next, DOE considered TSL 4. TSL 4 would likely save 0.11 quads of energy and 0.16 trillion gallons of water through 2043, an amount DOE considers significant. DOE projects that TSL 4 would result in a net increase of $0.41 billion in NPV of customer benefits using a discount rate of 7 percent, and of $1.03 billion using a discount rate of 3 percent. The emissions reductions at TSL 4 are 5.66 Mt of CO_2, 3.39 kt of NO_X, and 0.0004 t of Hg. At TSL 4, the estimated benefits of reducing CO_2 emissions based on global estimates of the value of CO_2 ranges from $14 million to $156 million at a 7-percent discount rate and $31 million to $337 million at a 3-percent discount rate. Total generating capacity in 2043 is estimated to decrease compared to the reference case by 0.011 GW under TSL 4.

At TSL 4, top-loading CCWs have the same efficiency as at TSL 5. Therefore, top-loading CCW customers will experience the same LCC impacts and PBPs as TSL 5. At TSL 4 for front-loading CCWs, DOE projects that the average front-loading CCW consumer would experience a decrease in LCC of $91 in multi-family applications and $93 in laundromats. DOE also estimates an LCC decrease for an overwhelming majority of customers that purchase front-loading CCWs—76 percent of customers in multi-family applications and 77 percent of customers in laundromats. The median PBP of the average consumer at TSL 4 in multi-family applications and in laundromats is projected to be 3.0 years and 1.8 years, respectively.

DOE estimated the projected change in INPV ranges from a decrease of $7.8 million to a decrease of $10.2 million. At TSL 4, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced shipments are realized. TSL 4 could result in a net loss as high as 16.6 percent in INPV to CCW manufacturers. Also, DOE is especially sensitive to the potentially severe impacts to the LVM. Since the LVM's clothes washer revenue

is so dependent on CCW sales, DOE is concerned that TSL 4 will materially harm the LVM.

Although DOE recognizes the increased economic benefits that could result from TSL 4, DOE has the same concerns regarding TSL 4 as for TSL 5. Namely, DOE has concerns as to the potential of TSL 4 to give customers less incentive to purchase more efficient front-loading washers. At TSL 4, front-loading CCWs are highly efficient but have a purchase price estimated to be $454 more expensive than top-loading washers. With such a price differential between the two types of CCWs, and with less than 4 percent of the front-loading market currently meeting TSL 4, DOE is concerned that a significant number of potential customers of front-loading CCWs would be more likely to purchase a top-loading CCW, which is less efficient. If potential front-loading CCW customers did decide to switch to top-loading models, the NES and NPV realized from TSL 4 would be diminished.

In addition, TSL 4 would adversely impact manufacturers' INPV to a significant extent. Not only does the industry face a potential loss in industry INPV, but manufacturers would also need to make significant capital investments for both types of CCWs in order to produce both top-loading washers at the maximum technologically feasible level and front-loading washers at a level which only 3 percent of the market currently meets.

After carefully considering the analysis and weighing the benefits and burdens of TSL 4, the Secretary has reached the following conclusion: At TSL 4, the benefits of energy savings, economic benefit, and emissions reductions would be outweighed by the potential for giving customers less incentive to purchase high efficiency front-loading CCWs and the large capital conversion costs that could result in a substantial reduction in INPV for manufacturers.

Next, DOE considered TSL 3. TSL 3 would likely save 0.10 quads of energy and 0.14 trillion gallons of water through 2043, an amount DOE considers significant. DOE projects that TSL 3 would result in a net increase of $0.36 billion in NPV of customer benefits using a discount rate of 7 percent, and of $0.89 billion using a discount rate of 3 percent. The emissions reductions at TSL 3 are 5.07 Mt of CO_2, 3.04 kt of NO_X, and 0.0003 t of Hg. The estimated benefits of reducing CO_2 emissions based on global estimates of the value of CO_2 ranges from $13 million to $140 million at a 7-percent discount rate, and $28 million to $303 million at a 3-percent discount rate. Total generating capacity in 2043 is estimated to decrease compared to the reference case by 0.010 GW under TSL 3.

At TSL 3, top-loading CCWs have the same efficiency as at TSL 5. Therefore, top-loading CCW customers would experience the same LCC impacts and PBPs as TSL 5. At TSL 3 for front-loading CCWs, DOE projects that the average front-loading CCW consumer would experience a decrease in LCC of $19 in multi-family applications and $22 in laundromats. DOE also estimates an LCC decrease for all customers that do not already purchase front-loading CCWs with an efficiency meeting TSL 3. The median PBP of the average consumer at TSL 3 in multi-family applications and in laundromats is projected to be 0.4 years and 0.2 years, respectively.

DOE estimated the projected change in INPV ranges from a decrease of $4.8 million to a decrease of $7.0 million. At TSL 3, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced shipments are realized. TSL 3 could result in a net loss as high as 11.4 percent in INPV to CCW manufacturers. Also, DOE is especially sensitive to the potential adverse impacts to the LVM. Since the LVM's clothes washer revenue is so dependent on CCW sales, DOE is concerned that TSL 3 could disproportionately impact the LVM.

DOE recognizes the increased economic benefits that could result from TSL 3. DOE still has concerns of the potential for giving customers less incentive to purchase more efficient front-loading washers, but at TSL 3, the price difference between front-loading and top-loading CCWs drops to $414. Given that DOE projects that the average front-loading CCW consumer would experience an LCC savings at TSL 3, DOE believes that most front-loading CCW customers not already purchasing washers at TSL 3 would likely continue to purchase a front-loading unit if standards are set at TSL 3. DOE notes that TSL 3 adversely impacts manufacturers' INPV, but because such a large percentage of the front-loading market is already at TSL 3, manufacturers would likely not need to make significant capital investments for front-loading CCWs. Product development and conversion expenses and capital investments would only be required in order to produce higher efficiency top-loading washers at TSL 3.

After considering the analysis and weighing the benefits and the burdens, DOE has concluded that the benefits of a TSL 3 standard outweigh the burdens. In particular, the Secretary has concluded that TSL 3 saves a significant amount of energy and is technologically feasible and economically justified. Further, benefits from carbon dioxide reductions (at a central value of $20) would increase NPV by $48 million (2008$) at a 7% discount rate and $105 million at a 3% discount rate. These benefits from carbon dioxide emission reductions, when considered in conjunction with the consumer savings NPV and other factors described above support DOE's conclusion that TSL 3 is economically justified. Therefore, DOE establishes TSL 3 as the energy conservation standards for CCWs in this final rule. Table VI.25 lists today's energy conservation standards for CCWs. DOE's amended energy conservation standards for CCWs at TSL 3 reflect its conclusion that this standard level would minimize the potential adverse impacts on the LVM and, therefore, would also minimize the adverse impacts on CCW market competition.

TABLE VI.25—AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL CLOTHES WASHERS

Equipment class	Amended energy conservation standards
Top-Loading	1.60 Modified Energy Factor/8.5 Water Factor.
Front-Loading	2.00 Modified Energy Factor/5.5 Water Factor.

DOE also calculated the annualized values for certain benefits and costs under the considered TSLs. The annualized values refer to consumer operating cost savings, consumer incremental product and installation costs, the quantity of emissions reductions for CO_2, NO_X, and Hg, and the monetary value of CO_2 emissions reductions (using a value of $20/t CO_2, which is in the middle of the values considered by DOE for valuing the

potential global benefits resulting from reduced CO_2 emissions).

DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value for the time-series of costs and benefits using a discount rate of either 3 or 7 percent. From the present value, DOE then calculated the fixed annual payment over the analysis time period (2013 to 2043) that yielded the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined are a steady stream of payments.

Table VI.26 presents the annualized values for each TSL considered for CCWs. The tables also present the annualized net benefit resulting from summing the two monetary benefits and subtracting the consumer incremental product and installation costs. Although summing the value of operating savings with the value of CO_2 reductions provides a valuable perspective, please note the following. The operating cost savings are domestic U.S. consumer monetary savings found in market transactions while the CO_2 value is based on an estimate of imputed marginal SCC, which is meant to reflect the global benefits of CO_2 reductions. In addition, the SCC value considers a longer time frame than the period considered for operating cost savings.

TABLE VI.26—ANNUALIZED BENEFITS AND COSTS FOR COMMERCIAL CLOTHES WASHERS BY TRIAL STANDARD LEVEL

TSL	Category	Unit	Primary estimate (AEO reference case)		Low estimate (AEO low growth case)		High estimate (high growth case)	
			7%	3%	7%	3%	7%	3%
1	**Benefits**							
	Monetized Operating Cost Savings ...	*Million 2008$*	12.75	15.32	11.25	13.46	14.63	17.70
	Quantified Emissions Reductions	CO_2, *Mt*	0.07	0.07	0.07	0.07	0.07	0.07
		NO_X, *kt*	0.041	0.044	0.041	0.044	0.041	0.044
		Hg, *t*	0.000	0.000	0.000	0.000	0.000	0.000
	Monetized Avoided CO_2 Value (at $20/t).	*Million 2008$*	2.35	2.73	2.35	2.73	2.35	2.73
	Costs							
	Monetized Incremental Product and Installation Costs.	*Million 2008$*	11.44	11.06	10.67	10.19	12.01	11.65
	Net Benefits							
	Monetized Value	*Million 2008$*	3.66	6.99	2.93	6.01	4.97	8.79
2	**Benefits**							
	Monetized Operating Cost Savings ...	*Million 2008$*	13.98	16.79	12.43	14.86	15.90	19.23
	Quantified Emissions Reductions	CO_2, *Mt*	0.07	0.07	0.07	0.07	0.07	0.07
		NO_X, *kt*	0.042	0.045	0.042	0.045	0.042	0.045
		Hg, *t*	0.000	0.000	0.000	0.000	0.000	0.000
	Monetized Avoided CO_2 Value (at $20/t).	*Million 2008$*	2.38	2.77	2.38	2.77	2.38	2.77
	Costs							
	Monetized Incremental Product and Installation Costs.	*Million 2008$*	11.49	11.11	10.72	10.23	12.06	11.70
	Net Benefits							
	Monetized Value	*Million 2008$*	4.87	8.45	4.09	7.40	6.22	10.30
3	**Benefits**							
	Monetized Operating Cost Savings ...	*Million 2008$*	60.62	72.82	54.87	65.33	66.59	80.43
	Quantified Emissions Reductions	CO_2, *Mt*	0.14	0.16	0.14	0.16	0.14	0.16
		NO_X, *kt*	0.087	0.094	0.087	0.094	0.087	0.094
		Hg, *t*	0.001	0.001	0.001	0.001	0.001	0.001
	Monetized Avoided CO_2 Value (at $20/t).	*Million 2008$*	5.05	5.88	5.05	5.88	5.05	5.88
	Costs							
	Monetized Incremental Product and Installation Costs.	*Million 2008$*	23.44	22.67	21.85	20.87	24.61	23.87
	Net Benefits							

TABLE VI.26—ANNUALIZED BENEFITS AND COSTS FOR COMMERCIAL CLOTHES WASHERS BY TRIAL STANDARD LEVEL—Continued

TSL	Category	Unit	Primary estimate (AEO reference case)		Low estimate (AEO low growth case)		High estimate (high growth case)	
			7%	3%	7%	3%	7%	3%
	Monetized Value	*Million 2008$*	42.23	56.04	38.07	50.34	47.04	62.44
4	**Benefits**							
	Monetized Operating Cost Savings	*Million 2008$*	68.83	82.66	62.65	74.62	75.33	90.94
	Quantified Emissions Reductions	CO_2, *Mt*	0.16	0.17	0.16	0.17	0.16	0.17
		NO_X, *kt*	0.097	0.105	0.097	0.105	0.097	0.105
		Hg, *t*	0.001	0.001	0.001	0.001	0.001	0.001
	Monetized Avoided CO_2 Value (at $20/t).	*Million 2008$*	5.63	6.56	5.63	6.56	5.63	6.56
	Costs							
	Monetized Incremental Product and Installation Costs.	*Million 2008$*	25.45	24.62	23.81	22.75	26.67	25.87
	Net Benefits							
	Monetized Value	*Million 2008$*	49.01	64.60	44.47	58.43	54.29	71.63
5	**Benefits**							
	Monetized Operating Cost Savings	*Million 2008$*	81.19	97.52	74.46	88.77	88.24	106.51
	Quantified Emissions Reductions	CO_2, *Mt*	0.17	0.19	0.17	0.19	0.17	0.19
		NO_X, *kt*	0.105	0.113	0.105	0.113	0.105	0.113
		Hg, *t*	0.001	0.001	0.001	0.001	0.001	0.001
	Monetized Avoided CO_2 Value (at $20/t).	*Million 2008$*	6.08	7.08	6.08	7.08	6.08	7.08
	Costs							
	Monetized Incremental Product and Installation Costs.	*Million 2008$*	28.19	27.26	26.47	25.30	29.47	28.57
	Net Benefits							
	Monetized Value	*Million 2008$*	59.08	77.34	54.08	70.55	64.86	85.02

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Executive Order 12866 requires that each agency identify in writing the problem the agency intends to address that warrants new agency action (including, where applicable, the failures of private markets or public institutions), as well as assess the significance of that problem to determine whether any new regulation is necessary. Executive Order 12866, section 1(b)(1).

Because today's regulatory action is a "significant regulatory action" under section 3(f)(1) of Executive Order 12866, section 6(a)(3) of the Executive Order requires DOE to prepare and submit for review to the Office of Information and Regulatory Affairs (OIRA) in OMB an assessment of the costs and benefits of today's rule. Accordingly, DOE presented to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget for review the draft final rule and other documents prepared for this rulemaking, including a regulatory impact analysis (RIA). These documents are included in the rulemaking record and are available for public review in the Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC, 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

The Executive Order requires each agency to identify the problem the agency intends to address that warrants new agency action (including, where applicable, the failures of private markets or public institutions), as well as to assess the significance of that problem in evaluating whether any new regulation is warranted. E.O. 12866, section 1(b)(1).

DOE believes that there is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the CCW market. If this is the case, DOE would expect the energy efficiency for CCWs to be randomly distributed across key variables such as energy prices and usage levels. DOE is not able to correlate the consumer's usage pattern and energy price with the efficiency of the purchased equipment, however. In the October 2008 NOPR, DOE sought data on the efficiency levels of existing CCWs by how often they are used and their associated energy prices (and/or geographic regions of the country). 73 FR 62034, 62123 (Oct. 17, 2008). DOE received no such data from interested parties. Therefore, DOE was unable to test for today's final rule the extent to which purchasers of CCWs behave as if they lack information about the costs associated with CCW energy

consumption and/or the benefits of more-efficient equipment.

In addition, this rulemaking addresses the problem that certain external benefits resulting from improved energy efficiency of CCWs are not captured by the users of such equipment and thus may not play a role in their purchase decisions. These benefits include externalities related to environmental protection and energy security, such as reduced emissions of greenhouse gases. The TSLs that DOE evaluated resulted in CO_2, NO_X, and Hg emissions reductions. DOE also determined a range of possible monetary benefits associated with the emissions reductions. DOE considered both the emissions reductions and their possible monetary benefit in determining the economic feasibility of the TSLs.

The November 2009 SNOPR contained a summary of the RIA, which evaluated the extent to which major alternatives to standards for CCWs could achieve significant energy savings at reasonable cost, as compared to the effectiveness of the proposed rule. The complete RIA (Regulatory Impact Analysis for Proposed Energy Conservation Standards for Commercial Clothes Washers) is contained in the TSD prepared for today's rule. The RIA consists of (1) a statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of today's standards.

As shown in Table VII.1 below, DOE identified the following major policy alternatives for achieving increased energy efficiency in CCWs:

(1) No new regulatory action;
(2) Financial incentives;
(3) Consumer rebates;
(4) Consumer tax credits;
(5) Manufacturer tax credits;
(6) Voluntary energy efficiency targets;
(7) Bulk government purchases;
(8) Early replacement; and
(9) Today's approach (national performance standards).

TABLE VII.1—NON-REGULATORY ALTERNATIVES TO COMMERCIAL CLOTHES WASHER STANDARDS

Policy alternatives	Energy savings,* *quads*	Water savings, *trillion gallons*	Net present value** *billion 2008$*	
			7% Discount rate	3% Discount rate
No New Regulatory Action	0	0	0	0
Consumer Rebates	0.06	0.07	0.18	0.47
Consumer Tax Credits	0.01	0.01	0.03	0.08
Manufacturer Tax Credits	0.00	0.01	0.02	0.06
Voluntary Energy Efficiency Targets***	0.02	0.02	0.06	0.15
Early Replacement	0.01	0.01	0.11	0.17
Bulk Government Purchases***	0.00	0.01	0.02	0.04
Today's Standards at TSL 3	0.10	0.14	0.36	0.89

* Energy savings are in source quads.
** DOE determined the net present value for shipments in 2013–2043.
*** Voluntary energy efficiency target and bulk government purchase alternatives are not considered for front-loading washers because the percentage of the market at TSL 3 is well over the market adoption target level that each alternative strives to attain.

The net present value amounts shown in Table VII.1 refer to the NPV for CCW consumers. The costs to the government of each policy (such as rebates or tax credits) are not included in the costs for the NPV since, on balance, consumers would be both paying for (through taxes) and receiving the benefits of the payments. As explained in detail in section VI of the November 2009 SNOPR, none of the alternatives DOE examined would save as much energy or have an NPV as high as the proposed standards. The same conclusion applies to the standards in today's rule. Also, several of the alternatives would require new enabling legislation, because DOE does not have authority to implement those alternatives. Additional detail on the regulatory alternatives is found in the RIA chapter in the TSD.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Also, as required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

For the manufacturers of equipment covered by this rulemaking, the SBA has set two size thresholds that define which entities are "small businesses" for the purposes of the statute. See *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.* Because all CCW manufacturers also produce RCWs, limits for both categories are presented in Table VII.2. DOE used these small business definitions to determine whether any small entities would be required to comply with the rule. (65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (September 5, 2000) and codified at 13 CFR Part 121.) The size standards are listed by NAICS code and industry description.

TABLE VII.2—SBA AND NAICS CLASSIFICATION OF SMALL BUSINESSES POTENTIALLY AFFECTED BY THIS RULE

Industry description	Revenue limit	Employee limit	NAICS
Residential Laundry Equipment Manufacturing	N/A	1,000	335224
Commercial Laundry Equipment Manufacturing	N/A	500	333312

As explained in the November 2009 SNOPR, the CCW industry consists of three principal competitors that make up almost 100 percent of the market share. Two of them are high-volume, diversified appliance manufacturers, while the third is a focused laundry equipment manufacturer. Before issuing November 2009 SNOPR, DOE interviewed all major CCW manufacturers. Because all CCW manufacturers also make RCWs, DOE also considered whether a CCW manufacturer could be considered a small business entity in that industry. None of the CCW manufacturers fall into any small business category. As a result, DOE certifies that today's final rule will not have a significant impact on a substantial number of small entities and that a regulatory flexibility analysis is not required.

C. Review Under the Paperwork Reduction Act

DOE stated in the October 2008 NOPR that this rulemaking would impose no new information and recordkeeping requirements, and that OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 73 FR 62034, 62130 (Oct. 17, 2008). DOE received no comments on this in response to the October 2008 NOPR or the November 2009 SNOPR, and, as with the proposed rule, today's final rule imposes no information and recordkeeping requirements. Therefore, DOE has taken no further action in this rulemaking with respect to the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

DOE prepared an environmental assessment of the impacts of today's standards which it published as chapter 16 within the TSD for the final rule. DOE found the environmental effects associated with today's various standard levels for CCWs to be insignificant. Therefore, DOE is issuing a FONSI pursuant to NEPA (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

E. Review Under Executive Order 13132

DOE reviewed this rule pursuant to Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. In accordance with DOE's statement of policy describing the intergovernmental consultation process it will follow in the development of regulations that have federalism implications, 65 FR 13735 (March 14, 2000), DOE examined the November 2009 proposed rule and determined that it 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. 74 FR 57738, 57798 (Nov. 9, 2009). DOE received no comments on this issue in response to the November 2009 SNOPR, and its conclusions on this issue are the same for the final rule as they were for the proposed rule. Therefore, DOE has taken no further action in today's final rule with respect to Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729 (Feb. 7, 1996)) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, today's final regulations meet the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

As indicated in the November 2009 SNOPR, DOE reviewed the proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), which imposes requirements on Federal agencies when their regulatory actions will have certain types of impacts on State, local and Tribal governments and the private sector. 74 FR 57738, 57798–99 (Nov. 9, 2009). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted for inflation), section 202 of UMRA requires an agency to publish a written statement assessing the costs, benefits, and other effects of the rule on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Although today's final rule does not contain a Federal intergovernmental mandate, it may impose expenditures of $100 million or more on the private sector, although DOE believes such expenditures are likely to be less than $50 million.

Section 202 of UMRA authorizes an agency to respond to the content

requirements of UMRA in any other statement or analysis that accompanies the supplemental notice. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of this supplemental notice and the "Regulatory Impact Analysis" section of the SNOPR TSD respond to those requirements.

Under section 205 of UMRA, DOE is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(h) and (o), 6313(e), and 6316(a), today's final rule would establish energy conservation standards for CCWs that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the "Regulatory Impact Analysis" section of the TSD for today's final rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

DOE determined that, for this rulemaking, it need not prepare a Family Policymaking Assessment under section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277). *Id.* DOE received no comments concerning section 654 in response to the November 2009 SNOPR, and, therefore, takes no further action in today's final rule with respect to this provision.

I. Review Under Executive Order 12630

DOE determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that today's rule would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution. 73 FR 62034, 62131 (Oct. 17, 2008). DOE received no comments concerning Executive Order 12630 in response to the October 2008 NOPR or November 2009 SNOPR, and, therefore, has taken no further action in today's final rule with respect to this Executive Order.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. The OMB guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OIRA a Statement of Energy Effects for any significant energy action. For the October 2008 NOPR, DOE determined that the proposed rule, which set energy conservation standards for commercial clothes washers, was not a "significant energy action" within the meaning of Executive Order 13211. 73 FR 62034, 62132 (Oct. 17, 2008). The rule was also not designated as such by OIRA. Accordingly, it did not prepare a Statement of Energy Effects on that proposed rule. DOE received no comments on this issue in response to the October 2008 NOPR. As with the October 2008 NOPR, DOE has concluded that today's final rule is not a significant energy action within the meaning of Executive Order 13211, and OIRA has not designated the rule as such. As a result, DOE has not prepared a Statement of Energy Effects on the final rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, the OMB, in consultation with the Office of Science and Technology, issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government. As indicated in the November 2009 SNOPR, this includes influential scientific information related to agency regulatory actions, such as the analyses in this rulemaking. 74 FR 57738, 57799 (Nov. 9, 2009).

As more fully set forth in the November 2009 SNOPR, DOE held formal in-progress peer reviews of the types of analyses and processes that DOE has used to develop the energy conservation standards in today's rule, and issued a report on these peer reviews. The report is available at *http://www.eere.energy.gov/buildings/appliance_standards/peer_review.html. Id.*

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is a "major rule" as defined by 5 U.S.C. 804(2). DOE also will submit the supporting analyses to the Comptroller General in the U.S. Government Accountability Office (GAO) and make them available to each House of Congress.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on December 18, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons stated in the preamble, chapter II, subchapter D, of title 10 of the Code of Federal Regulations, part 431 is amended to read as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 431.156 of subpart I is revised to read as follows:

§ 431.156 Energy and water conservation standards and effective dates.

Each CCW manufactured on or after January 8, 2013, shall have a modified

energy factor no less than and a water factor no greater than:

Equipment class	Modified energy factor, *cu. ft./kWh/cycle*	Water factor, *gal./cu. ft./cycle*
Top-Loading	1.60	8.5
Front-Loading	2.00	5.5

Appendix

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

DEPARTMENT OF JUSTICE

Antitrust Division

DEBORAH A. GARZA

Acting Assistant Attorney General

Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001, (202) 514–2401/(202) 616–2645 (Fax), E-mail: *antitrust@usdoj.gov*, Web site: *http://www.usdoj.gov/atr.*

December 16, 2008.

Warren Belmar, Esq., Deputy General Counsel for Energy Policy, Department of Energy, Washington, DC 20585.

Dear Deputy General Counsel Belmar: I am responding to your October 1, 2008, letter seeking the views of the Attorney General about the potential impact on competition of proposed amended energy conservation standards for residential kitchen ranges and ovens, microwave ovens, and commercial clothes washers (CCWs). Your request was submitted under Section 325(0)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended, ("ECPA"), 42 U.S.C. § 6295(0)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g).

In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, leaving consumers with fewer competitive alternatives, placing certain manufacturers of a product at an unjustified competitive disadvantage compared to other manufacturers, or by inducing avoidable inefficiencies in production or distribution of particular products.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking (73 Fed. Reg. 62034, October 17, 2008) and supplementary information submitted to the Attorney General. We also attended the November 13 public meeting on the proposed standards and conducted interviews with industry members. Based on this review, we have determined that legitimate issues arise as to whether the proposed standards adversely effect competition and consumer choice with respect to (1) gas cooking products with standing pilot lights and (2) top-loading CCWs.

The proposed standards would extend the ban on constant burning pilot lights, currently applicable to cooking appliances equipped with electrical supply cords, to appliances that are not equipped with electrical supply cords. As the notice regarding the proposed standards recognizes, certain consumers, including those with religious and cultural practices that prohibit the use of line electricity, those without access to line electricity, and those whose kitchens do not have appropriate electrical outlets, rely on gas cooking appliances with standing pilots in lieu of electrical ignition devices. For these consumers, gas cooking appliances with electronic ignition are not a reasonable substitute. The notice states that gas cooking appliances may become available with technological options such as battery-powered ignition to replace a standing pilot light. However, it is unclear whether such battery-powered devices have been tested for indoor use and whether they are in compliance with safety standards for such use. If these options prove not to be feasible, then the proposed standard could substantially limit consumer choice by eliminating the cooking appliance that most closely meets these consumers' needs.

As to top-loading CCWs, it appears that meeting the proposed standards may require substantial investment in the development of new technology that some suppliers of top-loading CCWs may not find it economical to make. CCWs are used primarily in multi-housing laundries, with top-loading machines accounting for approximately 80 percent of machines in these locations. The remaining 20 percent are front-loading machines, which are more energy efficient but significantly more expensive than top-loading models. There are only three manufacturers of top-loading CCWs selling in the United States. It appears that there is a real risk that one or more of these manufacturers cannot meet the proposed standard. In such a case, CCW purchasers would have fewer competitive alternatives for top-loading machines, potentially resulting in purchasers facing higher prices from the remaining top-loading manufacturer or manufacturers.

Although the Department of Justice is not in a position to judge whether manufacturers will be able to meet the proposed standards, we urge the Department of Energy to take into account these possible impacts on competition and the availability of options to consumers in determining its final energy efficiency standard for CCWs and residential gas cooking appliances with constant burning pilots. To maintain competition, the Department of Energy should consider keeping the existing standard in place for top-loading CCWs. The Department of Energy may wish to consider setting a "no standard" standard for residential gas cooking products with constant burning pilots to address the potential for certain customers to be stranded without an economical product alternative.

The Department of Justice does not believe that the proposed standards for other products listed in the NOPR would likely lead to an adverse effect on competition.

Sincerely,

Deborah A. Garza.

[FR Doc. E9–30891 Filed 1–7–10; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Friday,
January 8, 2010

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 238

Passenger Equipment Safety Standards; Front End Strength of Cab Cars and Multiple-Unit Locomotives; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 238

[Docket No. FRA–2006–25268, Notice No. 2]

RIN 2130–AB80

Passenger Equipment Safety Standards; Front End Strength of Cab Cars and Multiple-Unit Locomotives

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule is intended to further the safety of passenger train occupants by amending existing regulations to enhance requirements for the structural strength of the front end of cab cars and multiple-unit (MU) locomotives. These enhancements include the addition of requirements concerning structural deformation and energy absorption by collision posts and corner posts at the forward end of this equipment. The requirements are based on standards specified by the American Public Transportation Association (APTA). FRA is also making clarifying amendments to existing regulations for the structural strength of passenger equipment and is clarifying its views on the preemptive effect of this part.

DATES: *Effective Date:* This final rule is effective March 9, 2010. Petitions for reconsideration of this final rule must be received not later than February 22, 2010.

ADDRESSES: Any petition for reconsideration of the final rule should reference Docket No. FRA–2006–25268, Notice No. 2, and be submitted by any of the following methods:

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

Instructions: Note that all petitions for reconsideration received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please *see* the Privacy Act heading, below.

Docket: For access to the docket to read background documents, comments, or petitions for reconsideration received, go to *http://www.regulations.gov* anytime, or to the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Gary G. Fairbanks, Specialist, Motive Power and Equipment Division, Office of Railroad Safety, RRS–14, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–493–6282); Eloy E. Martinez, Program Manager, Equipment and Operating Practices Division, Office of Railroad Development, Federal Railroad Administration, 55 Broadway, Cambridge, Massachusetts 02142 (telephone 617–494–2599); or Daniel L. Alpert, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–493–6026).

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I. Statutory Background

In September of 1994, the Secretary of Transportation (Secretary) convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety

Summit, the Secretary announced that DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November of 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment safety regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Public Law 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994). Congress also authorized the Secretary to consult with various organizations involved in passenger train operations for purposes of prescribing and amending these regulations, as well as issuing orders pursuant to them. Section 215 of the Act is codified at 49 U.S.C. 20133.

II. Proceedings to Date

A. Proceedings To Carry Out the Initial 1994 Rulemaking Mandate

The Secretary delegated these rulemaking responsibilities to the Administrator of the Federal Railroad Administration, *see* 49 CFR 1.49(m), and FRA formed the Passenger Equipment Safety Standards Working Group to provide FRA with advice in developing the regulations. On June 17, 1996, FRA published an advance notice of proposed rulemaking (ANPRM) concerning the establishment of comprehensive safety standards for railroad passenger equipment. *See* 61 FR 30672. The ANPRM provided background information on the need for such standards, offered preliminary ideas on approaching passenger safety issues, and presented questions on various passenger safety topics. Following consideration of comments received on the ANPRM and advice from FRA's Passenger Equipment Safety Standards Working Group, FRA published an NPRM on September 23, 1997, to establish comprehensive safety standards for railroad passenger equipment. *See* 62 FR 49728. In addition to requesting written comment on the NPRM, FRA also solicited oral comment at a public hearing held on November 21, 1997. FRA considered the comments received on the NPRM and prepared a final rule establishing comprehensive safety standards for passenger equipment, which was published on May 12, 1999. *See* 64 FR 25540.

After publication of the final rule, interested parties filed petitions seeking FRA's reconsideration of certain requirements contained in the rule. These petitions generally related to the following subject areas: Structural design; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. To address the petitions, FRA grouped issues together and published in the **Federal Register** three sets of amendments to the final rule. Each set of amendments summarized the petition requests at issue, explained what action, if any, FRA decided to take in response to the issues raised, and described FRA's justifications for its decisions and any action taken. Specifically, on July 3, 2000, FRA issued a response to the petitions for reconsideration relating to the inspection, testing, and maintenance of passenger equipment, the movement of defective passenger equipment, and other miscellaneous provisions related to mechanical issues contained in the final rule. *See* 65 FR 41284. On April 23, 2002, FRA responded to all remaining issues raised in the petitions for reconsideration, with the exception of those relating to fire safety. *See* 67 FR 19970. Finally, on June 25, 2002, FRA completed its response to the petitions for reconsideration by publishing a response to the petitions for reconsideration concerning the fire safety portion of the rule. *See* 67 FR 42892. (For more detailed information on the petitions for reconsideration and FRA's response to them, please *see* these three rulemaking documents.) The product of this rulemaking was codified primarily at 49 CFR part 238 and secondarily at 49 CFR parts 216, 223, 229, 231, and 232.

Meanwhile, another rulemaking on passenger train emergency preparedness produced a final rule codified at 49 CFR part 239. *See* 63 FR 24629 (May 4, 1998). The rule addresses passenger train emergencies of various kinds, including security situations, and requires the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. The emergency preparedness plans must include elements such as communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information. The rule requires each affected railroad to instruct its employees on the applicable provisions of its plan, and the plan adopted by each railroad is subject to formal review and approval by FRA. The rule also requires each railroad operating passenger train service to conduct emergency simulations to determine its capability to execute the emergency preparedness plan under the variety of emergency scenarios that could reasonably be expected to occur. In addition, in promulgating the rule, FRA established specific requirements for passenger train emergency systems, *e.g.,* to mark all emergency window exits and all windows intended for rescue access by emergency responders, to light or mark all door exits intended for egress, to mark all door exits intended for rescue access by emergency responders, and to provide instructions for the use of such exits and means of rescue access.

B. Key Issues Identified for Future Rulemaking

Although FRA had completed these rulemakings, FRA had identified various issues for possible future rulemaking, including those to be addressed following the completion of additional research, the gathering of additional operating experience, or the development of industry standards, or all three. One such issue concerned enhancing the requirements for corner posts on cab cars and MU locomotives. *See* 64 FR 25607. FRA requirements for corner posts were based on conventional industry practice at the time, which had not proven adequate in then-recent side swipe collisions with cab cars leading. *Id.* FRA explained that those requirements were being adopted as an interim measure to prevent the introduction of equipment not meeting the requirements, that FRA was assisting APTA in preparing an industry standard for corner post arrangements on cab cars and MU locomotives, and that adoption of a suitable Federal standard would be an immediate priority. *Id.* In broader terms, this issue concerned the behavior of cab car and MU locomotive end frames when overloaded, as during an impact with maintenance-of-way equipment or with a highway vehicle at a highway-rail grade crossing, and thus concerned collision post strength as well. FRA and interested industry members also began identifying other issues related to the passenger equipment safety standards and the passenger train emergency preparedness regulations. FRA decided to address these issues with the assistance of FRA's Railroad Safety Advisory Committee (RSAC).

C. RSAC Overview

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other

interested parties. A list of member groups follows:

- American Association of Private Railroad Car Owners (AARPCO);
- American Association of State Highway and Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petroleum Institute;
- APTA;
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association;
- Association of American Railroads (AAR);
- Association of Railway Museums;
- Association of State Rail Safety Managers (ASRSM);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employes Division;
- Brotherhood of Railroad Signalmen (BRS);
- Chlorine Institute;
- Federal Transit Administration (FTA);*
- Fertilizer Institute;
- High Speed Ground Transportation Association (HSGTA);
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers (IBEW);
- Labor Council for Latin American Advancement;*
- League of Railway Industry Women;*
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women;*
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association;
- National Railroad Passenger Corporation (Amtrak);
- NTSB;*
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte;*
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association, Inc.;
- Transport Canada;*
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration (TSA);* and
- United Transportation Union (UTU).

*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommendation achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing an actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on a recommendation for action, FRA moves ahead to resolve the issue(s) through traditional rulemaking proceedings or other action.

D. Establishment of the Passenger Safety Working Group in May 2003

On May 20, 2003, FRA presented, and RSAC accepted, the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions that could be useful in advancing the safety of rail passenger service. RSAC established the Passenger Safety Working Group (Working Group) to handle this task and develop recommendations for the full RSAC body to consider. Members of the Working Group, in addition to FRA, include the following:

- AAR, including members from BNSF Railway Company (BNSF), CSX Transportation, Inc., and Union Pacific Railroad Company;
- AAPRCO;
- AASHTO;
- Amtrak;
- APTA, including members from Bombardier, Inc., LDK Engineering, Herzog Transit Services, Inc., Long Island Rail Road (LIRR), Metro—North Commuter Railroad Company (Metro-North), Northeast Illinois Regional Commuter Railroad Corporation (Metra), Southern California Regional Rail Authority (Metrolink), and Southeastern Pennsylvania Transportation Authority (SEPTA);
- BLET;
- BRS;
- FTA;
- HSGTA;
- IBEW;
- NARP;
- RSI;
- SMWIA;
- STA;
- TCIU/BRC;
- TWU; and
- UTU.

Staff from DOT's John A. Volpe National Transportation Systems Center (Volpe Center) attended all of the meetings and contributed to the technical discussions. In addition, staff from the NTSB met with the Working Group. The Working Group has held 13 meetings on the following dates and locations:

- September 9–10, 2003, in Washington, DC;
- November 6, 2003, in Philadelphia, PA;
- May 11, 2004, in Schaumburg, IL;
- October 26–27, 2004 in Linthicum/Baltimore, MD;
- March 9–10, 2005, in Ft. Lauderdale, FL;
- September 7, 2005 in Chicago, IL;
- March 21–22, 2006 in Ft. Lauderdale, FL;
- September 12–13, 2006 in Orlando, FL;
- April 17–18, 2007 in Orlando, FL;
- December 11, 2007 in Ft. Lauderdale, FL;
- June 18, 2008, in Baltimore, MD;
- November 13, 2008, in Washington, DC; and
- June 8, 2009, in Washington, DC.

At the meetings in Chicago and Ft. Lauderdale in 2005, FRA met with representatives of Tri-Rail (the South Florida Regional Transportation Authority) and Metra, respectively, and toured their passenger equipment. The visits were open to all members of the Working Group and FRA believes they have added to the collective understanding of the Group in identifying and addressing passenger equipment safety issues.

E. Establishment of the Crashworthiness/Glazing Task Force in November 2003

Due to the variety of issues involved, at its November 2003 meeting the Working Group established four task forces—smaller groups to develop recommendations on specific issues within each group's particular area of expertise. Members of the task forces included various representatives from the respective organizations that were part of the larger Working Group. One of these task forces was assigned the job of identifying and developing issues and recommendations specifically related to the inspection, testing, and operation of passenger equipment as well as concerns related to the attachment of safety appliances on passenger equipment. An NPRM on these topics was published on December 8, 2005, *see* 70 FR 73069, and a final rule was published on October 19, 2006, *see* 71 FR 61835. Another of these task forces was established to identify issues and develop recommendations related to emergency systems, procedures, and equipment, and helped to develop an NPRM on these topics that was published on August 24, 2006, *see* 71 FR 50276, and a final rule that was published on February 1, 2008, *see* 73 FR 6370. Another task force, the Crashworthiness/Glazing Task Force (Task Force), was assigned the job of developing recommendations related to glazing integrity, structural crashworthiness, and the protection of occupants during accidents and incidents. Specifically, this Task Force was charged with developing recommendations for glazing qualification testing and for cab car and MU locomotive end frame optimization. (Glazing and cab car/MU locomotive end frame issues are being handled separately, and glazing is not a subject of this final rule.) The Task Force was also given the responsibility of addressing a number of other issues related to glazing, structural crashworthiness, and occupant protection and recommending any research necessary to facilitate their resolution. Members of the Task Force, in addition to FRA, include the following:

- AAR;
- Amtrak;
- APTA, including members from Bombardier, Inc., General Electric Transportation Systems, General Motors–Electro-Motive Division, Kawasaki Rail Car, Inc., LDK Engineering, LIRR, LTK Engineering Services, Maryland Transit Administration, Massachusetts Bay Transportation Authority (MBTA), Metrolink, Metro-North, Northern Indiana Commuter Transportation District (NICTD), Hyundai Rotem Company, Saint Gobian Sully NA, San Diego Northern Commuter Railroad (Coaster), SEPTA, and STV, Inc.;
- BLET;
- California Department of Transportation (Caltrans);
- NARP;
- RSI; and
- UTU.

While not voting members of the Task Force, representatives from the NTSB attended meetings and contributed to the discussions of the Task Force. In addition, staff from the Volpe Center attended all of the meetings and contributed to the technical discussions.

The Task Force held seven meetings on the following dates and locations:

- March 17–18, 2004, in Cambridge, MA;
- May 13, 2004, in Schaumburg, IL;
- November 9, 2004, in Boston, MA;
- February 2–3, 2005, in Cambridge, MA;
- April 21–22, 2005, in Cambridge, MA;
- August 11, 2005, in Cambridge, MA; and
- September 9–10, 2008, in Cambridge, MA.

F. Development of the NPRM Published in August 2007

The NPRM was developed to address concerns raised and issues discussed about cab car and MU locomotive front end frame structures during the Task Force meetings and pertinent Working Group meetings. Minutes of each of these meetings have been made part of the docket in this proceeding and are available for public inspection. Except for one issue, which is discussed below, the Working Group reached consensus on the principal regulatory provisions contained in the NPRM at its meeting in September 2005. After the September 2005 meeting, the Working Group presented its recommendations to the full RSAC body for concurrence at its meeting in October 2005. All of the members of the full RSAC in attendance at its October 2005 meeting accepted the regulatory recommendations submitted by the Working Group. Thus, the Working Group's recommendations became the full RSAC's recommendations to FRA.

After reviewing the full RSAC's recommendations, FRA agreed that the recommendations provided a good basis for a proposed rule, but that test standards and performance criteria more suitable to cab cars and MU locomotives without flat forward ends or with energy absorbing structures used as part of a crash energy management design (CEM), or both, should be specified. The NPRM therefore provided an option for the dynamic testing of cab cars and MU locomotives as a means of demonstrating compliance with the rule. However, FRA made clear that the proposal was not the result of an RSAC recommendation. Otherwise, FRA adopted the RSAC's recommendations with generally minor changes for purposes of clarity and formatting in the **Federal Register**.

The NPRM was published in the **Federal Register** on August 1, 2007, *see* 72 FR 42016, and FRA solicited public comment on it. FRA notified the public of its option to submit written comments on the NPRM and to request a public, oral hearing on the NPRM. FRA also invited comment on a number of specific issues related to the proposed requirements for the purpose of developing the final rule.

G. Development of This Final Rule

This final rule is the product of FRA's review and consideration of the recommendations of the Task Force, Working Group, and full RSAC, and the written comments to the docket. FRA received written comments in response to the publication of the NPRM from a wide array of interested parties. Specifically, FRA received three separate comments from members of the U.S. Congress: (1) From Senator Kent Conrad, Senator Byron Dorgan, and Congressman Earl Pomeroy; (2) from Congressman James Oberstar, Chairman, House Committee on Transportation and Infrastructure, and Congressman Bennie Thompson, Chairman, House Committee on Homeland Security; and (3) from Congressman Adam Schiff. FRA also received comments from the AAR and APTA, which represent freight and passenger railroads, respectively, as well as comments from Caltrans and the Peninsula Corridor Joint Powers Board (Caltrain), which are involved in providing passenger rail service. The BLET and UTU submitted comments on behalf of the railroad employees whom they represent. In addition, FRA received comments from rail car manufacturers Bombardier and Colorado Railcar Manufacturing (CRM), as well as from the firm of Raul V. Bravo + Associates, Inc. (RVB). FRA also received comments from other interested parties: the American Association for Justice (AAJ), formerly known as the Association of Trial Lawyers of America, and the California Public Utilities Commission (CPUC). All Aboard Washington (AAWA), an advocacy organization for promoting

rail service in the Pacific Northwest, and a private citizen also commented on the NPRM. At about the same time as the written comment period closed on October 1, 2007, management of DOT rulemaking dockets was transitioning from DOT to the Federal Docket Management System at *http://www.regulations.gov*. This transition led to some delay in the posting of comments to the Web site; however, FRA has considered all such comments in preparing this final rule.

FRA notes that Congressman Adam Schiff made a request that FRA hold public hearings to receive oral comment on the NPRM in Los Angeles or Glendale, CA, so that those who have a "deeply-felt" concern for rail safety could be heard. As stated in a January 30, 2008 letter to Congressman Schiff, FRA discussed this request with the Congressman's staff and was informed that the Congressman had decided to reserve his request that FRA convene public hearings on the NPRM. (A copy of this letter has been placed in the public docket for this rulemaking.) No public hearing was held in response to the NPRM.

Throughout the preamble discussion of this final rule, FRA refers to comments, views, suggestions, or recommendations made by members of the Task Force, Working Group, and full RSAC. FRA does so to show the origin of certain issues and the nature of discussions concerning those issues at the Task Force, Working Group, and full RSAC level. FRA believes this serves to illuminate factors that it has weighed in making its regulatory decisions, as well as the logic behind those decisions. The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA and that it is the consensus recommendation of the full RSAC on which FRA acts. However, as noted above, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements.

III. Technical Background

Transporting passengers by rail in the U.S. is very safe. Since the beginning of 1978, about 12.5 billion passengers have traveled by rail, based on reports filed monthly with FRA. The number of rail passengers has steadily increased over the years, and since the year 2000 has averaged more than 525 million passengers per year. On a passenger-mile basis, with an average of about 16.1 billion passenger-miles per year since 2000, rail travel is about as safe as scheduled airline service and intercity bus transportation, and it is far safer than private motor vehicle travel. Passenger rail accidents—while always to be avoided—have a very high passenger survival rate.

Yet, as in any form of transportation, there are risks inherent in passenger rail travel. For this reason, FRA continually works to improve the safety of passenger rail operations. FRA's efforts include sponsoring the research and development of safety technologies, providing technical support for industry specifications and standards, and engaging in cooperative rulemaking efforts with key industry stakeholders. FRA has focused in particular on enhancing the crashworthiness of passenger trains.

In a passenger train collision or derailment, the principal crashworthiness risks that occupants face are the loss of safe space inside the train from crushing of the train structure and, as the train decelerates, the risk of secondary impacts with interior surfaces. Therefore, the principal goals of the crashworthiness research sponsored by FRA are twofold: First, to preserve a safe space in which occupants can ride out the collision or derailment, and, then, to minimize the physical forces to which occupants are subjected when impacting surfaces inside a passenger train as the train decelerates. Though not a part of this final rule, other crashworthiness research focuses on related issues such as fuel tank safety, for equipment with a fuel tank, and the associated risk of fire if the fuel tank is breached during the collision or derailment.

The results of ongoing research on cab car and MU locomotive front end frame structures help demonstrate both the effectiveness and the practicality of the structural enhancements in this final rule to make this equipment more crashworthy. This research is discussed below, along with other technical information providing the background for this rulemaking.

A. Predominant Types of Passenger Rail Service

FRA's focus on cab car and MU locomotive crashworthiness should be considered in the context of the predominant types of passenger rail service in North America. The first involves operation of passenger trains with conventional locomotives in the lead, typically pulling consists of passenger coaches and other cars such as baggage cars, dining cars, and sleeping cars. Such trains are common on long-distance, intercity rail routes operated by Amtrak. On a daily basis, however, most passenger rail service is provided by commuter railroads, which typically operate one or both of the two most predominant types of service: Push-pull service and MU locomotive service.

Push-pull service is passenger train service typically operated, in one direction of travel, with a conventional locomotive in the rear of the train pushing the consist (the "push mode") and with a cab car in the lead position of the train; and, in the opposite direction of travel, the service is operated with the conventional locomotive in the lead position of the train pulling the consist (the "pull mode") and with the cab car in the rear of the train. (A cab car is both a passenger car, in that it has seats for passengers, and a locomotive, in that it has a control cab from which the engineer can operate the train.) Control cables run the length of the train, as do electrical lines providing power for heat, lights, and other purposes.

MU locomotive service is passenger rail service involving trains consisting of self-propelled electric or diesel MU locomotives. MU locomotives may operate individually but typically operate semi-permanently coupled together as a pair or triplet with a control cab at each end of the consist. During peak commuting hours, multiple pairs or triplets of MU locomotives, or a combination of both, are typically operated together as a single passenger train in MU service. This type of service does not make use of a conventional locomotive as a primary means of motive power. MU locomotive service is very similar to push-pull service as operated in the push mode with the cab car in the lead.

By focusing on enhancements to cab car and MU locomotive crashworthiness, FRA seeks to enhance the safety of the two most typical forms of passenger rail service in the U.S.

B. Front End Frame Structures of Cab Cars and MU Locomotives

Structurally, MU locomotives and cab cars built in the same period are very similar. Both are designed to be occupied by passengers and to operate as the lead units of passenger trains. The principal distinction is that cab cars do not have motors to propel themselves. Unlike MU locomotives and cab cars, conventional locomotives are not designed to be occupied by passengers—only by operating crewmembers. Concern has been raised about the safety of cab car-led and MU locomotive train service due to the closer proximity of the engineer and

passengers to the leading end of the train than in conventional locomotive-led service.

The principal purpose of cab car and MU locomotive front end frame structures is to provide protection for the engineer and passengers in the event of a collision where the superstructure of the vehicle is directly engaged and the underframe is either not engaged or only indirectly engaged in the collision. In the event of impacts with objects above the underframe of a cab car or MU locomotive, the end frame members are the primary source of protection for the engineer and the passengers. There are various types of cab cars and MU locomotives in current use. As discussed below, flat-nosed, single-level cab cars have been used for purposes of FRA-sponsored crashworthiness research. (The cab cars were originally constructed as MU locomotives but had their traction motors removed for testing.) Flat-nosed designs are representative of a large portion of the cab car and MU locomotive fleet.

In a typical flat-nosed cab car, the end frame is composed of several structural elements that act together to resist inward deformations under load. The base of the end frame structure is composed of the end/buffer beam, which is directly connected to the draft sill of the vehicle. For cars that include stepwells, the side sills of the underframe generally do not directly connect to the end/buffer beam. There are four major vertical members connected to the end/buffer beam: two collision posts located approximately at the one-third points along the length of the beam; and two corner posts located at the outermost points of the beam. These structural elements are also connected together through two additional lateral members: a lateral member/shelf located just below the window frame structure; and an anti-telescoping plate at the top. The attachment of the end frame structure to the rest of the vehicle typically occurs at three locations. The first location is at the draft sill at the level of the underframe. This is the main connection where a majority of any longitudinal load applied to the end frame is reacted into the underframe of the vehicle. There are two other connections at the cant/roof rail located at each side of the car just below the level of the roof. When a longitudinal load is applied to the end frame, it is reacted by the draft sill and the cant rails into the main car body structure. A schematic of a typical arrangement is depicted in Figure 1 (although not every cab car or MU locomotive necessarily has every component shown).

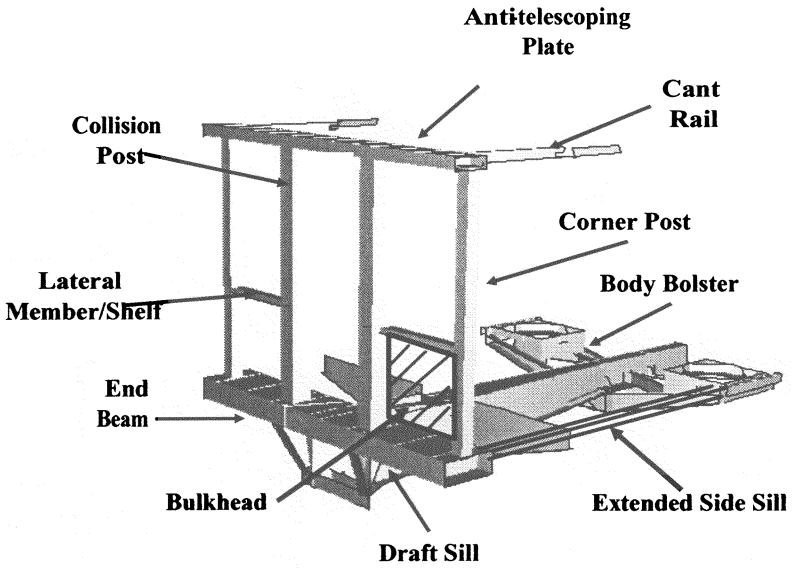


Figure 1. Schematic of the Main Structural Components of the Front End of a Typical, Flat-Nosed Cab Car and MU Locomotive

C. Accident History

In a collision involving the front end of a cab car or an MU locomotive, it is vitally important that the end frame behaves in a ductile manner, absorbing some of the collision energy in order to maintain sufficient space in which the engineer and passengers can ride out the event. Several collisions have occurred where the superstructure of a leading cab car has been loaded but the underframe of the car has not. These collisions demonstrate a need for better protecting the cab engineer and passengers from external threats. One example of a collision where the end frame did not effectively absorb collision energy occurred in Portage, IN, in 1998 when a NICTD train consisting of MU locomotives struck a tractor-tandem trailer carrying steel coils that had become immobilized on a grade crossing.[1] The leading MU locomotive impacted a steel coil at a point centered on one of its collision posts, the collision post failed, and the steel coil penetrated into the interior of the locomotive, resulting in three fatalities. Little of the collision energy was absorbed by the collision post, because the post had failed before it could deform in any significant way.

There are additional examples of incidents where the end frame of a cab car or an MU locomotive was engaged during a collision and a loss of survivable volume ensued due to the failure of end frame structures. In a collision in Secaucus, NJ, in 1996, a cab car-led New Jersey Transit Rail Operations (NJTR) train impacted a conventional locomotive-led NJTR

[1] National Transportation Safety Board, "Collision of Northern Indiana Commuter Transportation District Train 102 with a Tractor-Trailer Portage, Indiana, June 18, 1998," RAR–99–03, 07/26/1999. This report is available on the NTSB's Web site at: *http://www.ntsb.gov/publictn/1999/RAR9903.pdf.*

train.[2] At the collision interface, the conventional locomotive pushed in or tore loose the collision and corner posts of the cab car. The underframe of the cab car was not loaded. The engineers of both trains and one passenger in the cab car were fatally injured. Also in 1996 in Silver Spring, MD, a collision occurred between a cab car-led Maryland Area Rail Commuter (MARC) train and a conventional locomotive-led Amtrak train. In the collision, the front left collision and corner posts of the cab car were pushed in and torn loose. The underframe of the cab car was not loaded.[3] Three crewmembers and eight passengers on the MARC train were fatally injured as result of the collision and ensuing fire. Earlier, on January 18, 1993, near Gary, IN, two NICTD trains collided corner-to-corner on intersecting tracks that shared a bridge. One of the trains was at rest and the other had a speed estimated to be 32 mph. The left front corner posts and adjacent car body sidewall structures were destroyed on the leading MU locomotive of each train. Seven passengers were fatally injured.[4]

The preceding collisions were used to characterize types of loading conditions, which led to the development of a simplified, generalized test scenario, in furtherance of the goal of establishing methods for measuring the crashworthiness performance of end frame structures and developing strategies for incrementally improving their survivability under a range of impact conditions. Although the speeds associated with certain past events are greater than the speed at which full protection can currently be provided, and even though enhancements to passenger train emergency features and other requirements unrelated to crashworthiness, such as fire safety, may overall do as much or more to prevent or mitigate the consequences of these types of events, these collisions do provide indicative loading conditions for developing structural enhancements that can improve crashworthiness performance.

FRA also notes that on January 26, 2005, in Glendale, CA, a collision involving an unoccupied sport utility vehicle (SUV) (that was intentionally parked on the track by a private citizen), two Metrolink commuter trains, and a standing freight train resulted in 11 fatalities and numerous injuries. Eight of the fatalities occurred on a cab car-led commuter train, which derailed after striking the SUV, causing the cab car to be guided down a railroad siding, which resulted in an impact at an approximate speed of 49 mph with the standing freight train. After the collision with the standing freight train, the rear end of the lead cab car buckled laterally, obstructing the right-of-way of an oncoming, conventional locomotive-led commuter train. The rear end of the cab car raked the side of the conventional locomotive-led train, which was moving at an approximate speed of 51 mph, crushing occupied areas of that train. This incident involved enormous quantities of kinetic energy, and the underframe of the leading cab car crushed more than 20 feet inward. Because the strength of the end frame ultimately depends on the strength of the underframe, which failed here, stronger collision posts and corner posts on the front end of the leading cab car would have been, in themselves, of little benefit in absorbing the collision energy. For this reason, as discussed below, FRA has been exploring other crashworthiness strategies, such as CEM, to help mitigate the effects of collisions involving higher impact speeds. Nevertheless, CEM will also require proper end frame performance in order to function as intended.

D. FRA and Industry Standards for Front End Frame Structures of Cab Cars and MU Locomotives

Both the Federal government and the passenger railroad industry have been working together to improve the crashworthiness of cab cars and MU locomotives. As noted above, in 1999, after several years of development and in consultation with a working group comprised of key industry stakeholders, FRA promulgated the Passenger Equipment Safety Standards final rule. The rule included end frame structure requirements and additional crashworthiness-related requirements for cab cars, MU locomotives, and other passenger equipment. In particular, the final rule provided for strengthened collision posts for new cab cars and MU locomotives (*i.e.*, those ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002).

APTA also issued industry standards in 1999, in furtherance of its initiative to continue the development and maintenance of voluntary industry standards for the safety of railroad passenger equipment. In particular, APTA Safety Standard (SS)–C&S–013–99, Standard for Corner Post Structural Strength for Railroad Passenger Equipment, and SS–C&S–014–99, Standard for Collision Post Structural Strength for Railroad Passenger Equipment, included provisions on end frame designs for cab cars and MU locomotives. (Copies of these standards have been placed in the public docket for this rulemaking.) Specifically, these APTA standards included increased industry requirements for the strength of cab car and MU locomotive vertical end frame members—collision posts and corner posts. The 1999 APTA standards also included industry requirements for the deformation of these end frame vertical members, specifying that they must be able to sustain "severe deformation" before failure of the connections to the underframe and roof structures occurs.

In January 2000, APTA requested that FRA develop information on the effectiveness of APTA's then-recently introduced *Manual of Standards and Recommended Practices for Rail Passenger Equipment*, which included APTA SS–C&S–013–99 and APTA SS–C&S–014–99, and FRA's then-recently issued Passenger Equipment Safety Standards rule. This review was intended to look in particular at what increase in crashworthiness was obtained for cab cars and MU locomotives through the combination of these standards and regulations. FRA shared APTA's interest and included full-scale impact tests and associated planning and analysis activities in its overall research plan to gather this information. FRA then developed the details of the testing process in conjunction with APTA's Passenger Rail Equipment Safety Standards (PRESS) Construction and Structural (C&S) Subcommittee.

Around this same time, questions arose in the passenger rail industry in applying the APTA standards for collision posts and corner posts to new cab cars and MU locomotives. Views differed as to what the standards actually specified—namely, the meaning of "severe deformation" in the provisions calling for corner and collision posts to sustain "severe deformation" before failure of the posts' attachments. Consequently, there was not common agreement as to whether

[2] National Transportation Safety Board, "Near Head-On Collision and Derailment of Two New Jersey Transit Commuter Trains Near Secaucus, New Jersey, February 9, 1996," RAR–97–01, 03/25/1997. This report is available on the NTSB's Web site at: *http://www.ntsb.gov/publictn/1997/RAR9701.pdf*.

[3] National Transportation Safety Board, "Collision and Derailment of Maryland Rail Commuter *MARC* Train 286 and National Railroad Passenger Corporation *AMTRAK* Train 29 Near Silver Spring, Maryland, on February 16, 1996," RAR–97–02, 06/17/1997. This report is available on the NTSB's Web site at: *http://www.ntsb.gov/publictn/1997/RAR9702.pdf*.

[4] National Transportation Safety Board, "Collision between Northern Indiana Commuter Transportation District Eastbound Train 7 and Westbound Train 12 Near Gary, Indiana, on January 18, 1993," RAR–93–03, 12/7/1993.

particular designs met the standards. On May 22, 2003, APTA's PRESS Committee accepted the recommendation of its C&S Subcommittee to replace these provisions in the standards concerning "severe deformation" with a recommended practice that the corner and collision post attachments be able to sustain minimum prescribed loads with negligible deformation. APTA SS–C&S–013–99 and SS–C&S–014–99 were then incorporated in their entirety into APTA SS–C&S–034–99, Rev. 1, Standard for the Design and Construction of Passenger Railroad Rolling Stock. (A copy of APTA SS–C&S–034–99, Rev. 1, has been placed in the public docket for this rulemaking. As discussed below, the latest revision, Rev. 2, of APTA SS–C&S–034–99 is available on APTA's Web site at *http://www.aptastandards.com/portals/0/PRESS_pdfs/Construcstruct/construcstruct%20reaffirm/APTA%20SS-CS-034-99%20Rev%202-Approved.pdf*. The larger compilation of standards and recommended practices for rail passenger equipment of which this standard is a part, APTA's *Manual of Standards and Recommended Practices for Rail Passenger Equipment*, is available on APTA's Web site at *http://aptastandards.com/PublishedDocuments/PublishedStandards/PRESS/tabid/85/Default.aspx*.)

When the decision to turn the provisions concerning "severe deformation" into a recommended practice was made, ongoing research from full-scale impact tests was showing that a substantial increase in cab car and MU locomotive crashworthiness could be achieved by designing the posts to first deform and thereby absorb collision energy before failing.[5] As discussed below, in August 2005, APTA's PRESS C&S Subcommittee accepted a revised "severe deformation" standard for collision and corner posts. The standard includes requirements for minimum energy absorption and maximum deflection. The standard thereby eliminates a deficiency in the 1999 APTA standards by specifying test criteria to objectively measure "severe deformation" (or large deformation).

The NPRM in this rulemaking was based on APTA SS–C&S–034–99, Rev. 1, and proposed dynamic performance requirements in the alternative to the quasi-static, large deformation criteria in the APTA Standards. In response to the NPRM, members of industry disagreed with including FRA's proposed dynamic performance requirements in the rule and requested that FRA demonstrate actual compliance with both the quasi-static and the dynamic large deformation requirements that were proposed. As detailed below, these tests were performed in the spring and summer of 2008. FRA has sought to retain the dynamic performance requirements as an alternative to the quasi-static requirements, in particular because the dynamic performance requirements facilitate evaluation of equipment without a flat front-end or traditional corner or collision posts. After discussion within the Task Force, consensus was reached on including dynamic performance requirements in appendix F to part 238 as an alternative to the enhanced collision and corner post requirements in §§ 238.211 and 238.213 of this final rule. As discussed below, the enhanced requirements in §§ 238.211 and 238.213 essentially codify the current APTA standards.

E. Testing of Front End Frame Structures of Cab Cars and MU Locomotives

This section summarizes the work done by FRA and the passenger rail industry on developing the technical information to support regulations requiring that corner and collision posts in cab car and MU locomotive front end frames fail in a controlled manner when overloaded. Due to the collaborative work of FRA with the passenger rail industry, APTA's current passenger rail equipment standards include deformation requirements, which prescribe how these vertical members should perform when overloaded quasi-statically.

1. FRA-Sponsored Dynamic Testing in 2002

Two full-scale, grade-crossing impact tests were conducted in June 2002 as part of an ongoing series of FRA-sponsored crashworthiness tests of passenger rail equipment carried out with the support of the Volpe Center at FRA's Transportation Technology Center (TTC) in Pueblo, CO. The purpose of these two tests was to evaluate incremental improvements in the crashworthiness performance, in highway-rail grade-crossing collision scenarios, of modern corner and collision post designs when compared against the performance of older designs. The grade-crossing tests were intended to address the concern of occupant vulnerability to bulk crushing resulting from offset/oblique collisions where the primary load-resisting-structure is the equipment's end frame design.

a. Test Article Designs

Two end frame designs were developed. The first end frame design was representative of typical designs of passenger rail vehicles in the 1990s prior to 1999. The first end frame design is referred to as the "1990s design." The second end frame design incorporated all the enhancements required beginning in 1999 by FRA's Passenger Equipment Safety Standards in part 238 and also recommended beginning in 1999 by APTA's standards for corner post and collision post structures, respectively, SS–C&S–013–99 and SS–C&S–014–99. The second end frame design is referred to as the State-of-the-Art (SOA) design. The two end frame designs developed were then retrofitted onto two Budd Pioneer passenger rail cars for testing.

The SOA design differed principally from the 1990s design by having higher values for static loading of the end frame structure and by specifically addressing the performance of the collision and corner posts when overloaded. As noted above, the 1999 APTA standards for cab car and MU locomotive end frame structures included the following statement for both corner and collision posts:

> [The] post and its supporting structure shall be designed so that when it is overloaded * * * failure shall begin as bending or buckling in the post. The connections of the post to the supporting structure, and the supporting car body structure, shall support the post up to its ultimate capacity. The ultimate shear and tensile strength of the connecting fasteners or welds shall be sufficient to resist the forces causing the deformation, so that shear and tensile failure of the fasteners or welds shall not occur, even with severe deformation of the post and its connecting and supporting structural elements.

(*See* paragraph 4.1 of APTA SS–C&S–013–99, and paragraph 3.1 of APTA SS–C&S–014–99.) Although the term "severe deformation" was not specifically defined in the APTA standards, discussions with APTA technical staff led to specifying "severe deformation" in the SOA design as a horizontal crush of the corner and collisions posts for a distance equal to the posts' depth. Some failure of the parent material in the posts was allowable, but no failure would be

[5] Mayville, R., Johnson, K., Tyrell, D., Stringfellow, R., "Rail Vehicle Cab Car Collision and Corner Post Designs According to APTA S–034 Requirements," American Society of Mechanical Engineers, Paper No. IMECE2003–44114, November 2003. This document is available on the Volpe Center's Web site at: *http://www.volpe.dot.gov/sdd/docs/2003/rail_cw_2003_11.pdf*. All of the published Volpe Center papers and reports on rail equipment crashworthiness can be found at: *http://www.volpe.dot.gov/sdd/pubs-crash.html*.

allowed in the welded connections, as the integrity of the welded connections prevents complete separation of the posts from their connections.

An additional difference in the designs was the exclusion of the stepwells for the SOA design, to allow for extended side sills from the body bolster to the end/buffer beam. By bringing the side sills forward to support the end/buffer beam directly at the corners, the end/buffer beam can be developed to a size similar to the one for the 1990s design. In fact, recent cab car procurements have provided for elimination of the stepwells at the ends of the cars.

As compared to the 1990s design, the SOA design had the following enhancements: more substantial corner posts; a bulkhead sheet connecting the collision and corner posts, extending from the floor to the transverse member connecting the posts; and a longer side sill that extended along the engineer's compartment to the end beam, removing the presence of a stepwell. In addition to changes in the cross-sectional sizes and thickness of some structural members, another change in the SOA design was associated with the connection details for the corner posts. In comparison to the corner posts, the collision posts of both the 1990s and SOA designs penetrated both the top and bottom flanges of both the end/buffer beam and the anti-telescoping plate. This was based upon typical practice in the early 1990s for the 1990s design, and a provision in the APTA standard for the SOA design. Yet, the corner posts differed in that the corner posts for the 1990s design did not penetrate both the top and bottom flanges of the end/buffer and anti-telescoping beams, while those in the SOA design did. The SOA design therefore had a significantly stiffer connection that was better able to resist torsional loads transferred to the anti-telescoping plate.

b. Dynamic Impact Testing

As noted, two full-scale, grade-crossing impact tests were conducted in June 2002. In each test a single cab car impacted a 40,000-pound steel coil resting on a frangible table at a nominal speed of 14 mph. The steel coil was situated such that it impacted the corner post above the cab car's end sill. The principal difference between the two tests involved the end frame design tested: In one test, the cab car was fitted with the 1990s end frame design; in the other, the cab car was fitted with the SOA end frame design.

Prior to the tests, the crush behaviors of the cars and their dynamic responses were simulated with car crush and collision dynamics models. The car crush model was used to determine the force/crush characteristics of the corner posts, as well as their modes of deformation.[6] The collision dynamics model was used to predict the extent of crush of the corner posts as a function of impact velocity, as well as predict the three-dimensional accelerations, velocities, and displacements of the cars and coil.[7] Pre-test analyses of the models were used in determining the initial test conditions and instrumentation test requirements.

The impact speed of approximately 14 mph for both tests was chosen so that there would be significant intrusion (more than 12 inches) into the engineer's cab in the test of the 1990s design, and limited intrusion (less than 12 inches) in the test of the SOA design. This 12-inch deformation metric was chosen to demarcate the amount of intrusion that would leave sufficient space for the engineer to ride out the collision safely.

During the full-scale test of the 1990s design, the impact force transmitted to the end structure exceeded the corner post's predicted strength, and the corner post separated from its upper attachment. Upon impact, the corner post began to hinge near the contact point with the coil; subsequently, tearing at the upper connection occurred. The intensity of the impact ultimately resulted in the failure of the upper connection of the corner post to the anti-telescoping plate. More than 30 inches of deformation occurred and the survivable space for the engineer was lost.

By contrast, during the test of the SOA end frame design, the corner post remained attached. The maximum rearward deformation measured was approximately 9 inches. The results of this test showed that the SOA end frame design is sufficient to prevent the engineer from being crushed in such an impact.

c. Analysis

The SOA design performed very closely to pre-test predictions made by the finite element and collision dynamics models. *See* Figure 2, below. As noted, the SOA design crushed approximately 9 inches in the longitudinal direction.

[6] Martinez, E., Tyrell, D., Zolock, J., "Rail-Car Impact Tests with Steel Coil: Car Crush," American Society of Mechanical Engineers, Paper No. JRC2003–1656, April 2003. This document is available on the Volpe Center's Web site at: *http://www.volpe.dot.gov/sdd/docs/2003/rail_cw_2003_4.pdf.*

[7] Jacobsen, K., Tyrell, D., Perlman, A.B., "Rail Car Impact Tests with Steel Coil: Collision Dynamics," American Society of Mechanical Engineers, Paper No. JRC2003–1655, April 2003. This document is available on the Volpe Center's Web site at: *http://www.volpe.dot.gov/sdd/docs/2003/rail_cw_2003_3.pdf.*

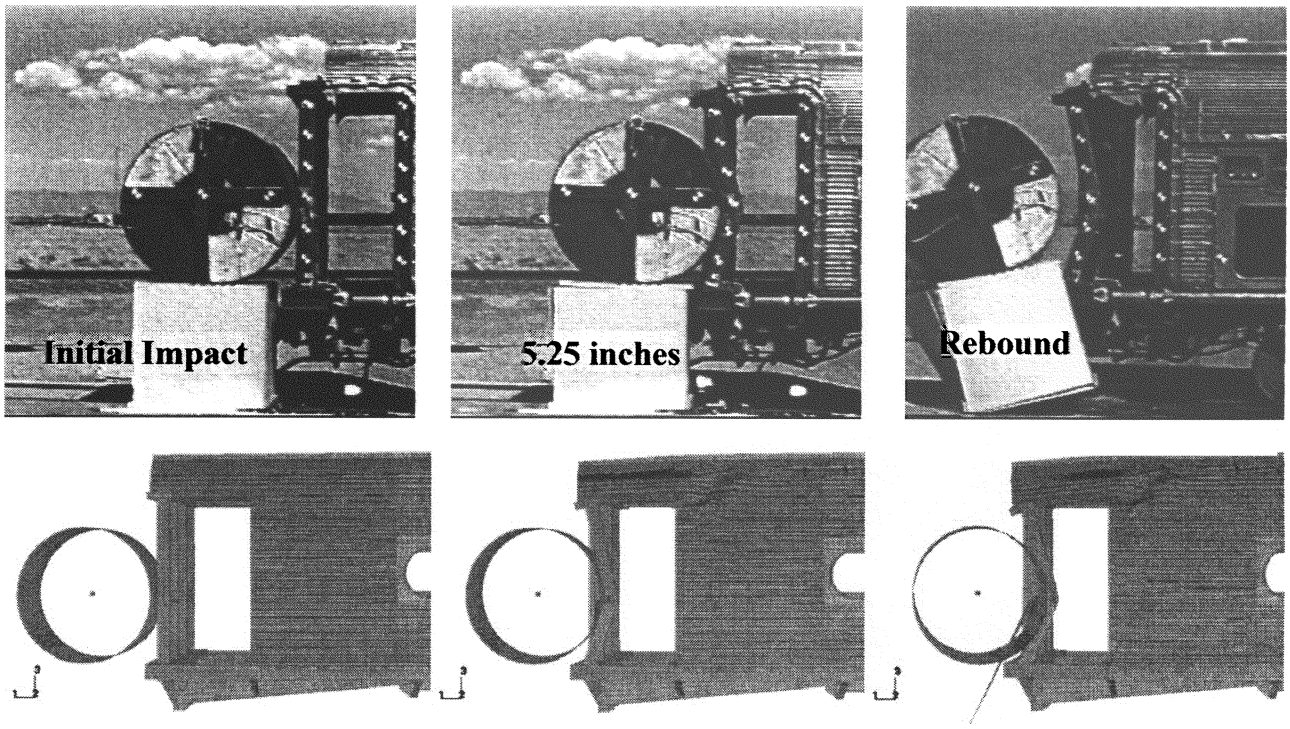


Figure 2. Photographs from the 2002 Dynamic Full-Scale Test of the SOA End Frame and Corresponding Depictions from the Dynamic Analysis

Pre-test analyses for the 1990s design using the car crush model and collision dynamics model were in close agreement with the measurements taken during the actual testing of the cab car end frame built to this design. The pre-test analyses also nearly overlay the test results for the force/crush characteristic of the SOA design. As a result, FRA believes that both sets of models are capable of predicting the modes of structural deformation and the total amount of energy consumed during a collision. Careful application of finite-element modeling allows accurate prediction of the crush behavior of rail car structures.

Both the methodologies used to design the cab car end frames and the results of the tests show that significant increases in rail passenger equipment crashworthiness can be achieved if greater consideration is given to the manner in which structural elements deform when overloaded. Modern methods of analysis can accurately predict structural crush (severe deformation) and consequently can be used with confidence to develop structures that collapse in a controlled manner. Modern testing techniques allow the verification of the crush behavior of such structures.

2. Industry-Sponsored Quasi-Static Testing in 2001

While FRA's full-scale, dynamic testing program was being planned and conducted with input from key industry representatives, several passenger railroads were incorporating in procurement specifications the then-newly promulgated Federal regulations and industry standards issued in 1999. Specifically, both LIRR and Metro-North had contracted with Bombardier for the development of a new MU locomotive design, the M7 series. Bombardier conducted a series of qualifying quasi-static tests on a mock-up, front-end structure of an M7, including a severe deformation test of the collision post. In addition to the severe deformation test, the other end frame members were also tested elastically at the enhanced loads specified in the APTA standards. The severe deformation qualification test was conducted on February 20, 2001.

a. Test Article Design

The mock-up test article was developed for the front end of an M7 cab car. The first 19.25 feet of the car was fabricated with great fidelity between the car's body bolster and the extreme most forward end. The mock-up contained all structural elements, but did not contain the corner post rub plates, the plymetal floor, any interior finishing, windows, doors, bonnet, or similar components.

b. Quasi-Static Testing

Load was applied at incrementally increasing levels with hydraulic jacks while being measured by load cells at the rear of the longitudinal end frame members. Initially, the elastic limit was determined for the post, and then the large deformation test was conducted. The test was stopped, for safety considerations, prior to full separation of the collision post with the end/buffer beam.

The maximum deflection in the collision post before yielding occurred at a position 42 inches above the end beam, near the top of the plates used to reinforce the collision post. The plastic shape the collision post acquired during testing was 'V'-shaped, with a plastic hinge occurring at 42 inches above the end beam. Some cracking and material failure occurred at the connection of the post with the end beam. The anti-telescoping plate was pulled down roughly three inches, and load was shed to the corner post via the shelf member and the bulkhead sheet. The shape that

the collision post experienced was very similar to what was observed from the dynamic testing of the SOA corner post, as discussed above.

c. Analysis

Under FRA sponsorship, the Volpe Center, with cooperation from Bombardier, conducted non-linear, large deformation analyses to evaluate the performance of the cab car corner and collision posts of the SOA end frame design and the Bombardier M7 design under dynamic test conditions. One of the purposes of this research was to determine whether the level of crashworthiness demonstrated by the SOA prototype design could actually be achieved by a general production design—here, the M7 design. Pre-test analysis predictions of the dynamic performance of the SOA corner post closely matched test measurements.[8] A similar analysis of the corner post was performed on the M7 design, and the results compared closely with the SOA design test and analysis results. Overall, the crashworthiness performance of the collision posts of the SOA and M7 designs were found to be essentially the same, and the M7 corner post design was even found to perform better than the SOA corner post design. This latter difference in performance was attributable to the sidewall support in the M7 design, which was not present in the SOA design.

Having established the fidelity of the models and modeling approach, a number of comparative simulations were conducted of both the SOA end frame and the M7 end frame under both dynamic and quasi-static test conditions to assess the equivalency of the two different tests for demonstrating compliance with the severe deformation criteria. For both sets of tests, the modes of deformation were very similar at the same extent of longitudinal displacement, and the locations where material failure occurred were also similar. In addition, the predicted force-crush characteristics showed reasonable agreement within the repeatability of the tests. Figure 3, below, shows a comparison of the deformation mode for the M7's collision post, as observed from the quasi-static testing that was conducted and as predicted for the dynamic loading condition.

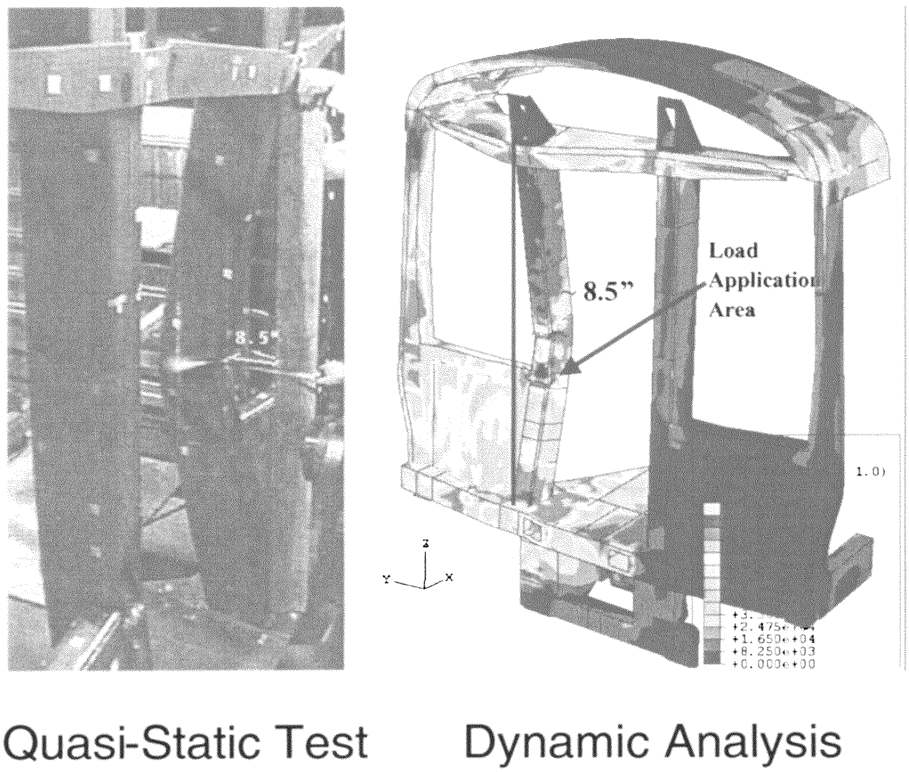


Figure 3. Comparison of Quasi-Statically Tested and Dynamically-Predicted Mode of Deformation for the M7 MU Locomotive Collision Post

3. FRA-Sponsored Dynamic and Quasi-Static Testing in 2008

In 2008, a full-scale dynamic test and two quasi-static tests were performed on the posts of an SOA end frame. These tests were designed to evaluate the dynamic and quasi-static methods for demonstrating energy absorption of the collision and corner posts. The tests focused on the collision and corner posts individually because of their critical positions in protecting the engineer and passengers in a collision where only the superstructure, not the underframe, is loaded.

a. Test Article Design

The SOA design was originally developed for the Budd Pioneer car for the 2002 dynamic impact testing. For the testing in 2008, only a Budd M1 car was available, so the design had to be modified to fit a Budd M1. The design

[8] Martinez, E., Tyrell, D., Zolock, J. Brassard, J., "Review of Severe Deformation Recommended Practice Through Analyses—Comparison of Two Cab Car End Frame Designs," American Society of Mechanical Engineers, Paper No. RTD2005–70043, March 2005. This document is available on the Volpe Center's Web site at: *http://www.volpe.dot.gov/sdd/docs/2005/rail_cw_2005_03.pdf.*

of an end frame for retrofit onto the cab end of a Budd Pioneer car was modified to account for differences between the two car designs. In addition, reinforcements to the M1 car body and connections from the end frame to the car body were designed and fabricated.

The design of the SOA end frame itself required only a few modifications to adapt to the M1 car body. Due to the rounded nature of the M1 car body as compared to the Pioneer car body, the lateral extent of the anti-telescoping beam was changed slightly so that it extended beyond the corner post by 1.5 inches, as compared to 1.0 inches for the Pioneer car.

b. Dynamic Testing of a Collision Post

For this test, a 14,000-pound cart impacted a standing car at a speed of 18.7 mph. The cart had a rigid coil shape mounted on the leading end that concentrated the impact load on the car's collision post. The test was conducted against the NPRM's proposed requirements for protecting the engineer's space—namely, that there be no more than 10 inches of permanent, longitudinal deformation and none of the attachments of any of the structural members separate.

During the test, the collision post deformed approximately 7.4 inches and absorbed approximately 138,000 foot-pounds of energy. The attachment between the post and the anti-telescoping beam remained intact. The connection between the post and the buffer beam did not completely separate; however, the forward flange and both side webs fractured. The post itself did not completely fail. There was material failure in the back and the sides of the post at the impact location. Overall, the end frame was successful in absorbing energy and preserving space for the engineer and the passengers. Figure 4 depicts three deformation states from the dynamic test: initial contact of the crash cart with the end frame, the greatest intrusion of the end frame, and the final deformation state.

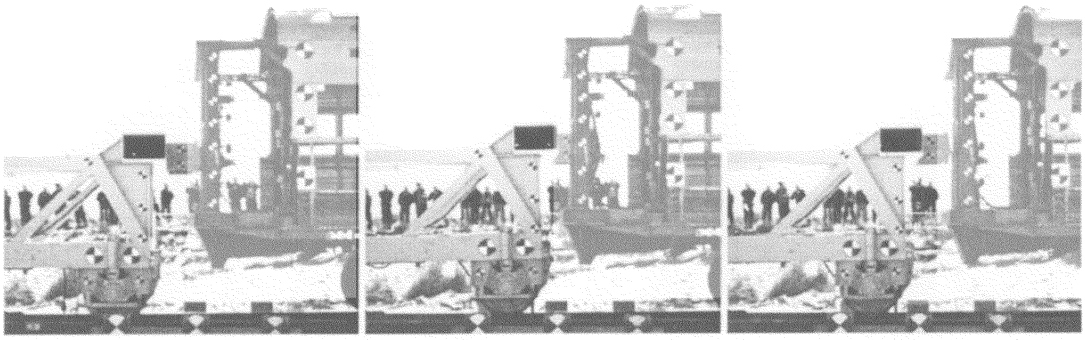


Figure 4. Photographs from the 2008 Full-Scale Dynamic Test of the SOA End Frame

c. Quasi-Static Testing of Collision and Corner Posts

A quasi-static collision post test was run to compare the quasi-static and the dynamic performance requirements proposed in the NPRM and to demonstrate the efficacy of the quasi-static test method. The NPRM proposed that the collision post absorb at least 135,000 foot-pounds of energy in no more than 10 inches of longitudinal, permanent deformation. Load was applied with the same fixture for the dynamic test. This fixture had a diameter of 48 inches and a width of 36 inches. The fixture was made of a thick, stiff material and reinforced so that it did not deform or absorb energy. Longitudinal string potentiometers at several locations recorded the deformation of the post. Four load cells, connected in parallel, measured the load being applied into the post. The force and the displacement were cross-plotted and the integral was used to calculate the energy absorbed during the test.

The test car was coupled to a reaction car. As the load from the hydraulic ram was introduced to the car through the collision post, it was reacted through the couplers. The mode of deformation in the quasi-static collision post test was very similar to the mode of deformation seen in the dynamic collision post test. The collision post pulled down on the anti-telescoping beam. The post was loaded past 15 inches of deformation and did eventually fail completely in the middle. The collision post fractured as it separated from the buffer beam. After 11 inches of crush, the post had absorbed 110,000 foot-pounds of energy. Based on the unloading characteristic measured during the test, 11 inches of crush is approximately equal to 10 inches of permanent deformation. Since the collision post and end frame were supposed to absorb 135,000 foot-pounds of energy in 10 inches of permanent deformation, but only absorbed 110,000 foot-pounds of energy for that distance, the test article did not pass the test requirements.

Design details warranted a closer look in determining why the test was unsuccessful. The specimens taken at the location of the fracture revealed that an internal gusset on the post coincided with an exterior shelf tab. The gusset locations were within specification for these posts. However, there is some flexibility with the location of the gusset relative to the location to the shelf tab. In both the dynamic and quasi-static tests, the fracture occurred at the location of both the gusset and the shelf welds. The rigid gusset did not allow the post to oval as it deformed, causing the fracture at the back of the post.

Attention turned to conducting a test of the corner post. The NPRM proposed that the corner post absorb at least 120,000 foot-pounds of energy with no more than 10 inches of permanent, longitudinal deformation. The same fixture was used for this test as for the collision post testing. The fixture was centered on the corner post. In response to the results of the quasi-static test of the collision post, the shelf was redesigned so that the tab was removed and the depth of the shelf was decreased. This reduced the number of welds at the corner and back of the post. However, because the corner post was not designed with internal gussets, gusset design details did not need to be addressed.

In the quasi-static corner post test, the end frame deformed as expected and absorbed energy while deforming. The anti-telescoping beam was pulled down significantly and the shelf and bulkhead were deformed. The connection between the corner post and the buffer beam fractured, but the post did not separate completely. Also, the connection between the shelf and the post fractured, but the post itself did not fracture. The post and end frame absorbed 136,000 foot-pounds of energy in 11 inches of crush. After elastic recoil, 11 inches of crush is the equivalent of 10 inches of permanent deformation; thus, the test was successful.

The testing program demonstrated repeatable methods for assessing the energy-absorbing capability of end frame structures. These methods include both dynamic and quasi-static tests where energy absorption and permanent deformation are used as limiting criteria. The tests also show the improved crashworthiness of the SOA design.

d. Analysis

Analysis is a crucial part of conducting a full-scale test. Based on the results of the 2002 full-scale dynamic test in which a heavy steel coil impacted the corner post of an SOA end frame design, some fracture was expected in certain key end frame components during the 2008 tests. For this reason, a material failure model, based on the Bao-Wierzbicki fracture criterion, was implemented in the finite element model of the car end frame using ABAQUS/Explicit. The finite element model with material failure was used to assess the effect of fracture on the deformation behavior of car end structures during quasi-static loading and dynamic impact and, in particular, the ability of such structures to absorb energy.

The material failure model was implemented in ABAQUS/Explicit for use with shell elements. A series of preliminary calculations was first conducted to assess the effects of element type and mesh refinement on the deformation and fracture behavior of structures similar to those found on cab car and MU locomotive end frames, and to demonstrate that the Bao-Wierzbicki failure model can be effectively applied using shell elements.

Model parameters were validated through comparison to the results of the 2002 testing. Material strength and failure parameters were derived from test data for A710 steel. The model was then used to simulate the three full-scale tests that were conducted during 2008 as part of the FRA program—dynamic impact testing of a collision post, and quasi-static load testing of a collision post and a corner post. Analysis of the results of the two collision post tests revealed the need for revisions to both the design of some key end frame components and to key material failure parameters. Using the revised model, pre-test predictions for the outcome of the corner post test were found to be in very good agreement with the actual test results.

Overall, the results of the tests in comparison with their pretest analyses show that, at this time, actual testing is necessary to demonstrate performance. However, as modeling methods improve and are shown to predict failure and energy absorption more accurately, there is the potential that use of analysis alone will in the future be acceptable for demonstrating crashworthiness performance.

F. Approaches for Specifying Large Deformation Requirements

As discussed above, APTA's initial "severe deformation" standard for corner and collision posts, published in 1999, did not contain specific methodologies or criteria for demonstrating compliance with the standard. Consequently, the dynamic tests performed by FRA and the Volpe Center, static tests performed by members of the rail industry, and analyses conducted by the Volpe Center and its contractors all helped to develop the base of information needed to identify the types of analyses and test methodologies to use. Further, evaluation of the test data, with the analyses providing a supporting framework, allowed development of appropriate criteria to demonstrate compliance.

The principal criteria developed involve energy absorption through end frame deformation and the maximum amount of that deformation. As shown by FRA and industry testing, energy can be imparted to conventional flat-nosed cab cars and MU locomotives either dynamically or quasi-statically. As shown by Volpe Center analyses, currently available engineering tools can be used to predict the results of such tests. Given the complexity of such analyses, and commensurate uncertainties, there is a benefit to maintaining dynamic testing as an alternative for evaluating compliance with any "severe deformation" standard.

There are tradeoffs between quasi-static and dynamic testing of cab car and MU locomotive end frames. Both sets of tests prescribe a minimum amount of energy for end frame deformation. However, the manner in which the energy is applied is different, and the setup of the two types of tests is different. As demonstrated by the tests conducted by Bombardier, quasi-static tests can be conducted by rail equipment manufacturers at their own facilities. Dynamic tests require a segment of railroad track with appropriate wayside facilities; there are few such test tracks available. Nevertheless, dynamic tests do not require detailed knowledge of the car structure to be tested, and allow for a wide range of structural designs. Quasi-static tests require intimate knowledge of the structure being tested, to assure appropriate support and loading conditions, and development of quasi-static test protocols requires assumptions about the layout of the structure, confining structural designs. In addition, dynamic tests more closely approximate accident conditions than quasi-static tests do.

In August 2005, APTA's PRESS C&S Subcommittee accepted a revised "severe deformation" standard for collision and corner posts. The standard includes requirements for minimum energy absorption and maximum deflection. The form of the standard is largely based on the testing done by Bombardier, and therefore is quasi-static. The standard eliminates a deficiency of the 1999 standard by specifying test criteria to objectively measure "severe deformation." The standard can be readily applied to conventional flat-nosed cab cars and MU locomotives but is more difficult to apply to shaped-nosed cab cars and MU locomotives or those with CEM designs, or both.

In addition, APTA as well as several equipment manufacturers have expressed an interest in maintaining the presence of a stairwell on the side of the cab car or MU locomotive opposite from where the locomotive engineer is situated. This feature enables multi-level boarding from both low and higher platforms. As such, FRA and the APTA PRESS C&S Subcommittee worked together to develop language associated with providing a safety equivalent to the requirements stipulated for cab car and MU locomotive corner posts in terms of energy absorption and end frame deformation. The Subcommittee agreed that for this arrangement there is sufficient protection afforded by the presence of two corner posts (an end corner post ahead of the stepwell and an internal corner post behind the stepwell) that are situated in front of the occupied space. The load requirements stipulated for such posts differ in that the longitudinal requirements are not equal to the transverse requirements.

This in effect changes the shape of these posts so that they are not equal in both width and height. For the end corner post ahead of the stepwell, the longitudinal loading requirements are smaller than the transverse ones. The opposite is true for the corner post behind the stepwell. It was agreed to allow for the combined contribution of both sets of corner posts, together, to provide an equivalent level of protection to that required for corner posts in standard cab car and MU locomotive configurations. *See* the discussion in the Section-by-Section Analysis on the structural requirements for cab cars and MU locomotives with a stairwell located on the side of the equipment opposite from where the locomotive engineer controls the train.

G. Crash Energy Management and the Design of Front End Frame Structures of Cab Cars and MU Locomotives

Research has shown that passenger rail equipment crashworthiness in train-to-train collisions can be significantly increased if the equipment structure is engineered to crush in a controlled manner. One manner of doing so is to design sacrificial crush zones into unoccupied locations in the equipment. These zones are designed to crush gracefully, with a lower initial force and increased average force. With such crush zones, energy absorption is shared by multiple cars during the collision, consequently helping to preserve the integrity of the occupied areas. While developed principally to protect occupants in train-to-train collisions, such crush zones can also potentially significantly increase crashworthiness in highway-rail grade-crossing collisions.[9]

The approach of including crush zones in passenger rail equipment is termed CEM, and it extends from current, conventional practice. Current practice for passenger equipment operated at speeds not exceeding 125 mph (*i.e.,* Tier I passenger equipment under part 238) requires that the equipment be able to support large loads without permanent deformation or failure, but does not specifically address how the equipment behaves when it crushes. CEM prescribes that car structures crush in a controlled manner when overloaded and absorb collision energy. In fact, for passenger equipment operating at speeds exceeding 125 mph but not exceeding 150 mph (*i.e.,* Tier II passenger equipment under part 238), the equipment must be designed with a CEM system to dissipate kinetic energy during a collision, *see* § 238.403, and Amtrak's Acela Express trainsets were designed with a CEM system complying with this requirement.

FRA notes that Metrolink is in the process of procuring a new fleet of cars utilizing CEM technology. As part of its response to the Glendale, CA train incident on January 26, 2005, Metrolink determined that CEM design specifications should be included in this planned procurement, and, in coordination with APTA, approached FRA and FTA to draft such specifications. In turn, FRA and FTA formed the ad hoc Crash Energy Management Working Group in May 2005. This working group included government engineers and participants from the rail industry, including passenger railroads, suppliers, labor organizations, and industry consultants, many of whom also participated in the Crashworthiness/Glazing Task Force. The working group developed a detailed technical specification for crush zones in passenger cars for Metrolink to include in its procurement specification, as well as for other passenger railroads to include in future procurements of their own. Metrolink released its specification as part of an invitation for bid, and then awarded the contract to manufacture the equipment to Rotem, a division of Hyundai, now Hyundai Rotem Company (Rotem).

Rotem has developed a shaped-nose, CEM design for new Metrolink cab cars. Because of the shaped-nose, it is more difficult to engineer structural members identifiable as full-height collision posts and corner posts that extend from the underframe to the cantrail or roofline at the front end, as specified in the current APTA standard. Consequently, to meet the APTA standard, Rotem has to locate the collision and corner posts inboard of the crush zone, rather than place them at the extreme front end of the cab car. Further, as currently written, the APTA quasi-static standard does not expressly take into account the energy-absorption capability of the crush zone, even if the crush zone would likely be engaged in a grade-crossing impact. Although the APTA standard acknowledges the use of shaped-nose and CEM designs, there remains uncertainty in the standard associated with demonstration of compliance by such designs. (The APTA standard does provide that on cars with CEM designs, compliance may be demonstrated either through analysis or testing as agreed to by the vehicle builder and purchaser, but no test methodology or criteria are provided.)

Dynamic performance criteria place fewer constraints on the layout of the cab car or MU locomotive end structure and allow the energy-absorption capability of the crush zone(s) to be expressly taken into account in the design of the collision and corner post structures. As noted, this final rule allows for the application of dynamic performance requirements for collision and corner post structures of cab cars and MU locomotives. FRA believes that the results of the crashworthiness research discussed above provide strong support for including dynamic performance requirements as alternatives to the quasi-static requirements for collision and post requirements in this rule, and that it is particularly necessary to address what FRA believes will be a growing number of cab cars and MU locomotives utilizing CEM designs.

H. European Standard EN 15227 FCD, Crashworthiness Requirements for Railway Vehicle Bodies

In the NPRM, FRA discussed that then-preliminary European standard prEN 15227 FCD, Crashworthiness Requirements for Railway Vehicle Bodies, included four collision scenarios. This standard is no longer preliminary and is consequently referred to throughout this document as EN 15227, without the preliminary "pr" designation. Collision Scenario 3 of the European standard involves a "train unit front end impact with a large road vehicle on a level crossing." The standard requires commuter and intercity trains to be able to sustain an impact with a deformable object weighing 33 kips (15,000 kg) at a speed up to 68 mph (110 kph). Calibration tests on components and numerical simulations of the scenario are recommended for showing compliance.

FRA has noted key differences between the European standard and the dynamic testing collision scenarios that FRA proposed for both collision posts and corner posts, below, including the amount of energy involved and the character of the object. Assuming that the mass of the train is more than about 25 times as great as the mass of the object (in that the mass of the train roughly corresponds to the mass of a commuter train made up of a cab car, four coaches, and a locomotive; or made up of six MU locomotives), then the total energy dissipated in an EN 15227 Collision Scenario 3-impact is 5.0 million foot-pounds. The total energy absorbed in the collision scenarios included in this final rule are 135,000

[9] Tyrell, D.C., Perlman, A.B., "Evaluation of Rail Passenger Equipment Crashworthiness Strategies," Transportation Research Record 1825, pp. 8–14, National Academy Press, 2003. This document is available on the Volpe Center's Web site at: *http://www.volpe.dot.gov/sdd/docs/2003/rail_cw_2003_12.pdf.*

foot-pounds for the collision post and 120,000 foot-pounds for the corner post. However, in the European standard, the impacted object is deformable and potentially absorbs a significant amount of the available energy; in the collision scenarios included in this final rule, the object is rigid, and virtually all of the energy is absorbed by the cab car or MU locomotive.

A recent paper describes the performance of the SOA end frame in both the FRA and the EN grade-crossing collision scenarios.[10] Specifically, testing and analysis of the SOA end frame's performance in appendix F's collision post test scenario was compared to an analysis of the SOA end frame's performance in EN15227's Collision Scenario 3.

Table 1

Table 1 summarizes a few key crashworthiness parameters and results from the testing and analysis conducted. Application of the FRA scenario involved only one car; whereas the EN 15227 scenario involved a complete consist or train unit. The difference in weight of one car, 80 kips, versus that of a complete consist, 767 kips, was an order of magnitude. In the FRA scenario, the 14-kip impact object was tested striking the car at 19 mph, resulting in 170 ft-kips of initial kinetic energy. Whereas in the EN 15227 scenario, the 767-kip consist was analyzed striking the deformable lorry at 53 mph, resulting in 72,000 ft-kips of initial kinetic energy. The difference in the amount of initial kinetic energy involved between the two scenarios was two orders of magnitude. Similarly, the impacting objects were quite different. As noted earlier, the FRA scenario provides for a rigid impact object; whereas in the EN 15227 scenario, the impact object is deformable. In the FRA scenario, this resulted in the energy being mostly absorbed by the impacted collision post, with virtually no energy absorbed by the impact object. Whereas in the EN 15227 scenario, both the first car and the impact object absorbed large amounts of energy, with very little energy absorbed by one collision post.

TABLE 1—COMPARISON OF SOA END FRAME PERFORMANCE APPLYING APPENDIX F COLLISION POST STANDARD AND EN 15227 COLLISION SCENARIO 3

Parameter	Application of Appendix F collision post standard	Application of EN 15227 collision scenario 3 specification
Type of Train	Single car: 80 kips	Complete train unit: 767 kips.
Impact Object	Rigid cart: 14 kips	Deformable lorry: 33 kips.
Impact Speed	19 mph (cart)	53 mph (consist).
Initial Kinetic Energy	170 ft-kips	72,000 ft-kips.
Energy Absorbed	End frame: 138 ft-kips; Cart: ~0; Collision post: 105 ft-kips.	Leading car: 1370 ft-kips; Lorry: 950 ft-kips; Collision post: 89 ft-kips.
Pass/Fail Criteria	Intrusion <= 10 in., no separation	Preserve survival spaces, mean deceleration <7.5g.

As the table shows in summary form, the key parameters of these two scenarios are very different, though they are both grade-crossing collision scenarios involving rail vehicles with impact objects. Additionally, comparing the complexity of the analysis required for each scenario, application of the FRA scenario is simpler to analyze. In analyzing the FRA scenario, fewer vehicles are involved, initial kinetic energy is lower, deformations are less, and the deformations that result are virtually all in the car and not the impact object.

Overall, FRA believes that the following conclusions can be drawn about the standards in appendix F and those specified in EN 15227's Collision Scenario 3. The appendix F standards concentrate the load on a single post, above the underframe; can be applied to both CEM and non-CEM equipment; and can potentially be used to demonstrate compliance either through analysis or testing. The EN 15227 grade-crossing collision specification distributes the load across the entire end structure; imparts a significant amount of load in the underframe and roof structure; assumes the use of CEM equipment; and can be used to demonstrate compliance through analysis only. Moreover, FRA believes that its dynamic collision scenario is not only easier to analyze, but easier to test than the EN 15227 scenario and imparts more energy to the impacted post than in the EN 15227 scenario.

IV. Discussion of Specific Comments and Conclusions

As noted above, FRA received written comments on the NPRM from representatives of government; various organizations, including railroad labor; railroads; railroad car manufacturers; railroad engineering firms; and as well as private citizens. The comments can principally be divided into two groups: comments of a technical nature affecting the substance of the requirements proposed, and comments as to the preemptive effect of the requirements proposed. FRA found that these groupings serve the organization of this final rule, even though some comments do not fit neatly into either grouping. Please note that certain comments are not discussed in either of these two groupings; instead, they are discussed directly in the Section-by-Section Analysis or in the Regulatory Impact and Notices portion of this final rule.

A. Technical Comments

This section contains the discussion of technical comments on the NPRM, as well as comments closely associated with these technical comments. FRA has endeavored to group the comments together by issue to the extent possible, rather than by commenter. Please note that the order in which the comments are discussed, whether by issue or by commenter, is not intended to reflect the significance of the comment raised or the standing of the commenter.

Please also note that following the submission of these written comments, FRA convened the Task Force and Working Group to consider and discuss the comments and to help achieve consensus on recommendations for this final rule. As a result, certain of these comments have been superseded by changes made in the rule text from the NPRM to this final rule, and they should not necessarily be understood to reflect the positions of the commenters with

[10] Llana, P., "Structural Crashworthiness Standards Comparison: Grade-Crossing Collision Scenarios," American Society of Mechanical Engineers, Paper No. RTDF2009–18030, October, 2009. This document is available on the Volpe Center's Web site at: *http://www.volpe.dot.gov/sdd/docs/2009/09-18030.pdf.*

respect to the requirements of the final rule. Nevertheless, FRA is setting out all of the comments received and is responding to each of them here so that FRA's positions are clearly understood.

1. Crash Energy Management

Caltrans raised concern with FRA's mention of CEM designs in the NPRM, believing that no rail equipment that features a CEM design has been built, that including CEM in the preamble implied that the NPRM included a CEM requirement, and that the implication that CEM designs may provide for a higher level of safety would expose those railroads not employing CEM designs to litigation for not selecting the "safer" design as identified by FRA.

FRA notes that Amtrak's Acela Express trainsets use CEM, and CEM is used in European and other vehicles. FRA does believe that, all other things being equal, CEM designs are superior in crashworthiness to conventional designs. Yet, as FRA stated in the preamble to the NPRM, FRA's recognition that fuller application of CEM technologies to cab cars and MU locomotives could enhance their safety would not nullify the preemptive effect of the standards arising from the rulemaking. FRA continually strives to enhance railroad safety, has an active research program focused on doing so, and sets safety standards that it believes are necessary and appropriate for the time that they are issued with a view to amending those standards as circumstances change. FRA has imposed, and will continue to impose, the requirements that it deems necessary for the safe operation of cab cars and MU locomotives in all of the configurations in which they will be operated. FRA is not requiring CEM in this final rule.

RVB also raised concerns with the NPRM for its application to CEM designs. RVB asked why the "static strength" requirements had to be met if the CEM requirements for energy absorption are met. RVB stated that the required amount of energy can be absorbed by CEM structures using considerably smaller collision and corner posts.

FRA understands that there are potential alternative arrangements using CEM that may place the end frame structure outboard of the crush elements or behind the crush elements. If the end frame is situated outboard of the crush elements (or crash energy absorbers), then the end frame will likely serve as the means for assuring planar introduction of the load into the crush elements, allowing them to react in a progressive, controlled collapse. To accomplish this energy transfer to the crush elements, the end frame must be very rigid, which can make meeting the severe deformation requirements for the end frame more difficult to achieve. Nonetheless, as long as the system of structural and CEM elements protecting the occupied volume performs well under the dynamic performance requirements provided in appendix F of this final rule, FRA is confident that sufficient protection is provided to passengers and crewmembers alike. For end frame members inboard of the crush elements, it is likely that they will serve as the reaction points for the crush elements. As in the case of end frame members outboard of the crush elements, to support the load introduced by the crush elements the end frame may have to be very rigid. As a result, meeting the severe deformation requirements for the end frame may also be more difficult to achieve. Yet, again, as long as the system of structural and CEM elements protecting the occupied volume performs well under the dynamic performance requirements provided in appendix F of this final rule, FRA is confident that the system provides sufficient protection for passengers and crewmembers.

Additionally, FRA would like to make clear that the energy-absorption requirements in this rulemaking should not be confused with energy absorption as part of a CEM approach. While inclusion of energy-absorption requirements is consistent with FRA's approach to incrementally build on traditional crashworthiness requirements, and whereas CEM is an advanced crashworthiness approach, FRA did not intend that the energy-absorption requirements in this rulemaking be considered part of a CEM approach. Instead, FRA's inclusion of energy-absorption requirements in this rulemaking is intended to address traditional cab car and MU locomotive designs that have very strong underframes with relatively weaker superstructures, for which it is vitally important to provide protection to crewmembers and passengers in the event that the superstructure is impacted. FRA is incorporating mature technology and design practice to extend from linear-elastic requirements to elastic-plastic requirements together with descriptions of allowable deformations without complete failure of the system.

RVB additionally commented that in the NPRM the collision and corner posts must be designed for yield strength in the case where the posts are behind the CEM structure and used as support for the CEM structure. RVB believed that this proposed requirement conflicted with the allowance in the NPRM for the posts to resist loads up to their ultimate strength. RVB believed that, by requiring yield strength in such case, the ultimate strength of the post would be much greater than the amount specified.

FRA understands the complexities introduced by using a CEM design that behaves significantly differently than a conventional cab car or an MU locomotive because of its crush zone(s). This is one of the reasons FRA proposed the option to test such designs dynamically, and one of the reasons why FRA has included alternative, dynamic performance requirements in this final rule. FRA has modified the dynamic performance requirements in the final rule from those proposed in the NPRM, and FRA believes that these modifications will help to address concerns with applying the requirements to CEM designs.

RVB also commented that since, by definition, a CEM system requires a structure that facilitates controlled collapse of the crush zone(s), the proposal would result in a much higher load imparted to the underframe than by the 800,000-pound compression load requirement, exceeding the yield strength of the structure. RVB claimed that this was another area of significant over-design that was unaddressed in the NPRM. RVB added that by disallowing correction of static strength requirements as they are taken up by CEM systems, a vehicle would be heavier than it needs to be, use more energy to operate, and exert more force on wheels and rails that would increase maintenance costs for equipment and track.

FRA believes that the commenter is incorrect in its assertions. FRA agrees that for CEM designs the overall average load that the structure must resist may exceed 800,000 pounds. However, this load is typically spread over a significantly larger area than just the line of draft of the vehicle, as specified for vehicles not utilizing CEM designs. Because the capacity of a vehicle incorporating a CEM design to resist compression loads elastically may be taken into account, FRA does not believe that this will result in over-design of the vehicle. In addition, FRA wishes to dispel the belief that a heavier vehicle would be necessary to meet the requirements proposed in the NPRM and those contained in this final rule. Crashworthiness features from clean-sheet designs can occupy the same space as other material and not weigh in excess of the structure(s) being replaced. There is considerable leeway in

designing such systems so that no additional weight is required. Moreover, the vehicle body structure itself typically accounts for only between 25 to 35 percent of the final weight of a vehicle, which minimizes the significance of any weight added to the vehicle to comply with the requirements of this final rule.

RVB further commented that one means of recognizing a CEM vehicle addressing the static end strength requirements would be for this part 238 to specify the minimum amount of energy that must be absorbed by each end of a vehicle in a train in a specified collision scenario. According to RVB, dynamic testing of the entire crush zone or testing of the critical crush zone elements, in conjunction with suitable analysis, would be required to confirm compliance, and acceptance criteria would include verification that (i) the required minimum energy has been absorbed, (ii) the occupied volume is not compromised, and (iii) climbing/telescoping does not occur under the collision scenario. For a CEM vehicle, RVB believed that this should be in place of the specific strength requirements for the collision and corner posts, and allow evaluation of the car ends as a system.

FRA recognizes the possibilities raised by the commenter. FRA intends to work with the APTA PRESS C&S Subcommittee to consolidate knowledge gained from the Metrolink CEM design effort to support development of such criteria. Inclusion of such criteria in this part 238 would be the subject of a separate rulemaking activity, however, and such criteria are not included in this final rule.

RVB additionally commented that the NPRM suggested that a manufacturer with a CEM system may choose to conduct two dynamic tests instead of conducting quasi-static tests on the individual components. RVB believed the practical situation is that the structure needed to support the CEM system would almost certainly meet the quasi-static requirements proposed in the NPRM. According to RVB, if a dynamic test were to be conducted for a CEM system, it would seem to serve the public better to conduct a dynamic test that verifies the performance of the entire CEM system, not just for how it protects against a steel coil.

As noted above, FRA plans on working with the industry to address the issue of more comprehensive requirements for CEM systems. However, with regard to specific application of the requirements of this final rule, a dynamic test of a CEM structural system as contemplated by the commenter may not in itself demonstrate that the superstructure has the strength to protect against the collision scenarios addressed in this rulemaking. In such a dynamic test of a CEM structural system, the entire end structure of the vehicle would potentially absorb all of the collision load. Yet, this final rule specifically targets grade-crossing collision scenarios where only portions of the superstructure are loaded. It is therefore believed that analysis and component testing, not a full-scale test alone, would be necessary to verify the design of a complete CEM system.

In its comments, RVB stated that the NPRM introduced requirements that would make manufacturers design to the actual strength of some components rather than rely on the yield stress as a measure of strength. RVB believed that this approach is sensible, particularly as CEM systems are introduced, in that such systems rely on controlled (plastic) deformation and operation at the maximum strength (load) capacity of structural members in collisions. Nevertheless, RVB believed that there are still numerous transportation requirements that are based on yield strength and that these impose constraints on the design of CEM members that may not be sensible, including the anti-climbing arrangement and the collision and corner post load cases for application points well above the underframe. According to RVB, FRA should consider moving to a true strength approach for all components as it stated is being done in much of the structural engineering community.

FRA notes that the commenter is focused on CEM systems for which the rule will probably not be applied for some time, and, if sooner, for systems FRA would have to review individually because such systems are sufficiently different from conventional designs. The requirements based on yield strength work well for non-CEM designs and facilitate their testing and use.

RVB also commented on FRA's statement in the NPRM that an energy-absorption requirement of 5 megajoules (MJ) will effectively prevent a cab car from being used in the lead position for Tier II equipment. RVB believed that this magnitude of energy absorption is feasible for cab cars.

FRA recognizes that advancements have been made in the ability of CEM systems to absorb energy. However, FRA continues to believe that for operational speeds in excess of 125 mph, as a rule of general applicability for our nation's railroads, no passengers should be allowed in the lead vehicle. Tier II passenger equipment can operate at speeds where the amount of energy required to be dissipated is too large for any vehicle design to survive a direct impact. Yet, with use of advanced system designs such as Positive Train Control (PTC) and CEM, the risk may potentially be minimized, and FRA would consider such cases individually in the context of the particular environment in which the equipment would operate.

In its comments on the NPRM, Caltrain stated that it would be far more appropriate for FRA to define a risk assessment methodology and prescriptions for addressing risk, letting designers provide alternatives such as CEM that deliver the required performance. Caltrain asked why a collision post inboard of a CEM system would be required to resist the same load as a collision post where there is no CEM system. Caltrain stated that presumably the load would be reduced as the CEM system performs its function, so that a substantially lighter collision post could be used to protect the passenger space, if the CEM system does not otherwise eliminate altogether the need for an interior collision post. Caltrain believed that if it is the intent of FRA to provide this level of flexibility, FRA should make this clear.

It is indeed FRA's intent to provide flexibility for vehicle designs with CEM features. In the final rule, FRA has added appendix F to part 238 to provide dynamic performance requirements as alternatives to both the collision and corner post quasi-static requirements. These dynamic performance requirements specify the performance of the end frame, were prepared with CEM designs in mind, and provide the designer leeway in choosing how that performance will be achieved. Nonetheless, FRA is not defining a risk assessment methodology and prescriptions for addressing risk, as an alternative to the collision and corner post quasi-static requirements. FRA believes that appendix F to part 238 provides the flexibility needed while assuring safety with more certainty than by performance of a risk assessment alone.

2. Dynamic Performance Requirements

FRA received a number of comments on its proposal to include dynamic performance requirements as an option to demonstrate compliance with the severe deformation requirements for collision and corner posts. In addition to inviting general comment on the proposal, FRA invited specific comment on the dynamic testing collision scenarios included in the proposed rule, including suggestions for any alternative

collision scenario or way to address possible future designs. FRA also invited specific comment whether this final rule should provide for all cab cars and MU locomotives to be tested dynamically to demonstrate compliance—whether or not they have a shaped-nosed design or a CEM design—and, if so, whether the collision scenarios included in the proposed rule are appropriate or whether another collision scenario would be.

CPUC supported FRA's intent to allow full-scale crash testing as an alternative to quasi-static testing to determine the crashworthiness of a prototype cab car or MU locomotive. APTA expressed support for FRA's approach to bring the Federal structural requirements for cab cars and MU locomotives up to current industry standards, including quasi-static tests with specific pass/fail requirements to demonstrate the ability of collision and corner posts to undergo severe deformations prior to failure. (APTA did advise that FRA make sure to reference in the preamble and section-by-section analysis APTA's most current industry standard, APTA SS–C&S–034–99, Rev. 2—not Rev. 1.) APTA appreciated FRA's concern that future vehicles utilizing CEM designs may require different treatment in Federal structural regulations than those with traditional flat-nosed designs. However, APTA had several concerns about including the proposed dynamic test option to accommodate such designs in the final rule. Noting that FRA has conducted an extensive full-scale collision test program to gain confidence in predictive, finite element analysis models and to support development of industry standards and rulemaking, APTA believed that FRA should not include a dynamic test scenario in the regulation unless and until similar testing supports it. APTA urged FRA to conduct appropriate testing and defer inclusion of dynamic testing in the regulation, even as an option, until those test results are available and validate the model.

As discussed in the "Technical Background" portion of this preamble, the testing described by APTA has been completed. In 2008 a full-scale dynamic test and two full-scale quasi-static tests were performed on the posts of an SOA end frame. These tests were designed to evaluate the dynamic and quasi-static methods for demonstrating energy absorption by—and graceful deformation of—the collision and corner posts. FRA believes that these tests support inclusion of the quasi-static and dynamic performance requirements of this final rule and address APTA's concerns.

APTA also mentioned that in the NPRM FRA stated that alternative, dynamic performance requirements are necessary because shaped-nose designs may not have readily identifiable, full-height corner and collision posts. APTA stated that, although FRA referred to the CRM and Rotem designs as potential examples of shaped-nose designs, both these designs include easily identifiable, full-height collision and corner posts behind the shaped nose. According to APTA, all evidence points to having collision and corner posts up to their full height as key design features to protect the engineer and passengers from front-end collisions.

FRA believes that the dynamic performance requirements in this final rule allow in particular for innovative designs that protect the occupied volume for its full height, even without what would be identified as full-height collision and corner posts. Whether or not the Rotem and CRM designs have full-height collision and corner post structures does not address FRA's underlying concern that the requirements in this final rule would otherwise be too restrictive without the alternative standards based on dynamic testing. For instance, the Stadler Rail equipment procured by the Capital Metropolitan Transportation Authority (CMTA) in Austin, TX, has no readily identifiable collision or corner post structures and yet has been found to behave well under analysis using the dynamic performance requirements in this final rule. By not allowing for such design innovation, potential use of alternative designs that could demonstrate compliance would be unnecessarily restricted.

Further, APTA questioned the safety implications of allowing such key features as full-height collision and corner posts to be optional. APTA stated that all the full-scale testing done by FRA, all the model-validation testing, and all the knowledge gained of how the end frame performs in collisions pertain to equipment with these design features. Until such safety implications are better understood, APTA believed the inclusion of alternative, dynamic performance requirements to be premature. Overall, APTA was not convinced that the proper foundation has been established for adding these dynamic performance requirements to the final rule, nor was APTA convinced that a single dynamic test demonstrates full equivalency for the range of protections provided by traditional full-height collision and corner posts.

As provided in the final rule, FRA makes clear that the occupied volume must be protected for its full height, utilizing either the quasi-static or the dynamic performance requirements. FRA expects that for traditional flat-nosed designs, the occupied volume will be protected for its full height by means of full-height collision and corner posts. Yet, for other designs, this protection of the occupied volume for its full height could be achieved by the performance of the entire end frame acting together to prevent intrusion and absorb energy. FRA believes that there are many potential ways of providing protection for the full height of the occupied volume, and this is reflected in the final rule.

In its comments on the NPRM, RVB stated that use in dynamic testing of a proxy object that is essentially a steel coil has a historical basis resulting from only a few accidents. RVB believed that the European approach of using a proxy vehicle would be more sensible and that it was not clear why FRA would resist adopting aspects of that approach that are in widespread use in Europe and other countries.

As discussed earlier, FRA notes that use of a proxy object that deforms (a deformable lorry, *e.g.*) adds undue complexity to the analysis of impacts. In addition, development of a proxy object with a repeatable crush response is, in itself, a daunting task, and the cost of developing such an object for each car manufacturer is not cost beneficial. Nevertheless, FRA has modified from the NPRM the manner in which the dynamic testing is conducted, to address related concerns about use of the proxy object. Further, FRA believes that the grade-crossing collision scenarios on which the dynamic testing is based challenges the end frame members in a way that can clearly demonstrate the ability of the end frame to resist significant impact loads.

RVB also commented that it was unclear why FRA decided to position the proxy object 19 inches from the car center in the collision post dynamic test. RVB stated that not all collision posts are located 19 inches from the centerline, and believed it would seem better to center the proxy object at the post itself.

FRA notes that the location of the collision posts is dictated by the need to place the posts at the one-third points laterally, along the end of the vehicle. With this in mind, positioning the proxy object 19 inches from the car center is intended to engage the end frame where the collision post structure will be. Nevertheless, because the alternative, dynamic performance requirements

more fully test the end frame as an integrated whole rather than as individual structural elements, and are not intended to test the strength of an individual element quasi-statically, it is not necessary to specify that the impact be centered on the collision post structure.

RVB further commented that the NPRM seemed to impose essentially the same energy-absorption requirements on both the collision and the corner posts in the alternative, dynamic performance requirements, and RVB was unclear if this was FRA's intent. RVB claimed that there is practically no difference between the 20 and 21 mph impact speeds that were proposed for the dynamic performance requirements, asserting that the target speeds used for actual testing would need to be higher than these values to ensure that the speeds are achieved.

FRA notes that in conducting a dynamic test there are alternative means of imparting impact energy into the front end of the cab car or MU locomotive. Speed is only one of the elements that make up impact energy. FRA has taken this fact into account in preparing the final rule and restated the dynamic performance requirements in terms of the amount of collision energy imparted. No specific test speeds are stated. Yet, the amount of collision energy is specific for each test of the two types of post structures, and each amount of collision energy was carefully chosen based upon input from industry stakeholders. FRA makes clear that it is not necessary to impart higher levels of energy than specified in this final rule to assure that the requirements are met. Of course, these requirements are minimum standards and may be exceeded by the manufacturer.

Additionally, RVB commented that the top of the deformable anti-climber of the FRA CEM-design is approximately 24 inches above the top of the underframe. RVB believed that an impact with a circular proxy object centered 30 inches above the top of the underframe, as proposed in the NPRM, could result in a ramp and alter the trajectory of the object in an undesirable manner. As a result, RVB believed it unclear how much energy would actually be imparted as intended to the structural elements, and that it may not be prudent to conduct a dynamic test in this manner for such a design to demonstrate its compliance.

FRA notes that the FRA CEM-design is intended to act as a complete system so that even if a ramp were to form on the deformable anti-climber, the end frame structure would be able to resist intrusion by the proxy object into the occupied space of the vehicle. The deformable anti-climber can absorb a significant amount of energy prior to bottoming out even when loaded in an offset manner. Nevertheless, to minimize the potential for off-axis rotations, FRA has reconsidered use of the standing proxy object specified in the NPRM to be struck by a moving cab car or MU locomotive, and has specified instead use of a proxy object connected to a moving crash cart to strike a standing cab car or MU locomotive.

In its comments on the NPRM, Caltrain raised concern with the testing performed by FRA to validate the effectiveness of the proposed collision and corner post requirements. Caltrain stated that the 1998 NICTD grade-crossing accident in Portage, IN, was recreated with a 40,000-pound steel coil at an impact test speed of 14 mph. Caltrain stated that the test speed used to recreate this accident was far lower than in most grade-crossing accidents, and that the test did not actually compare the proposed design to one that was compliant with part 238. Caltrain believed that data from a higher-speed test, using equipment that is compliant with part 238, would be more useful in evaluating potential solutions.

As discussed earlier, the SOA design is compliant with part 238 and has been tested. Further, the test cited by the commenter was carefully designed to overload only the structure of interest, and was not intended to replicate the actual collision speed. Moreover, FRA emphasizes that in this rulemaking the agency is taking an incremental approach to improving safety by enhancing the current end frame design of cab cars and MU locomotives. As noted, FRA is separately exploring the application of CEM to provide protection against even higher speed events.

In its comments on the NPRM, Caltrans stated that any dynamic testing requirement, even as an option, should be founded in actual testing and validation of the variables and proposed design criteria. Caltrans mentioned that although FRA has conducted tests that simulate a collision with a highway vehicle carrying a roll of coiled steel, the actual tests as conducted had significantly lower impact speeds and greater allowable deformation requirements. Caltrans maintained that until a real-time crash test has been conducted and analyzed by FRA that uses identical testing variables, inclusion of a standard for dynamic testing of end frame designs is premature.

FRA notes that the energy involved in the earlier testing supporting the NPRM was in fact equivalent to that proposed in the NPRM. Nevertheless, additional dynamic testing has been performed in support of the requirements in this final rule. Specifically, as discussed in the "Technical Background" section, a dynamic test was successfully conducted on April 16, 2008, and the dynamic performance requirements in this final rule are based on the actual test conditions and amount of collision energy imparted.

Caltrans also commented that FRA needs to clarify whether full-height collision and corner post tests are required if the alternative, dynamic performance requirements are used, and if not, whether FRA has performed a structural analysis showing that safety may be maintained in the absence of full-height posts. Caltrans cited FRA's statement that dynamic testing is essential as an option for validating car designs that feature non-flat front ends. Yet, Caltrans believed that current car designs that feature non-flat front ends, CRM's diesel MU locomotive and Metrolink's new Rotem cab car, both feature full-height collision and corner posts.

FRA makes clear that the fact that testing collision and corner posts dynamically is provided as an alternative in the final rule does not mean that protecting the full height of the occupied volume is optional under such circumstances. For traditional end frame designs (*i.e.,* flat-nosed designs) tested dynamically, full-height collision and corner posts are certainly not optional. Yet, FRA believes that the rule must continue to allow flexibility for other design approaches that may use different shapes and structures to protect the full height of the occupied volume. For example, FRA notes that novel designs may effectively prevent intrusion into the occupied volume through application of the concept of deflection—to deflect objects away from the vehicle. For such design approaches, full-height collision and corner posts are not necessarily required, provided, of course, that the occupied volume is nonetheless protected for its full height. FRA has conducted analysis to show that safety can be maintained in the absence of full-height collision and corner posts. Manufacturers attempting to meet the requirements of this final rule must perform the detailed structural analyses to show that safety is maintained in the absence of these structures.

In its comments on the NPRM, Bombardier raised a number of concerns with the proposal to include an option for a dynamic method of demonstrating compliance with the proposed severe-

deformation requirements for collision and corner posts. Bombardier believed the proposal to be contrary to the recommendation of the Task Force in developing the NPRM. Bombardier stated that it supported the general industry consensus that such dynamic performance requirements should not be included as an option, contending that the proposed dynamic tests were impractical, had not been fully validated, did not adequately test a realistic production design end structure, raised safety concerns, and would be costly. FRA will address each comment in turn.

Bombardier stated that due to the significantly higher static load design requirements for collision posts (compared to corner posts), collision posts would be much more substantial in size and strength than corner posts. However, because the proposed dynamic test defined only a 1.0 mph difference between the impact speeds to test both collision and corner post structures, Bombardier believed this illustrated the sensitivity in the size of the post required to resist such a small increase in impact velocity. According to Bombardier, a 1.0 mph difference in test speeds would approach the accuracy achievable for a full-scale impact test, and, from a practical perspective, would create various technical and commercial problems, most likely require re-testing if the actual test speed were only marginally above or below the target speed. For instance, Bombardier claimed that if the actual impact speed during the test of a corner post were 1.0 mph above the target speed for corner posts (*i.e.,* at the impact speed required to qualify a collision post) there would be a high probability that the corner post would fail and a re-test of another production end frame would be required. Similarly, Bombardier maintained that if the post were tested at a speed slightly below the target value, it may not absorb the energy required in the proposed regulation and, again, a re-test would likely be required to verify compliance.

FRA notes that the dynamic performance requirements proposed in the NPRM were intended to be both practical and achievable, as illustrated by the fact that the proposed quasi-static requirements would have required the same levels of energy absorption. These levels of energy absorption were chosen after comparing the performance of the FRA-developed, SOA end frame with a production model tested by the commenter. Moreover, the commenter worked in conjunction with FRA and the Volpe Center to assess the degree of incremental improvement that is reasonably achievable for collision and corner posts, and a paper was published on this topic. (*See* "Review of Severe Deformation Recommended Practice Through Analyses—Comparison of Two Cab Car End Frame Designs," cited above.) There are various ways to achieve the impact speeds with the precision required for either the proposed collision post or corner post tests, and the speeds were intended to be minimum speeds that could be exceeded by the manufacturers (as FRA's requirements are safety minimums). Nonetheless, FRA has revised the dynamic performance requirements in this final rule to state the requirements in terms of collision energy rather than collision speed. Like the collision speeds proposed in the NPRM, the specified levels of collision energy may also be exceeded.

Bombardier also commented that, while FRA had conducted analysis to determine the severe deformation characteristics of a collision post, no dynamic testing had been conducted to verify the acceptability or practicality of the dynamic test proposed for collision posts. Bombardier stated that, while a dynamic test had been conducted on the SOA corner post, that test used a significantly different proxy object mass (40,000 lbs vs. 10,000 lbs) and different impact speed (14 mph vs. 21 mph) than that proposed in the NPRM. Bombardier maintained that, although FRA analysis showed these to be "equivalent" tests, the actual qualification test proposed in the NPRM had never been validated. Bombardier compared this situation to the proposed changes to the large-object impact test for forward-facing glazing, which the Task Force separately considered, stating that FRA predicted that a test based on energy using a different mass and impact speed would be equivalent to the current glazing requirements but that subsequent tests that were conducted at the request of industry to validate the proposed requirement confirmed that the proposed tests were not equivalent. Therefore, Bombardier contended that until FRA conducts and validates the proposed dynamic tests for both a collision post and a corner post on a production-model end frame, it would be premature to include such requirements in this part.

As discussed in the "Technical Background" section, FRA makes clear that the testing cited by the commenter was completed successfully on April 16, 2008, following submission of these comments. The collision post and the entire SOA end frame performed well under the impact conditions prescribed and maintained the requisite safe volume for the locomotive engineer. Equivalency of the testing has been validated.[11] With regard to glazing, FRA believes that a fuller discussion of glazing is necessary in a separate forum, including a discussion of the glazing testing cited by the commenter and the current glazing test requirements. Nevertheless, FRA does not believe that the agency is required to conduct such testing on a production design. FRA does have the responsibility to demonstrate that the rules to be imposed on the industry are achievable and do not impose undue economic costs. Yet, this can be accomplished in different ways, including engineering analysis, prototype testing, and analysis of information provided by the industry on its production designs. This process was followed in the development of the proposed performance standards supporting this final rule.

In addition, Bombardier commented that on several occasions industry members pointed out to FRA that, while the full-scale test of the SOA corner post design was valuable to validate specific design features and characteristics, the SOA design did not fully represent a production design. Bombardier stated that on a production-version end frame (flat-nosed), the corner post is set back from the collision post in the longitudinal direction by about 6 inches to accommodate car clearance during curve negotiation, and both the collision and corner posts are connected laterally by the lateral shelf and bulkhead. According to Bombardier, this arrangement would cause the proxy object to impact the structure between the collision and corner posts, rather than directly impact the corner post, in a dynamic test of a production-model corner post. Bombardier likewise believed that for a flat-nosed cab car, the proxy object would impact the structure between the collision and corner posts at 18 inches from the outside of the vehicle, instead of on the corner post (stating, *e.g.,* that the coil would contact the sheathing on a flat-nosed cab car about 4½; inches ahead of the corner post), and that this would be greater for a non-flat-nosed car. According to Bombardier, this would result in both the collision and corner posts sharing the impact load and that it would therefore be possible to design a structure with a weaker corner post than

[11] Priante, M., Llana, P., Jacobsen, K., Tyrell, D., Perlman, A.B., "A Dynamic Test of a Collision Post of a State-of-the-Art End Frame Design," American Society of Mechanical Engineers, Paper No. RTDF2008–74020, September 2008. This document is available on the Volpe Center's Web site at: *http://www.volpe.dot.gov/sdd/docs/2008/08-74020.pdf.*

would be required to meet the quasi-static requirements.

As FRA has noted, FRA intends that the dynamic performance requirements be applicable to end frame designs that may not have identifiable corner post or collision post structures. For such designs, it is expected that the end frame will act more as an integrated whole in resisting an impact load, rather than having one structural element to resist the load by itself. Nonetheless, the final rule directs that the impact loads be applied to the end frame at the corner post and collision post locations. FRA does note that use of a crash cart to impart these loads is not specifically required by this final rule (even though FRA generally assumes that a cart will be used for purposes of the discussion in this preamble and in the examples provided in the rule text). Use of a crash cart is intended to help achieve a more repeatable testing methodology and better focus the impact loads than through use of the proxy object proposed in the NPRM, but allowance is provided for variation in the test set-up so that a car builder may tailor a test in a way that is best suited for a particular design within the requirements specified.

Bombardier further commented that, as FRA noted in the NPRM, industry members had raised concerns regarding the safety of conducting full-scale, dynamic testing of collision and corner posts. While these members acknowledged that all testing, including that required for quasi-static testing, requires attention to safety, Bombardier believed that it is much easier to manage the safety of a quasi-static test, which is conducted in a controlled lab/shop environment, than the type of dynamic tests proposed in the NPRM. Noting that during the dynamic test of the SOA corner post one side of the vehicle completely lifted off the rail, Bombardier raised concern about the potential likelihood and consequence of a derailment occurring in a dynamic test of a production-design vehicle at a higher speed, especially one with a shaped-nose. Bombardier believed that there would be particular safety concern in conducting the proposed dynamic test because the 10,000-pound proxy object would be positioned between the rails directly in front of the test vehicle and fall directly in front of the vehicle. Bombardier therefore stated that it would be premature to include the proposed dynamic tests in a Federal regulation, until FRA conducts and validates the safety of these tests on a collision post and a corner post for both a flat-nosed and a shaped-nose, production-model end frame.

As discussed earlier, FRA has modified the alternative, dynamic performance requirements in this final rule so that the testing methodology is safer and more repeatable. Specifically, FRA has modified the testing methodology so that the proxy object is set in motion to strike a standing cab car or MU locomotive. The resultant speed of the cab car or MU locomotive from being struck by the object is expected to be approximately 3 mph. Even if a cart connected to the proxy object should derail during the test, the cart is much lighter than a cab car or MU locomotive, and would present a much lesser safety hazard than would a derailment of those heavier vehicles. FRA believes that this revised test methodology sufficiently addresses the safety concerns raised by the commenter.

Bombardier also commented that while the NPRM indicated that a dynamic test option is needed to address cars with shaped noses or CEM designs, or both, all of the analysis and testing that had been conducted had been directed to assure that flat-nosed cab end structures undergo "graceful," severe deformation and maximize the energy absorbed by the post structure before total failure of the top or bottom post connections occurs. Bombardier believed that utilizing a dynamic test to validate a shaped-nose design significantly deviates from the original intent of the severe-deformation requirements. According to Bombardier, shaped-nose designs would inherently be much stiffer than flat-nosed designs, and as a result would have a much greater tendency to deflect the proxy object rather than absorb the energy through severe structural deformation. Bombardier therefore maintained that the proposed dynamic test option would not be a measure of the severe-deformation performance of shaped-nose designs. Additionally, Bombardier stated that CEM designs would have well-defined, severe-deformation requirements that typically require significantly more energy absorption than that defined in the NPRM for collision and corner posts, and as such, requiring the proposed dynamic (severe-deformation) test option would be redundant. Consequently, Bombardier recommended that the proposed requirements for the dynamic test option be deleted and that the proposed quasi-static test requirements for the collision and corner posts be retained for only flat-nosed designs.

FRA notes that the goal of dynamic testing is preservation of a survivable space for the train crew and passengers. Flat-nosed designs must be able to absorb energy and deform gracefully because these designs are inherently required to interact with objects that threaten the superstructure of the car. Yet, FRA disagrees with not allowing the industry the alternative to use dynamic performance requirements. A dynamic test does not have to be conducted—it is provided as an alternative to demonstrate compliance. There are certain designs for which it would be difficult, if not impossible, to test quasi-statically, such as the Stadler Rail equipment procured by the CMTA. Moreover, for a quasi-static test in which the front end of the car is not flat, or the post is not centered on the specified impact point, applying a high force could cause the impactor shape to shift vertically or laterally, when all it should do is move longitudinally. The benefit of a dynamic test as an alternative is that the force would be applied quickly and the test could be conducted properly, even if the cart moved laterally or vertically and derailed.

Bombardier also commented that it did not agree with the justifications outlined in the NPRM for including alternative, dynamic performance requirements. Bombardier stated that there was significant discussion in the NPRM about CEM and European standard EN 15227, Crashworthiness Requirements for Railway Vehicle Bodies, and its four collision scenarios. Bombardier believed that extreme care must be taken when comparing such a European standard with the severe-deformation requirements proposed in the NPRM and in the current APTA standards. According to Bombardier, FRA must clarify that EN 15227 is a standard for the qualification of a CEM system, where a large quantity of energy is absorbed, and not a severe deformation standard for collision and corner posts where a very small amount of energy absorption is required. However, Bombardier did agree that the approach in the European standard should be taken into consideration at the time when CEM standards are developed for North American application.

FRA believes that it was appropriate in the NPRM to reference the European standard and its adoption of dynamic test standards. FRA did not intend to indicate that the European standard was comparable to the dynamic performance requirements proposed in the NPRM, and FRA did highlight several differences between them. As noted above, FRA has made a more technical comparison of the European deformable-lorry requirements and the dynamic performance requirements in this final rule. This effort involved

taking FRA's prototype end frame design and using finite element analysis to compare its performance with the European specification and the final rule's requirements. Significant differences were found between the rule's dynamic performance requirements and those described in the European standard, including: the safety of conducting such testing, the repeatability of the results obtained, the ease of analysis, and the focus on the performance of the superstructure of the cab car or MU locomotive. The FRA dynamic performance requirements entail lower amounts of collision energy designed to provide repeatable results under conditions that are readily analyzable with a clear means of assessing adequate performance. The same was not found to be true of the European standard.

In its comments on the NPRM, CRM raised concern with actual dynamic testing of collision and corner posts using curved-shaped equipment, believing that the curved shape can be addressed in a quasi-static test but that the results would likely differ with those from a dynamic test.

FRA notes that, although the manner of load application can vary, dynamic testing provides immediate feedback as to how the tested structure will perform in an actual collision. Quasi-static testing of a shaped structure has to simplify for how the load enters the structure and reacts; consequently, the test results may not be truly reflective of actual performance. For this reason, FRA believes that the alternative, dynamic performance requirements in this final rule are better applicable to non-traditionally-shaped cab cars and MU locomotives.

CRM also commented that the dynamic testing proposed for the corner post of an aerodynamically-shaped car would impart larger lateral and vertical loads on the corner post than on the collision post.

As FRA has noted, the dynamic performance requirements included in this final rule facilitate testing of end frame designs without readily identifiable collision or corner post structures. In this light, instead of focusing on whether an individual corner post or collision post structure is capable of resisting an applied load, the focus is more appropriately placed on the ability of the end frame structure as an integrated whole to withstand the impact. In fact, the end frame may be intentionally shaped to deflect a striking object, which would be an acceptable means of complying with the dynamic performance requirements.

Additionally, CRM raised concern about the repeatability of energy-absorbing testing, stating that it has found that physical properties, such as yield, can be 30-percent higher than the published minimum. CRM asked if FRA has experience in the repeatability of identical energy-absorption tests with substantially-varying material properties, noting that repeatability studies it had seen were for multiple test samples made with both the same heat and physical properties.

FRA recognizes that material variability is a concern. Manufacturers may need to request that specific material testing be conducted when ordering materials for constructing cab cars and MU locomotives in compliance with this rule. Nevertheless, differences in yield strength are not as important as differences in the elongation to failure of the material, because most of the performance of interest is associated with plastic deformations. FRA has conducted dynamic and quasi-static tests of nominally the same design with varied results in energy absorption. This experience has demonstrated the importance of validating analysis through testing. Small design details can have dramatic effects and should be considered carefully in highly loaded areas.

3. Alternative Corner Post Requirements for Designs With Stepwells

The BLET raised concern with the proposed corner post requirements for cab cars and MU locomotives utilizing low-level passenger boarding on the non-operating side of the cab end. The BLET believed that the proposed requirements for corner post resistance were significantly lower than those for the operating side. The BLET stated that it has consistently voiced the position that current crashworthiness protection for this equipment is so low that the only practical recourse a locomotive engineer has after realizing a collision is impending is to place the train's brakes in emergency and flee the operating cab, running through the car toward the rear. While the BLET did believe that the standards proposed in § 238.213(b) would mark a significant improvement for the engineer's immediate worksite, it believed that lesser, non-operating side requirements in § 238.213(c) would still create a Hobson's choice for a locomotive engineer in the seconds immediately preceding a collision. Claiming that there would be a much greater potential for the non-operating side of the car to deform in such a way as to provide insufficient survivability, the BLET stated that both sides of the equipment should be required to withstand the same level of force. The BLET added that it is noteworthy that the non-operating side of the equipment is typically located on the "railroad" side of the train and that, as a result, impacts on that side are more likely to involve railroad equipment, producing higher collision forces. Similarly, in a frontal raking collision between two trains made of up this equipment, the BLET believed that the two "weaker" corners would meet, with potentially catastrophic consequences for passengers and crewmembers alike. The BLET also stated that the Volpe Center had researched and tested stepwell configurations and determined that it was viable to design a stepwell that was capable of supporting the end/buffer beam so that the non-operating side of the cab could comply with proposed § 238.213(b).

FRA notes that, after a review and analysis of technical information, both FRA and APTA's PRESS C&S Subcommittee determined that the proposed alternative arrangement would provide a level of safety equivalent to that on locomotive engineer's side of the cab end. Moreover, the analysis did not show that an impact on the non-operating side of the cab end would be more likely to spread damage across the full width of the cab end as described by the commenter. Nevertheless, in light of the comments raised, FRA conducted a further review and analysis of the available technical information. That review and analysis reaffirmed FRA's determination that the engineer and other occupants would not be placed at greater risk as a result of the corner post arrangement on the non-operating side of the cab end. FRA has therefore decided to retain this provision in the final rule. However, the final rule contains an additional requirement that FRA review and approve plans for manufacturing cab cars and MU locomotives with this corner post design arrangement. Each plan must detail how the corner post requirements will be met, including what the acceptance criteria will be to evaluate compliance. FRA believes that this close oversight will help to alleviate concerns that the manufactured designs are in any way less safe for crewmembers and passengers to occupy.

Another commenter on the NPRM, Caltrans, expressed its support of the proposed requirement that car designs featuring low-level passenger boarding in an end vestibule opposite from the engineer's seating location have two corner posts on that non—operating side of the car. However, Caltrans stated that the rule must make clear that this requirement applies only to those cars

with a passenger loading stepwell in the same vestibule as the engineer's control location. Caltrans believed that this provision should not encompass its car design where the engineer is located on the second level of the car and the side door is on the opposite side on the lower level.

FRA agrees with the comment raised by Caltrans and makes clear that the provision does not apply to a design where the stepwell and engineer's cab are not in the very same vestibule.

APTA's comments on the NPRM expressed support for the proposal to allow vehicle designs with two corner posts on the non-engineer's side of the cab end. According to APTA, this proposal would allow vehicles to continue to have stepwells for low-platform boarding, which APTA noted is an operational necessity for many passenger railroads. APTA did raise concern that neither the preamble nor the proposed rule text specifically acknowledged that the corner post ahead of the stepwell be allowed to fail when applying the loads to the corner post behind the stepwell. APTA believed that allowing a structural member to fail as part of a test or analysis is an unusual concept for a Federal regulation and that it warrants clear discussion in the preamble.

FRA agrees that testing a post all the way through to complete failure has safety implications and should not be done without thorough analysis first. As noted, FRA has modified this provision to require FRA review and approval of a plan, including acceptance criteria, to evaluate compliance with these corner post requirements. FRA believes that this oversight will help to address the concern raised by the commenter.

4. Use of Testing and Analysis To Demonstrate Compliance

FRA requested specific comment on whether and under what circumstances analysis and scale model or fixture testing might be acceptable to demonstrate compliance with the alternative, dynamic performance requirements. A number of comments were received in response to this request, and in addressing them FRA discusses their application to both the quasi-static and the dynamic performance requirements, as appropriate.

Bombardier commented that the severe-deformation requirements proposed in the NPRM (for either the quasi-static or the dynamic performance requirements) would result in a significant, added cost for cab cars and MU locomotives, particularly as a percentage of the overall procurement cost for small orders. Bombardier contended that if these severe-deformation requirements were truly considered to be safety requirements, then it is imperative that they be required for all new equipment, regardless of the size of the order. Bombardier noted that since the proposed quasi-static requirements were also contained in an APTA standard (APTA SS–C&S–034–99, Rev. 2), the quasi-static requirements would not impose a greater cost burden on the industry than what it already accepts. However, Bombardier maintained that the actual cost to conduct dynamic testing, which would be expected to be done at a location offsite of the manufacturer's facility, would most likely be much greater than for quasi-static testing. Consequently, before any dynamic performance requirements are included in the regulation, Bombardier believed that a proper cost-benefit analysis would be needed and that it was not evident from the information in the public docket that a valid cost-benefit analysis had been conducted. Bombardier noted that the section-by-section analysis seemed to imply that verification of compliance with either the quasi-static or dynamic performance requirements would require an actual test, while the preamble did state that modern methods of analysis can accurately predict structural crush (severe deformation) and consequently can be used with confidence to develop structures that collapse in a controlled manner. Bombardier added that the proposed rule text was itself silent as to whether an actual test would be required or whether analysis could be used to verify compliance with the severe-deformation requirements. Bombardier therefore believed that FRA should clarify what would be required to demonstrate compliance with the severe-deformation requirements and should include the associated costs in the cost-benefit analysis.

FRA notes that it did ask the commenter and other members of the Task Force to provide FRA with estimated costs for each testing alternative for FRA to review. FRA did not receive this specific cost information. FRA agrees with Bombardier that the cost of meeting the quasi-static test requirements is likely not to add to the costs of manufacturing or purchasing new passenger equipment. However, FRA does not agree that the costs of dynamic testing would be greater than the costs of quasi-static testing. Based upon the testing program sponsored by FRA at the TTC in Pueblo, CO, the overall cost of conducting either quasi-static or dynamic testing should be comparable. But even more important, FRA believes that dynamic testing provides at least the same level of confidence in the safety of the equipment tested as through quasi-static testing, and a manufacturer or railroad could voluntarily choose to conduct dynamic testing. The voluntary act of a manufacturer or railroad would provide sufficient evidence that dynamic testing does not materially add to costs, and no specific benefit-cost analysis is needed to provide a voluntary alternative. As FRA has noted, FRA does agree that actual physical testing should be required and that large orders, as well as small orders alike, should undergo actual testing. Yet, as discussed elsewhere in this preamble, FRA does not believe that actual physical testing of a complete, production-design vehicle is required, and FRA recognizes in particular the potential cost of doing so for small car orders.

CRM also raised concerns as to the cost of demonstrating compliance with the regulation to manufacturers of small orders of cab cars or MU locomotives. CRM believed that consideration needs to be given to these manufacturers to protect them from undue financial and schedule hardships.

FRA has taken into account the costs of this final rule to manufacturers of small orders of cab cars or MU locomotives. As noted, FRA believes that for both large and small orders, the manufacturer must perform actual physical testing. However, FRA does not believe that actual physical testing of a complete, production-design vehicle is required. FRA recognizes in particular the potential cost of doing so for small order sizes. Compliance may be demonstrated by a combination of engineering analysis and physical testing on a smaller scale.

CRM further commented that destructive testing could be very expensive. CRM stated that its customers generally order in small quantities, often in the range of two to three cars. According to CRM, producing a 19.25-foot long section of the end of a car for destructive testing would represent a considerable, additional expenditure. CRM therefore requested that FRA clarify that the test sample need not be a large end section of the car, noting that as the NPRM is focused on the post structure and its attachments, the test sample should be limited to just that. CRM nonetheless estimated the costs of quasi-static testing to be approximately $250,000 for each design after a capital expenditure of $75,000 for test fixtures.

FRA agrees that the entire car need not be tested. Bombardier has conducted quasi-static end frame tests where the end of the car was tested only to the body bolster; this would be appropriate. (*See* "Review of Severe Deformation Recommended Practice Through Analyses—Comparison of Two Cab Car End Frame Designs," cited above.) There are a variety of ways of testing the end frame structure that would not require production of a test specimen of the 19.25-foot size described. Current testing of end frames (both dynamically as well as a quasi-statically) is intended to ensure that the superstructure with some supporting structure can deform gracefully while not allowing permanent deformations in the car body structure too much of a distance behind the connection points. As a result, considerably smaller test articles may be used, provided of course that both the collision post and corner post structures are subject to actual testing. In addition, FRA believes that the costs estimated by CRM for testing are too high, absent more specific cost information from the commenter, and that any expenditure for test fixtures should be a one-time cost that could be spread over many orders.

In addition, CRM proposed that analysis be allowed in lieu of actual testing for orders of less than 50 cars, provided that the analysis methods have been validated by actual testing. In its comments on the NPRM, Caltrain also requested clarification whether actual testing is required to demonstrate compliance, or whether analysis would be acceptable. Caltrain believed that it had been decided that for purposes of complying with the APTA collision and corner posts standards on which this rulemaking is based, current computer finite element modeling methods were adequate to verify design performance, in part due to the cost associated with destructive testing.

FRA believes that there is no substitute for conducting actual testing, as we have seen from the quasi-static test of the collision post that did not meet the energy-absorbing requirement due to the location of a rigid gusset, even though the modeling showed that it would.[12] In particular, because there are always some uncertainties associated with new designs and materials, some degree of testing is required whether for material characterization or sub-assembly testing to confirm that the modes of deformation and failure are modeled appropriately. FRA recognizes that after several designs have been tested and approved, perhaps future designs that are very similar to the older designs could be accepted through analysis only. The individual car builder would still have to demonstrate good experience conducting large deformation analyses, including material failure.

APTA stated that FRA asked for specific comment on whether and under what circumstances analysis and scale model or fixture testing might be acceptable to demonstrate compliance with the dynamic performance requirements. APTA stated that this was a key question, noting that the rule text proposed that compliance "be demonstrated." APTA believed that either a test or analysis could apparently fulfill the requirement and that there was no indication or guidance of when analysis would suffice in lieu of testing. APTA recommended that, until the industry, in partnership with FRA, can reasonably describe under what circumstances a test must be done and when analysis alone is sufficient, the option for dynamic testing should not be included.

FRA notes that due to uncertainty associated with progression of material failure, some level of actual physical testing is necessary. But this uncertainty is not limited to demonstrating compliance with the dynamic performance requirements; it would also apply for demonstrating compliance with the quasi-static requirements. In this preamble to the final rule, FRA is providing additional guidance in response to similar comments received on the need for and extent of actual physical testing. In general, FRA believes that a combination of actual physical testing and analysis is appropriate to demonstrate compliance with the requirements in this final rule, and FRA encourages manufacturers to approach FRA should they have any questions or concerns about demonstrating the compliance of cab cars or MU locomotives they manufacture with this final rule's requirements.

5. Submission of Test Plans for FRA Review

In part because FRA recognized that questions may arise in applying the proposed dynamic performance requirements in situations not clearly anticipated today, FRA requested comment on whether this final rule should include either an option or a requirement that the test methodology be submitted for FRA review prior to the conduct of destructive testing.

APTA commented that it believed such pre-approval to be unwise. APTA stated that delay awaiting FRA approval would impact schedules, extend the already extensive procurement process, and expose car builders to liquidated damages should FRA review be delayed. Instead, if FRA were to impose a requirement to submit a test plan, APTA recommended that FRA include a presumption that the plan is approved by some reasonable time after submittal to FRA, to avoid increasing the commercial risk to car builders. Caltrans' comments raised similar concern with the inclusion of a requirement that test plans be submitted to FRA for approval, asserting a great possibility of project delay while the railroad or its contract equipment supplier is awaiting FRA's response. In addition, CRM commented that, while its involvement with Volpe Center staff in the analysis and testing of its equipment has been very informative and helpful, it did not recommend mandating the submittal of test plans. CRM believed that doing so would require FRA to budget for a staff to support this effort in a timely manner so that delivery schedules remain unaffected. Nonetheless, CRM recommended that FRA publish guidelines for preparing analyses and conducting tests so that manufacturers know to follow an approach with which FRA agrees.

In response to these comments, FRA makes clear that it welcomes the submittal of test plans for its review. For instance, if a manufacturer were to conduct a test without using appropriate instrumentation or without applying a load at the appropriate location, a new test would likely be costly and would likely have been avoided had a test plan been submitted to FRA for review. Nevertheless, FRA agrees with the commenters and, in general, is not imposing new submittal requirements. As noted, however, FRA is requiring the submission and approval of plans to ensure compliance with the alternative corner post requirements for the non-engineer's side of the cab end of vehicles with stepwells for low-level platform boarding. *See* § 238.213(c) and appendix F. FRA does encourage submission of other plans for the safety of new designs that are significantly different than conventional equipment, and FRA believes that manufacturers would benefit by approaching FRA before such designs are complete to prevent the need for redesign or retrofit. In this regard, FRA notes that § 238.111

[12] Muhlanger, M., Llana, P., Tyrell, D., "Dynamic and Quasi-Static Grade Crossing Collision Tests," American Society of Mechanical Engineers, Paper No. JRC2009–63035, March 2009. This document is available on the Volpe Center's Web site at: *http://www.volpe.dot.gov/sdd/docs/2009/09-63035.pdf.*

(Pre-revenue service acceptance testing plan) contains specific requirements for the preparation and submittal of pre-revenue service acceptance testing plans for passenger equipment that has not been used in revenue service in the United States. Pursuant to § 238.111(b)(2), such plans must be submitted to FRA at least 30 days prior to conducting the testing, but FRA approval is required for Tier II passenger equipment only. Of course, it is within the purview of FRA to review the crashworthiness of all equipment prior to its placement in service, and to assess the compliance of all equipment with the requirements of the Federal railroad safety laws and regulations.

6. Whether the Requirements Affect Vehicle Weight

AWA commented that, while it stands firmly for rail safety, it was concerned with any policies or institutions that have the effect of limiting the development and operation of passenger trains and pushing existing or potential rail passengers onto already crowded highways and putting more people at greater risk. As stated in its comments, AWA believed the NPRM to be the latest in a series of FRA rules that attempt to enforce safety by adding yet more heavy metal to already massive passenger trains. AWA raised concern with increasing the weight of America's "uniquely bulky" passenger rail fleet compared with the "extremely safe, lighter" trains of Switzerland, Germany, Sweden, or Japan, and how the added monetary costs of such heavier trains in terms of purchase and greater energy consumption may discourage or inhibit passenger rail carriers from acquiring rail cars or running passenger trains. AWA recommended FRA reconsider its action and consider the impacts of mandating even heavier and costlier "steel-wheeled Hummers." AWA recommended that FRA look to harmonize passenger rail car construction and safety standards with the widely-accepted standards of the International Union of Railways (UIC), a worldwide organization for the promotion of rail transport and cooperation, so that rail agencies and operators can afford to provide more people with passenger rail service. Similarly, a private citizen principally commented that rather than increasing crashworthiness requirements and the weight of cab cars, FRA should first investigate whether existing UIC standards for end strength and buff strength would provide equal or better safety than the current FRA standards. The commenter believed that increasing the weight of passenger equipment should be a major concern from both an economic and an environmental point of view, causing greater wear on the track, increased energy consumption, and decreased operational performance. The commenter believed that reducing car weight and enabling use of European designs can reduce costs, and that there is a definite environmental and economic impact from having collision standards that differ from those in Europe or Asia.

As noted earlier, FRA wishes to dispel the belief that there is a meaningful correlation between an increase in a vehicle's crashworthiness and its weight. As FRA has stated, crashworthiness features from clean-sheet designs can occupy the same space as other material and not weigh in excess of the structure(s) being replaced. There is considerable leeway in designing such systems so that no additional weight is required, and the car body structure itself typically accounts for only between 25 to 35 percent of the final car weight. In fact, FRA found that the FRA/Volpe SOA end frame design added less than 500 pounds to vehicle weight. This difference is less than a one-percent increase in the weight of the vehicle over a typical 1990s design, but represents a considerable increase in improved crashworthiness performance. A vehicle with such a design was found capable of safely withstanding the same collision scenario at nearly a 50-percent greater collision speed—or more than double the amount of collision energy—as opposed to one without.

Further, the requirements in this final rule are performance-driven, similar to the new European standards calling for scenario-defined loading of the superstructure with energy and displacement evaluation criteria, as discussed above. In fact, the two are in much closer harmony when compared with FRA's more traditional requirements for cab cars and MU locomotives. The two sets of requirements differ principally in how compliance is demonstrated. FRA believes that the methods called for in this final rule are significantly less complicated than the methods provided in the European standards, while addressing similar concerns.

Nonetheless, as FRA has previously stated, the rail operating environment in the United States generally requires passenger equipment to operate commingled with very heavy and long freight trains, often over track with frequent highway-rail grade-crossings used by heavy highway equipment. European and Asian passenger operations, on the other hand, are generally intermingled with freight equipment of lesser weight, and in many cases highway-rail grade-crossings also pose lesser hazards to passenger trains in Europe and Asia due to lower highway vehicle weight. FRA is necessarily concerned with the level of safety provided by passenger equipment designed to European and other international standards when such equipment is intended to be operated in the United States and must ensure that the designs are appropriate for the nation's operating environment. FRA does believe that these new requirements for collision posts and corner posts will significantly enhance the performance of the posts in protecting occupants of cab cars and MU locomotives, while having little if any effect on total vehicle weight.

7. System Safety

Caltrain's comments on the NPRM raised issues not only on the NPRM itself but also on FRA's overall approach to regulation. Caltrain asserted that if the entire system, made up of components that may not be compliant with specific FRA regulations, can be shown to be as safe or safer than a system made up of components that individually meet FRA's regulations, then the true mission of both FRA and the railroad has been met. Caltrain recommended that FRA reword the NPRM so as not to discourage railroads from taking a systems-based approach to safety. In this regard, Caltrain recommended that FRA direct some of its research funds toward examining the safe use of CEM designs that do not have an inner structure compliant with part 238, to improve energy efficiency as well as international trade possibilities.

FRA notes that there are already procedures in place to allow the operation of equipment built to alternative standards. FRA permits such flexibility and has reviewed and approved the proposed operation of alternatively-designed equipment for CMTA. Moreover, FRA has established the Engineering Task Force of the Passenger Safety Working group to produce a set of technical evaluation criteria and procedures for passenger rail equipment built to alternative designs. The technical evaluation criteria and procedures are intended to provide an engineering-based method of comparing the crashworthiness of alternatively-designed equipment to the crashworthiness of equipment designed to the structural standards set forth in part 238. The initial focus of this effort will be on Tier I standards. When completed, the criteria and procedures would not only form a technical basis

for making determinations concerning equivalent safety pursuant to § 238.201 but also provide a technical framework for presenting evidence to FRA in support of any request for waiver of the compressive (buff) strength requirement set forth in § 238.203. *See,* generally, 49 CFR part 211 (Rules of Practice). The criteria and procedures could be incorporated into part 238 at a later date after notice and opportunity for public comment.

However, FRA strongly believes that, based upon research already conducted on application of CEM to conventional passenger rail equipment, the prescribed occupied-volume strength is required to serve as the foundation against which crush elements can react and thereby achieve high levels of energy absorption in reasonable crush distances while not creating too severe an interior deceleration environment.

Caltrain raised additional concern with FRA's approach in the NPRM to mitigate risk by increasing the survivability of an incident rather than by implementing a broader, systems approach that would first take into account the railroad's efforts to avoid the incident altogether or lower its probability of occurrence. Caltrain cited and agreed with FRA's promotion of system safety planning in the railroad industry, but believed that FRA has applied system safety planning in too limited a way. Caltrain believed that the NPRM focuses on increasing the survivability of a low-probability event, and thus mandates the solution rather than encourage the railroad to avoid the incident altogether. Caltrain stated that focusing on safety at the component level provides a lower return on investment than by broadening that focus to the system level. Caltrain cited the Washington Metropolitan Area Transit Authority's (WMATA) approach to addressing the safety of its operations on tracks that parallel freight operations. Caltrain stated that after WMATA first mitigated the risk of derailing its own trains into the freight railroad's right-of-way by maintaining its vehicles and tracks to tight standards, WMATA ultimately decided to install an intrusion detection system to provide warning of freight train derailments fouling WMATA's tracks. Caltrain believed that if WMATA had taken the approach presented in the NPRM, however, rather than a system safety approach, WMATA would have bought larger and heavier vehicles, incurred additional and continuing costs as a result, and would nonetheless not have avoided the risk of injury to passengers and crewmembers should a collision occur.

As Caltrain noted, FRA does encourage railroads to engage in system safety planning, and FRA even proposed to make system safety planning a requirement for passenger railroads. *See* 62 FR 49728, 49800. Elements of system safety planning are a part of the Passenger Equipment Safety Standards, *see* discussion at 64 FR 25548–25550, and FRA is newly examining system safety requirements for passenger railroads in the Passenger Safety Working Group's Passenger Safety Task Force. Moreover, FRA has long followed a policy of focusing on both collision-mitigation and collision-avoidance measures, as both are necessary for safe railroading. Collision-mitigation measures alone do not eliminate the risk of injuries to passenger and crewmembers should a collision occur, but neither do collision-avoidance measures eliminate the risk of a collision in any currently-practical way given, *e.g.,* the potential (however remote) for a rail to suddenly break under a train and cause a derailment. FRA therefore applies complementary approaches to reducing overall risk, including tightening track safety standards and implementing PTC systems. (On July 21, 2009, FRA published an NPRM implementing a requirement of the Rail Safety Improvement Act of 2008 (RSIA of 2008), Div. A of Public Law 110–432; 122 Stat. 4848 *et seq.* (Oct. 16, 2008), that certain passenger and freight railroads install PTC systems, *see* 74 FR 35950.) It is nonetheless paramount to establish, in addition to collision-avoidance methods, a base minimum level of crashworthiness performance.

Here, as a regulatory agency issuing a rule of general applicability for passenger equipment that may be operated commingled with freight trains and over public highway-rail grade-crossings used by heavy highway vehicles, FRA believes that certain minimum enhancements to collision mitigation measures are necessary. These enhancements have been developed with the industry and can be readily met as a result of improvements and maturity in design techniques available to manufacturers. FRA notes that WMATA operates in a different environment as a rapid transit system not connected to the general railroad system, and WMATA is not subject to FRA's jurisdiction. But even WMATA cannot eliminate the risk of a collision altogether, and collisions of WMATA trains have resulted in significant loss of life and damage. On June 22, 2009, a WMATA train traveling in a curve struck the rear end of another WMATA train, which had stopped for a station. The lead car of the oncoming train telescoped and overrode the rear car of the stopped train by about 50 feet, resulting in 9 fatalities and numerous injuries. *See* letter dated September 22, 2009, from Deborah A.P. Hersman, Chairman, NTSB, to Joseph C. Szabo, Administrator, FRA, conveying Safety Recommendations R–09–20 and –21 (Urgent), and R–09–22. This letter is available on the NTSB's Web site at: *http://www.ntsb.gov/Recs/letters/2009/R09_20_21_22.pdf.* Four and a half years earlier, on November 3, 2004, a non-revenue WMATA train rolled backwards down a grade and struck a train that was in the process of discharging and loading passengers at a station. The car at the rear end of the striking train overrode the leading end of the first car of the stopped train and sustained a loss of about 34 linear feet of the passenger occupant volume, which was almost half the length of the passenger compartment. Had the passenger compartment not been empty, the loss of that length of occupant volume could have caused numerous fatalities. *See* "Collision Between Two Washington Metropolitan Area Transit Authority Trains at the Woodley Park-Zoo/Adams Morgan Station in Washington, DC, November 3, 2004," NTSB Report No. RAR–06–01, adopted on March 23, 2006. This report is available on the NTSB's Web site at: *http://www.ntsb.gov/publictn/2006/RAR0601.pdf.*

8. Other Comments

Bombardier commented that the structural loads (including those for severe deformation) defined in APTA SS–C&S–034–99, Rev. 2, specify requirements for collision and corner posts that act together with the supporting car body structure and intervening connections. To make this regulation consistent with the industry standard, therefore, Bombardier recommended that this final rule adopt the same approach.

FRA agrees with the commenter and has modified this final rule accordingly. The intent has always been to have the entire end frame act as a system and resist intrusion of objects that threaten the superstructure of the cab car or MU locomotive.

CRM sought to extend the effective date of the final rule so as not to impact existing orders. In addition, CPUC supported FRA's proposed applicability dates for the collision and corner post requirements as enhancements to safety while still allowing manufacturers and industry buyers adequate time to develop and provide the required

additional cab car and MU locomotive strengthening.

FRA did not intend to impact existing orders. While this final rule may have an effective date of March 9, 2010 the new collision and corner posts requirements apply to cab cars and MU locomotives ordered on or after May 10, 2010, or placed in service for the first time March 8, 2012. This date range is consistent with other applicability dates imposed by FRA, and FRA believes they are achievable.

In other comments on the NPRM, the BLET expressed disappointment that the proposed rule did not include general cab standards. The BLET stated that, while the proposed rule would make significant and meaningful strides in improving crashworthiness, no consideration has been given to any other ergonomic issue, including cab size, vibration, noise, and seat construction. The BLET believed that equipment is evolving to the point where locomotive engineers are confined to essentially small cages, creating both safety and security risks that are foreseeable and avoidable.

FRA understands that this rule does not address general cab standards. Instead, this rule is focused on improving the crashworthiness of the front end structure of cab cars and MU locomotives in the event of an impact generating collision forces that overload the superstructure of the car. General cab standards include consideration of structural layout, ergonomics, and human factors, and would need to be addressed in a separate RSAC effort.

Caltrain commented on FRA's statement in the NPRM that FRA's crashworthiness research program focuses on two objectives: preservation of a safe space in which occupants can ride out a collision or derailment, and minimization of physical forces to which occupants are subjected when impacting surfaces inside a passenger train as the train decelerates. Caltrain did not believe that the NPRM adequately addressed the second objective. Caltrain stated that the amount of energy absorbed by the collision and corner posts will not significantly lower secondary-impact velocities.

FRA notes that for events that primarily load the superstructure (*i.e.*, end frame) of the cab car or MU locomotive, secondary-impact response for passengers is not a real concern. For example, since highway vehicles weigh much less than trains, a collision with a highway vehicle at a grade crossing would not impart dangerously high decelerations to the train or the train occupants but could impart significant loads to the end frame, making protection of the occupied volume paramount.

In addition, Caltrain commented that making the car body stronger seems secondary to preventive measures, and even contrary to FRA's stated objective of reducing secondary-impact velocities. Caltrain stated that in a train-to-train collision, rigid non-CEM vehicles will experience higher secondary-impact velocities than vehicles equipped with CEM and that by focusing on the specific approach in the NPRM, FRA may be overlooking more cost-effective solutions.

FRA notes that it is not necessarily true that use of CEM will result in lower secondary-impact forces in a train-to-train collision. Secondary-impact forces may actually be higher as part of a CEM-design that mitigates initial impact forces by dissipating the forces more evenly throughout the train. Test data has shown cars in a CEM-train to have higher secondary-impact velocities.

B. Preemption

A number of comments were filed on the topic of Federal preemption concerning the safety of operating a cab car or an MU locomotive as the leading unit of a passenger train, as well as concerning passenger equipment safety in general. Several of these comments were from members of Congress. These and other comments on the topic of Federal preemption are generally grouped by issue and are addressed below.

1. Whether FRA Characterized Its Views on Preemption as the RSAC Consensus

Several commenters raised the concern that FRA's statements in the NPRM wrongly conveyed the idea that a consensus had been expressed within RSAC on the preemptive effect of the rulemaking. Specifically, the BLET, which is an RSAC member and was a participant in RSAC meetings on the rulemaking, asserted that RSAC never addressed, much less reached consensus on, the preemptive effect of the proposed rule. The BLET contended that FRA erroneously claimed that RSAC agreed by consensus to the preemption provision espoused in the NPRM, stating that RSAC meeting documents reflect discussion of technical issues only. The UTU, which also is an RSAC member and was a participant in RSAC meetings on the rulemaking as well, similarly commented that it was never involved in any discussions regarding the preemption of State common law. The UTU disagreed with FRA's characterization of how federalism issues were addressed by RSAC, citing FRA's statement in the NPRM that FRA had received no indication of concerns about the federalism implications of the rulemaking. The CPUC also raised the same issue, referring to the UTU's comment that the UTU was not involved in any discussions regarding the preemption of State common law. The CPUC itself commented that the ASRSM's RSAC representative advised the CPUC that it too could not recall a discussion regarding the preemption of State law.

FRA makes clear that it did not intend to convey that RSAC had reached consensus on FRA's statements in the NPRM as to preemption. Indeed, FRA did not make preemption an issue within RSAC on which it sought consensus. Nonetheless, FRA believes that commenters have read too much into what FRA did say in the NPRM. In discussing the federalism implications of the rulemaking in Section V.A. of the NPRM's preamble, FRA stated the following:

> [F]ederalism concerns have been considered in the development of this NPRM both internally and through consultation within the RSAC forum, as described in Section II of this preamble, above. The full RSAC, which reached consensus on the proposal (with the exception discussed above concerning cab cars and MU locomotives without flat-ends or with CEM designs, or both) and then recommended it to FRA, has as permanent voting members two organizations representing State and local interests: AASHTO and ASRSM. As such, these State organizations concurred with the proposed requirements (again, with the exception noted above). The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives or from any other representative on the Committee.

72 FR 42036. FRA did state that RSAC, with one exception, had reached consensus on the proposed requirements. These requirements were the amendments to §§ 238.205 (Anti-climbing mechanism), 238.211 (Collision posts), and 238.213 (Corner posts). For this reason, FRA explicitly mentioned that consensus had not been reached on dynamic test standards for cab cars and MU locomotives. FRA should have made clearer that it did not intend to convey that RSAC's consensus included the proposed modification to § 238.13 (Preemptive effect), or any of FRA's views on preemption. FRA did not consider § 238.13 a proposed requirement, and FRA did not make it an issue for which consensus was

sought. To the extent that FRA had discussed preemption in RSAC, FRA had explained to RSAC members what it has told the public and continues to say regarding the permissibility of a railroad not to operate Tier I passenger trains in a push-pull configuration—in particular, the freedom of a State or local authority funding its own railroad to direct that its railroad not operate trains in push-pull fashion. (*See* below for a fuller discussion of this issue.)

FRA also believes that some confusion may have arisen from FRA's use of customary language discussing the federalism implications of its rulemaking actions in general and the consultation afforded through RSAC. Because FRA's rulemaking actions have preemptive effect by virtue of 49 U.S.C. 20106 (Section 20106), discussed further below, RSAC serves as a forum in which FRA can consult with State and local officials early in the process of developing proposed regulations in accordance with the executive order on federalism. FRA recognizes the value in such consultations and the ability of State and local interests to raise federalism concerns with proposed regulatory actions. Here, no federalism concerns had been raised in RSAC regarding the proposed requirements in the rulemaking—what would become national standards through a final rule—and FRA represented that fact using a customary formulation. FRA did not intend that representation to mean that RSAC members had no objections to any of FRA's statements on federalism in the NPRM. FRA makes clear that no such meaning or implication was intended.

2. Whether FRA's Views Are Consistent With 49 U.S.C. 20106, as Amended

A number of commenters, including members of Congress, raised concern that FRA's statements in the NPRM were not consistent with revisions made to 49 U.S.C. 20106 by the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Commission Act of 2007), Public Law 110–53, Aug. 3, 2007. Congressmen James Oberstar and Bennie Thompson jointly commented that they had strong concern over the preemption language included in the preamble. They requested that FRA issued a revised NPRM to delete portions of the preamble inconsistent with revisions made to Section 20106. In the alternative, the Congressmen believed that FRA should include a revised preemptive effect discussion in the preamble of the final rule to reflect Congress' intent that such regulations do not preempt State tort claims. The Congressmen commented that Congress did not intend that the Federal Railroad Safety Act of 1970 (FRSA) (formerly 45 U.S.C. 421 *et seq.*, now repealed and reenacted as positive law primarily in chapter 201 of title 49) would be interpreted to prevent injured victims from asserting their rights under common law, and raised concern that FRA's views on preemption may serve to immunize negligent railroad companies and prevent train derailment victims from holding these companies accountable for their injuries. The Congressmen stated that the 9/11 Commission Act of 2007 clarified that Section 20106 is intended as a limited preemption provision to prevent States from implementing their own rail safety regulations in certain instances and was not designed to preempt cases brought by victims of railroad derailments. The Congressmen believed that the law sends a loud and clear message that FRSA in no way preempts State common law claims and to the extent the U.S. Supreme Court has construed a Congressional intent to federally preempt State law claims against railroads Congress has cleared up any confusion. Accordingly, the Congressmen believed that statements in the preamble to the NPRM containing language attempting to preempt State common law standards contradicts Congressional intent and subverts the legislative determination that Congress does not want to leave victims of negligent railroads without any recourse.

Three other members of Congress also jointly commented on FRA's statements in the NPRM concerning preemption and requested that FRA revise its discussion in light of the revisions made to Section 20106 by the 9/11 Commission Act of 2007. Senators Kent Conrad and Byron Dorgan and Congressman Earl Pomeroy noted that section 1528 of the 9/11 Commission Act of 2007 clarified the intent of Congress with respect to the preemptive effect of FRSA but that, perhaps as a result of chronology, the preamble to the NPRM made no reference to the Congressional action. The Congressmen believed that certain statements in the preamble could be interpreted to contradict the language that Congress had just enacted and that it would be inappropriate to issue a final rule that does not accurately reflect current law. The Congressmen cited as an example the statement "FRA believes that it has preempted any State law, regulation, or order, including State common law." The Congressmen raised concern that this statement could be read to undermine the intent of Congress that FRSA not preclude victims of railroad accidents from seeking redress under State law for their injuries and losses, and could inform the interpretation of FRSA by the courts or other interested parties. The Congressmen requested that FRA revise the preamble to make explicit reference to the amendments to Section 20106 and make clear that FRSA does not prevent victims of railroad accidents from holding railroad companies to account for their actions in a court of law.

In addition to members of Congress, the AAJ commented that in the 9/11 Commission Act of 2007 Congress reiterated its intent to preserve State tort claims against negligent railroads. The AAJ asserted that section 1528 of this law sends a loud and clear message that Section 20106 in no way preempts State common law claims and that to the extent the U.S. Supreme Court has construed a Congressional intent in Section 20106 to preempt State law, Congress has cleared up any confusion. The AAJ concluded that there is no room for argument that the 9/11 Commission Act of 2007 does anything but restore the rights of victims to sue negligent railroads under State law. Finally, the BLET commented that it could not be clearer that Congress intended to preserve State common law causes of action in the circumstances defined in the 9/11 Commission Act of 2007. The BLET stated that the conference report on the legislation makes clear that Congress did not intend to preempt all State causes of action in every area where FRA has issued—or has considered but declined to issue—safety regulations. The BLET also commented that when FRA published the NPRM, the bill was on the President's desk.

FRA believes it important to address the comments raised as to why the NPRM does not reflect the changes made to Section 20106 by the 9/11 Commission Act of 2007. FRA believes that the timing of the NPRM's issuance has led to misunderstandings reflected in the comments. Although the NPRM was published on August 1, 2007, it was issued by FRA on July 26, 2007. At the time of the NPRM's issuance, Congress was still deliberating the legislation: the Senate agreed to it that same day, and the House passed it the following day, July 27, 2007. When Congress cleared the bill for the White House, the NPRM was being processed for publication at the **Federal Register.** Consequently, the NPRM did not reflect any changes made to Section 20106 by the 9/11 Commission Act of 2007, signed by the President on August 3, 2007.

As discussed elsewhere in this final rule, FRA is amending the existing preemption provision in this part, § 238.13 (Preemptive effect), to conform to the revisions made to Section 20106 by the 9/11 Commission Act of 2007. FRA makes clear that any statement in the NPRM that is contrary to Section 20106, as amended effective August 3, 2007, should be ignored. Nonetheless, FRA believes that its statements in the NPRM are consistent with the 9/11 Commission Act of 2007's clarification to Section 20106 and that there may have been misunderstandings as to the meaning of FRA's statements in the NPRM, relating in particular to what the commenters intend the terms "claim" and "standard" to mean. FRA believes that some of the comments overstate what FRA said in the NPRM about the preemptive effect of Section 20106, even prior to its amendment.

FRA was careful to convey that Federal preemption under Section 20106 applied to standards of care under State law—as opposed to claims (causes of action) under State law. They are different. As discussed further below, the 9/11 Commission Act of 2007 added new subsection (b) to Section 20106 to clarify the preemptive effect of FRSA so as not to restrict enumerated "causes of action" under State law. While FRA's regulations may preempt the standard of care, they do not preempt the underlying action in tort. In this regard, FRA did not make the broad statement by itself that "FRA believes that it has preempted any State law, regulation, or order, including State common law." FRA made that statement only in a fuller sentence that expressly limited its meaning: "FRA believes that it has preempted any State law, regulation, or order, including State common law, concerning the operation of a cab car or MU locomotive as the leading unit of a passenger train." *See* 72 FR 42036. In this instance, FRA did intend to convey that where a claim is based on a State standard concerning the operation of a cab car or MU locomotive, FRA has through its regulatory actions preempted any State standard that restricts the push-pull operation of a Tier I passenger train. However, FRA did not—and does not—find that any claim under State law is preempted merely because a train is operating in push-pull mode. FRA believes this to be consistent with the 9/11 Commission Act of 2007. A fuller discussion follows.

This rule preempts State common law standards of care. The Supreme Court has spoken clearly on the subject of preempting State common law by Section 20106. The question was squarely presented to the Court in *CSX Transp., Inc.* v. *Easterwood*, 507 U.S. 658 (1993), which involved a grade-crossing collision. One of the respondent's claims in the case was that, despite FRA's Track Safety Standards (49 CFR part 213) which permit a maximum speed of 60 m.p.h. over the Class Four track involved in the case and train speed at the collision being below 60 m.p.h., "petitioner [CSX] breached its common-law duty to operate its train at a moderate and safe rate of speed." *Id.* at 673. The Court's answer was "[w]e hold that, under the FRSA, Federal regulations adopted by the Secretary of Transportation pre-empt respondent's negligence action only insofar as it asserts that petitioner's train was traveling at an excessive speed." *Id.* at 676. In reaching that judgment, the Court reasoned that "[a]ccording to § [20106], applicable Federal regulations may pre-empt any state 'law, rule, regulation, order, or standard relating to railroad safety.' Legal duties imposed on railroads by the common law fall within the scope of these broad phrases." *Id.* at 664. The Supreme Court very plainly held that the State common law standard of care was preempted by FRA's Track Safety Standards, but that the underlying negligence action was not. That is completely in accord with the amendment Congress enacted to Section 20106 in section 1528 of the 9/11 Commission Act of 2007.

The Supreme Court's interpretation of Section 20106 was confirmed and further explained in a subsequent case involving a grade-crossing wreck in which the plaintiff had alleged that the railroad negligently failed to maintain adequate warning devices at the grade-crossing in question. The Supreme Court held:

> Sections 646.214(b)(3) and (4) [the Federal Highway Administration regulations mandating the installation of particular warning devices when certain conditions exist] "cover the subject matter" of the adequacy of warning devices installed with the participation of Federal funds. As a result, the FRSA pre-empts respondent's state tort claim that the advance warning signs and reflectorized crossbucks installed at the Oakwood Church Road crossing were inadequate. Because the TDOT [Tennessee Department of Transportation] used Federal funds for the signs' installation, §§ 646.214(b)(3) and (4) governed the selection and installation of the devices. And because the TDOT determined that warning devices other than automatic gates and flashing lights were appropriate, its decision was subject to the approval of the FHWA. *See* 23 CFR 646.214(b)(4). Once the FHWA approved the project and the signs were installed using Federal funds, the Federal standard for adequacy displaced Tennessee statutory and common law addressing the same subject, thereby pre-empting respondent's claim.

Norfolk Southern Ry. Co. v. *Shanklin*, 529 U.S. 344, 358–359 (2000). It could not be clearer that, before Congress amended Section 20106 in 2007, it provided for preemption of State common law by DOT regulations.

Congress was moved to amend Section 20106 by two court cases, *Lundeen* v. *Canadian Pacific Ry. Co.*, 507 F.Supp.2d 1006 (D.Minn. 2007), and *Mehl* v. *Canadian Pacific Ry., Ltd.*, 417 F.Supp.2d 1104 (D.N.D. 2006), which left without a legal remedy tort plaintiffs injured in a hazardous material release from a train wreck in Minot, ND. The judge's opinion in *Lundeen* said:

> Preemption bars private claims for FRA violations. Congress has given the Secretary of Transportation "exclusive authority" to impose civil penalties and request injunctions for violations of the railroad safety regulations. [FN4] 49 U.S.C. 20111(a); *Abate* v. *S. Pac. Transp. Co.*, 928 F.2d 167, 170 (5th Cir. 1991) ("The structure of the FRSA indicates that Congress intended to give Federal agencies, not private persons, the sole power of enforcement.").
>
> FN4. The single exception to the Secretary's exclusive authority exists when the Federal government fails to act promptly. In such cases, state government agencies can file suit, impose penalties, or seek injunctions. 49 U.S.C. 20113.
>
> Indeed, the FRSA has "absolved railroads from any common law liability for failure to comply with the safety regulations." *Mehl*, 417 F.Supp.2d at 1120. This is the regulatory scheme which Congress has imposed. And when Congress has clearly spoken, any relief from its regime must come from Congress rather than the Courts. Private actions against railroads based on Federal regulations are preempted.

Lundeen, supra at 1016.

The amendment to Section 20106 made by section 1528 of the 9/11 Commission Act of 2007 did not change the text the Supreme Court has interpreted. Instead, Congress enacted a very precise cure for the problem presented by *Lundeen* and *Mehl* by amending Section 20106 to redesignate the then-existing language of the section as subsection (a), and adding new subsections (b) and (c). Subsection (a) provides that a State may adopt or continue in force a law, regulation or order related to railroad safety or security, until the Secretary of Transportation (with respect to safety) or the Secretary of Homeland Security (with respect to security) has acted to cover the subject matter. Once there are Federal requirements covering a particular subject, a State may adopt or continue only an additional or more

stringent law, regulation, or order if it is necessary to eliminate or reduce an essentially local safety or security hazard, is not incompatible with Federal law, and does not unreasonably burden interstate commerce. New subsection (b) clarifies that causes of action under State tort law may be available to injured parties if they are based on the violation of the Federal standard of care created by a Federal regulation or order, or violation of a plan required to be created by Federal regulation or order. New subsection (c) provides that nothing in the section creates a Federal cause of action or Federal question jurisdiction, so that tort cases can be heard in State court.

New subsection (b) to Section 20106 makes clear that, as the Supreme Court held in *Easterwood*, regulations or orders issued by the Secretary of Transportation preempt the State standard of care, but not the underlying cause of action in tort, thereby preserving the ability of injured parties to seek redress in court.

Since FRA's Track Safety Standards were involved in both *Easterwood* and *Lundeen,* they are especially apt for illuminating FRA's interpretation of the amended statute. The Track Safety Standards substantially subsume the subject matters of standards for railroad track and train speeds over it and, therefore, preempt State standards, both statutory and common law, pertaining to those subjects. Nevertheless, under Section 20106(b)(1)(A), a private plaintiff may bring a tort action for damages alleging injury as a result of violation of the Track Safety Standards, such as for train speed exceeding the maximum speed permitted under 49 CFR 213.9 over the class of track being traversed. Similarly, under Section 20106(b)(1)(B), a private plaintiff may bring a tort action for damages alleging injury as a result of violation of a railroad's continuous welded rail (CWR) plan required by the Track Safety Standards (the key issue in *Lundeen*). Provisions of a railroad's CWR plan that exceed the requirements of part 213 are not included in the Federal standard of care. Under Section 20106(b)(1)(C), a private plaintiff may bring a tort action for damages alleging injury as a result of violation of a State law, regulation, or order that is not incompatible with subsection (a)(2), such as Ohio's regulation of minimum track clearances in rail yards found not to be preempted in *Tyrrell* v. *Norfolk Southern Ry. Co.,* 248 F.3d 517 (6th Cir. 2001).

It is a settled principle of statutory construction that, if the statute is clear and unambiguous, it must be applied according to its terms. *Carcieri* v. *Salazar,* 129 S.Ct. 1058 (U.S., 2009). Read by itself, Section 20106(a) preempts State standards of care, but does not expressly say whether anything replaces the preempted standards of care for purposes of tort suits. The focus of that provision is clearly on who regulates railroad safety: the Federal government or the States. It is about improving railroad safety, for which Congress deems nationally uniform standards to be necessary in the great majority of cases. That purpose has collateral consequences for tort law which new Section 20106, subsections (b) and (c) address. New subsection (b)(1) creates three exceptions to the possible consequences flowing from subsection (a). One of those exceptions ((b)(1)(B)) precisely addresses an issue presented in *Lundeen* that Congress wished to rectify: it allows plaintiffs to sue a railroad in tort for violation of its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries. None of those exceptions covers a plan, rule, or standard that a regulated entity creates for itself in order to produce a higher level of safety than Federal law requires, and such plans, rules, or standards were not at issue in *Lundeen.* The key concept of Section 20106(b) is permitting actions under State law seeking damages for personal injury, death, or property damage to proceed using a Federal standard of care. A plan, rule, or standard that a regulated entity creates pursuant to a Federal regulation logically fits the paradigm of a Federal standard of care—Federal law requires it and determines its adequacy. A plan, rule, or standard, or portions of one, that a regulated entity creates on its own in order to exceed the requirements of Federal law does not fit the paradigm of a Federal standard of care—Federal law does not require it and, past the point at which the requirements of Federal law are satisfied, says nothing about its adequacy. That is why FRA believes that Section 20106(b)(1)(B) covers the former, but not the latter. The basic purpose of the statute—improving railroad safety—is best served by encouraging regulated entities to do more than the law requires and would be disserved by increasing potential tort liability of regulated entities that choose to exceed Federal standards, which would discourage them from ever exceeding Federal standards again.

In this manner, Congress adroitly preserved its policy of national uniformity of railroad safety regulation expressed in Section 20106(a)(1) and assured plaintiffs in tort cases involving railroads, such as *Lundeen,* of their ability to pursue their cases by clarifying that Federal railroad safety regulations preempt the standard of care, not the underlying causes of action in tort. Under this interpretation, all parts of the statute are given meanings that work together effectively and serve the safety purposes of the statute. Because the language of the statute is clear, there is no need to resort to the legislative history to properly interpret the statute. *See Ratzlaf* v. *United States,* 510 U.S. 135, 147–148 (1994) ("[W]e do not resort to legislative history to cloud a statutory text that is clear.").

3. Whether FRA's Views on Preemption Affect Safety

The BLET commented that FRA's views on preemption serve to immunize the railroad industry for its actions or inactions, contrary to FRA's duties as a safety regulator. The BLET stated that immunizing railroads from liability in all cases except where a Federal regulation or statute is violated will diminish safety and increase costs to the public in the long run, asserting that the public will bear the cost of damages caused by private railroads who have acted negligently but not in violation of a Federal law or regulation. The BLET believed that FRA's views on preemption will make FRA's minimum safety standards a ceiling above which no railroad will venture, to avoid voluntary exposure to liability flowing from a failure to adhere to its own higher standard. The BLET maintained that, thereafter, higher standards will not come about except through rulemaking, which it viewed as a time-consuming and somewhat imprecise process. In addition, the BLET commented that even if FRA's views protect publicly-funded transportation agencies, the decision to do so should be a State one.

FRA believes that the BLET's comments minimize the significance of FRA's safety regulations. FRA has issued detailed safety regulations covering a broad range of areas, and has both ongoing and planned safety rulemaking activities on a variety of topics. It is not a small matter for a railroad to maintain compliance with every applicable safety regulation issued by FRA, and that responsibility continues only to increase. In particular, this responsibility is growing as FRA implements the numerous safety rulemaking mandates in the RSIA of 2008. Moreover, the RSIA of 2008 itself added to the body of railroad safety statutory laws with which railroads must comply. These efforts are all directed toward promoting safety—the safety of railroad employees, passengers,

and the public, overall—in a systematic and comprehensive way.

The BLET is clearly incorrect in arguing that FRA is immunizing railroads from tort liability except where they violate a Federal safety standard. State law, both statutory and common law, is preempted only where FRA's regulations substantially subsume the subject matter of the State law and FRA's regulations, while extensive, are not encyclopedic. The BLET's contention that a railroad that complies with the Federal standard of care set by Federal law should nevertheless be held to be negligent *for the very behavior required by Federal law* would make a nullity of Federal railroad safety laws. If the BLET's view were to be adopted, the effective railroad safety standard would be set by the most recent jury verdict in each State and national uniformity of safety regulation would no longer exist. That is clearly inconsistent with the statute and the case law.

Nor does FRA believe that our views on preemption will preclude railroads from exceeding Federal railroad safety standards. Railroads regularly exceed these standards now. A railroad that abides only by the minimum Federal safety standards would constantly run the risk of incurring civil penalty liability. For example, because wheels wear from use, no freight railroad would logically operate its fleet of rail equipment at the very minimum Federal safety standards for wheels; any usage of the equipment would potentially wear the wheels out of compliance, rendering them defective *per se* under 49 CFR part 215. Similarly, no railroad would logically maintain its track to the very minimum standards allowed by FRA's Track Safety Standards, as the railroad should know that any usage of the track could potentially bring it out of compliance by, for example, widening the gage. *See* 49 CFR 213.9. Further, as discussed above, FRA believes that Congress has encouraged railroads to exceed Federal safety standards and that Section 20106 does not increase the potential tort liability of railroads that choose to do so.

In addition, FRA disagrees that its duties as a safety regulator preclude it from providing its views on the preemptive effect of its regulations. A variety of considerations go into setting safety standards, including their relationship to other safety laws and standards. For example, as noted in the NPRM, FRA has directed extensive efforts to provide for the safety of Tier I passenger-occupied equipment operated as the leading units of passenger trains, such as by providing for increased collision post strength for the forward ends of cab cars and MU locomotives in the 1999 final rule. Had FRA intended to impose restrictions in the 1999 final rule on operating this equipment in the lead, FRA may have acted differently in imposing the crashworthiness requirements that it did on this equipment. This very final rule FRA is issuing today will enhance crashworthiness requirements for cab cars and MU locomotives, specifically recognizing that this equipment is operated as the leading units of passenger trains.

Finally, FRA believes that the comments raised essentially disregard the possibility that FRA requirements may in fact be more restrictive than State law would be. In the original Passenger Equipment Safety Standards rulemaking, for example, FRA addressed a number of comments from State departments of transportation that applying the static end strength (or "buff" strength) requirements, § 238.203, to existing passenger equipment was too restrictive. *See* 64 FR 25544–25545. FRA also addressed similar comments on other provisions of the rule, such as from the Washington State Department of Transportation, which believed FRA had not justified the requirements for side structure, § 238.217. *See* 64 FR 25608–25609. Potentially, these States may have deemed less restrictive requirements appropriate.

4. Whether FRA's Views on Preemption Affect Recovery for Victims of Railroad Accidents

The AAJ asserted that Federal preemption would prevent victims of the 2005 Glendale, CA, Metrolink derailment from seeking justice, that common carriers like Metrolink owe the highest degree of care to their passengers, and that if a court affords deference to FRA's preamble, the NPRM would effectively render that obligation meaningless. Similar to other comments that have been raised, the AAJ commented that State common law should govern railroad safety issues in that they are unique to each community and therefore more effectively addressed under State law. The AAJ believed that Federal regulations cannot effectively ensure that the public is protected from hazards caused by a railroad's inability to follow operating rules. The AAJ maintained that Federal regulations are minimum standards and are not intended to provide maximum protection, asserting that the justice system offers a deterrent against railroad companies' violations of Federal, State, and local regulations. The AAJ stated that the public needs a mechanism to compensate individuals for losses suffered at the hands of negligent railroad operators or otherwise these injured individuals could become a burden to the public.

FRA notes that it has already addressed, above, comments that State common law should govern railroad safety issues. The 9/11 Commission Act of 2007 expressly clarified the criteria providing for State law causes of action but left untouched the provisions in Section 20106 governing national uniformity of regulation. Once the Secretary of Transportation has covered a subject matter through a regulation or order, and thus established a Federal standard of care, Section 20106 preempts State standards of care regarding this subject matter. Nonetheless, FRA believes it important to address specifically the AAJ's claim that FRA's views would prevent the victims of the Glendale incident from seeking justice.

The Glendale derailment was the result of a deliberate, criminal act. The perpetrator was found guilty of 11 counts of murder. Surely, nothing FRA has said about Federal preemption should be construed in any way to mean that victims of the Glendale derailment may not seek redress against the criminal perpetrator.

Nor should anything FRA has said about Federal preemption be construed to mean that these victims may not pursue negligence claims against Metrolink. As discussed elsewhere in this preamble, FRA agrees that railroads owe their passengers and employees a high degree of care and that victims of railroad accidents may hold railroads accountable in tort for their actions. Surely nothing FRA has said should be interpreted to preclude a claim for negligence based on a railroad's failure to comply with a Federal law, standard, or order or, where none of those apply, State law. In this regard, FRA believes that the AAJ's comments significantly minimize the degree to which railroads are in fact responsible for complying with a broad range of safety laws, regulations (such as this final rule), and orders, with a host of new requirements arising from the RSIA of 2008, as noted above. To a considerable degree, this reflects a difference of view over whether safety standards are better set by twelve jurors good and true, most of whom probably do not know anything about railroad safety, or by experts in railroad safety to whom Congress has assigned the task. Of course, those jurors can do a fine job of finding the facts and applying the legal standard to them. In a recent case involving Federal preemption under a U.S. Food and Drug Administration (FDA) regulation, the

Supreme Court eloquently explained why Congress's decision to preempt State common law makes sense:

> [I]n the context of this legislation excluding common-law duties from the scope of pre-emption would make little sense. State tort law that requires a manufacturer's catheters to be safer, but hence less effective, than the model the FDA has approved disrupts the federal scheme no less than state regulatory law to the same effect. Indeed, one would think that tort law, applied by juries under a negligence or strict-liability standard, is less deserving of preservation. A state statute, or a regulation adopted by a state agency, could at least be expected to apply cost-benefit analysis similar to that applied by the experts at the FDA: How many more lives will be saved by a device which, along with its greater effectiveness, brings a greater risk of harm? A jury, on the other hand, sees only the cost of a more dangerous design, and is not concerned with its benefits; the patients who reaped those benefits are not represented in court. As Justice BREYER explained in *Lohr,* it is implausible that the MDA [Medical Device Amendments] was meant to "grant greater power (to set state standards 'different from, or in addition to' federal standards) to a single state jury than to state officials acting through state administrative or legislative lawmaking processes." 518 U.S., at 504, 116 S.Ct. 2240. That perverse distinction is not required or even suggested by the broad language Congress chose in the MDA,[FN4] and we will not turn somersaults to create it.

Riegel v. *Medtronic, Inc.* 128 S.Ct. 999, 1008 (U.S., 2008). (Footnote omitted.)

The Supreme Court's logic is equally applicable to regulations under the Federal railroad safety laws, including this one.

5. How a State May Act as the Owner and Not the Regulator of a Railroad

FRA received comment from the CPUC indicating that there was confusion as to what FRA intended to convey by explaining the difference between a State acting as an "owner" of a railroad—in distinction to a regulator of a railroad—in directing a railroad's operations. The CPUC commented that it understood that FRA interprets Section 20106 so that States that own or control a passenger railroad may impose more stringent standards on their railroad(s) than those prescribed in the NPRM, as long as the more stringent State standards are not in conflict with the Federal standards and are wholly distinct and not derived from the statutory provision—*i.e.,* not a part of the State's regulatory authority over passenger railroads but resulting from its status as an owner of a passenger railroad. The CPUC then concluded that since FRA has "approved" of cab car-forward operations of Tier I passenger trains, States may not prohibit these operations on passenger railroads they own since such a restriction would conflict with the NPRM. Yet, the CPUC then understood that if the State wishes to increase the load-bearing capability of collision posts, corner posts and other structural elements, it may where it is the owner of the passenger railroad. The CPUC asserted that FRA was in effect establishing a Federal public safety policy that permits States to raise safety requirements above minimum Federal standards on railroads they own but limits States to the minimum standards on private railroads. The CPUC believed that this policy would severely limit State police powers even when State regulation neither conflicts with Federal law or regulation nor unreasonably burdens interstate commerce.

FRA appreciates the CPUC's comments for purposes of clarifying FRA's discussion in the NPRM concerning the application of preemption to the actions of a State or local entity in the role of "owner" of a railroad versus those of a State or local entity in the role of regulator of a railroad. FRA has pointed out that commuter rail service is typically provided by public benefit corporations chartered by State or local governments. This legal arrangement essentially places the State or local entity in the role of "owner" of the railroad, and FRA sought to make clear that when a State or local governmental entity acts in this capacity to direct that the railroad exceed FRA's standards, it is not acting as a regulator of railroad operations. Instead, it is effectively acting in a private capacity concerning the operation of its own railroad. The fact that it is a public entity does not somehow convert its action into a law, regulation, or order related to railroad safety that invokes the statutory provisions governing the preemptive effect of FRA's regulation of this area.

Specifically, FRA intended to make clear that when a State acts in this private capacity to direct its own railroad to exceed FRA's requirements or prohibit its own railroad from doing something FRA's requirements permit, it need not be concerned with satisfying Section 20106(a)'s three-part, "essentially local safety or security hazard" exception for State regulation, as the State's action is wholly distinct, and does not derive, from the exception provided in the statute. This latter point may not have been conveyed clearly enough in the NPRM; FRA is restating it here for clarity. Further, FRA makes clear that even though States and local entities may act in a private capacity concerning their own railroads, this fact does not alter in any way FRA's views as to the preemptive effect of FRA's comprehensive regulation of passenger equipment safety, and the safe operation of cab cars and MU locomotives in particular, when the State or local governmental entity is acting in a regulatory capacity. Nor does FRA mean in any way to suggest that because States and local entities may act in a private capacity concerning their own railroad, a State or local court or jury has the ability to decide how the railroad should have acted. FRA makes clear that its views on a State or local entity's ability to run its own railroad do not extend to a State or local court or jury's ability to apply a standard of care that deviates from the Federal standard of care established by an FRA regulation or order.

Additionally, FRA sought to make clear in the NPRM that even when the State or local governmental entity acts in this private capacity and directs that its passenger railroad operate in a manner more stringent than FRA's requirements, it may not direct that its railroad operate in a manner inconsistent with FRA's requirements. The CPUC's comments indicate that there may have been some confusion on this point, however. The CPUC believed that FRA has "approved" of cab car-forward operations of Tier I passenger trains, and that, as a result, States may not prohibit these operations on passenger railroads they own since such a restriction would conflict with the NPRM. FRA did not intend such conclusions to be drawn. First, FRA makes clear that our regulations permit but do not require cab car-forward operations of Tier I-compliant passenger trains; there is no FRA approval process. Moreover, the fact that FRA's regulations permit cab car-forward operations does not prohibit a State, acting in a private capacity as the owner of its own railroad, from deciding not to use cab car-forward operations. For example, in no way would a State's decision directing its own railroad to operate each of its trains with a conventional locomotive in the lead conflict with any regulatory decision FRA has made. Both methods of operation are permitted under FRA's regulations and operators are free to choose among permitted methods of operation. (*See* the separate discussion on push-pull train operations, below.) The CPUC's comments indicate that it understood the overall issue when it noted that if the State wishes to increase the load-bearing capability of collision posts, corner posts and other structural elements of its equipment, it may if it is the owner of the passenger railroad.

Indeed, that analysis applies in the same way to cab car-forward operations of Tier I passenger trains.

FRA also wishes to make clear that in no way did FRA intend to convey that freight railroads operate under less stringent safety standards—including those voluntarily imposed—because the railroads are typically owned by non-governmental entities. The CPUC additionally commented that the balance determined by FRA in weighing freight railroad safety with the business of freight railroading is heavily slanted towards the railroad industry at the expense of public safety since the public is subjected to "minimum" railroad safety regulations and the States are prohibited from requiring more stringent regulation. In the NPRM, FRA compared a State or local governmental entity's ability to act in a private capacity concerning the operation of its own railroad to that of a non-governmental entity that owns a freight railroad, for purposes of illustrating how the public entity is permitted to act in a private capacity to direct that its passenger railroad operate in a manner more stringent than FRA's requirements and not implicate preemption concerns. FRA believed this comparison particularly appropriate because freight railroads—like passenger railroads—regularly exceed FRA's safety standards as a matter of course, and they are encouraged to do so. Surely, a governmental entity that owns a freight railroad may choose to exceed FRA's requirements without concern for implicating the statutory provision governing preemption. While the CPUC's comment may not have been directed to this discussion in the NPRM, FRA believes that this clarification is helpful to place the discussion in a fuller context.

6. How State Regulation of Push-Pull Operations Is Preempted

Congressman Adam Schiff commented that FRA's views in the NPRM may have the effect of preempting State laws on pushing trains with cab cars in the lead. He stated that in response to the January 2005 Metrolink derailment in Glendale, CA, he had placed in the FY2006 transportation appropriations bill a measure that led FRA to conduct a historical study of push-pull passenger rail operations that found that derailments and general fatalities were somewhat higher when push-pull trains were operated in the push mode. He believed that FRA's views could threaten the authority of States to require a higher level of passenger train safety or to seek redress for a wide variety of unsafe railroad practices, stating that the role of FRA is to adopt regulations to protect the traveling public from injury and death because of unsafe railroad operations and that State and local regulators must be allowed to take further steps to ensure that public transportation is as safe as possible. He additionally commented that any regulatory action should be avoided that may preempt States and localities from regulating railroad safety in ways that do not affect interstate commerce but do improve passenger safety, and believed that preemption should seldom be employed but on those rare occasions when it is required and that it should be used to set a floor and never a ceiling on the public's safety and well-being. As a result, he requested that FRA clarify that Federal preemption will not affect local and State limitations on the use of cab cars as the leading units of passenger trains, asserting that such regulations are designed to increase public safety and will not affect the national operations of rail service providers or rail car manufacturers.

FRA notes first that the nature of Federal preemption under Section 20106, even as amended, is that States and localities are restricted from acting as regulators concerning the operation of trains with cab cars in the lead, given Federal regulation of the matter. Nonetheless, as discussed earlier, FRA believes that in fact States and localities have the capability to act in a non-regulatory way either as owners or funders of commuter rail systems to restrict the operation of trains with cab cars in the lead, and, preemption concerns aside, could seemingly do so more directly. FRA will use the example of Metrolink, which operates wholly within the State of California and is a joint powers authority comprised of five county transportation planning agencies: The Los Angeles County Metropolitan Transportation Authority, the Orange County Transportation Authority, the Riverside County Transportation Commission, San Bernardino Associated Governments, and the Ventura County Transportation Commission. FRA makes clear that the representatives of those California counties who are designated as members of Metrolink's board of directors are not preempted from directing that Metrolink not run trains with cab cars as the leading units. Nor would the State of California be preempted from conditioning any grant of State funds to Metrolink on its not running trains with cab cars as the leading units. Preemption does not apply in either situation.

While the authority does not apply in this situation, Congress has addressed Congressman Schiff's concerns in another way to some extent. The statute provides that States may regulate until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the State regulation. The statute also provides that a State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order is necessary to eliminate or reduce an essentially local safety hazard, is not incompatible with a law, regulation, or order of the United States Government, and does not unreasonably burden interstate commerce. Thus, while Congress prescribed national uniformity of railroad safety regulation, it also provided exceptions through which States can address matters Congress or FRA has not. Where FRA does regulate, the clear expectation is that the States will participate in the rulemaking process. If a State has a better idea or perceives a risk others have not seen, that State has several avenues through which it can get its concerns addressed. The State can petition FRA for rulemaking. The State can participate in RSAC and help formulate recommendations to the Administrator of FRA for regulatory action. The State can comment on notices of proposed rulemaking FRA issues. In these ways, State ideas and concerns can be embodied in uniform national regulations in keeping with the policy Congress established in the statute. The overwhelming majority of railroad safety issues are capable of being handled in uniform national regulations, and should be.

FRA also notes that although the study cited by Congressman Schiff tended to favor conventional locomotive-led train service over cab car- and MU locomotive-led train service for resistance to derailment in highway-rail grade-crossing collisions on the raw data, no statistically significant difference was found between the modes of operation. *See* "Report to the House and Senate Appropriations Committees: The Safety of Push-Pull and Multiple-Unit Locomotive Passenger Rail Operations," June 2006, available on FRA's Web site at: *http://www.fra.dot.gov/downloads/safety/062606FRAPushPullLetterandReport.pdf*. The accident record did show a higher fatality rate for occupants of cab car-led trains than occupants of conventional locomotive-led trains in commuter service, yet

(passenger occupied) MU locomotive-led trains compiled a superior safety record and experienced fatality rates less than conventional locomotive-led trains or any competing mode of transportation. The report explained that FRA's broad approach to safety is to focus on areas of the highest risk and thus the greatest potential for safety gains and that, by contrast, a narrower focus on one aspect of the safety issues (cab car- or MU locomotive-led operations versus conventional locomotive-led operations) could result in simply shifting risk from one place to another. FRA noted that compared to cab car- or MU locomotive-led trains, conventional locomotive led-trains may reduce the number of fatalities due to loss of occupant volume at the colliding interface, but in more serious events the structural crush is passed back to other areas of the train, potentially increasing the risk to other train occupants. The September 12, 2008 head-on train collision in Chatsworth, CA, which resulted in the deaths of 25 people and the injury of numerous others, involved a conventional locomotive-led Metrolink train. The NTSB and FRA are currently investigating the collision and the NTSB has not yet determined the probable cause of the accident. Nevertheless, preliminary information indicates that most, if not all, of the passenger fatalities resulted from structural crush caused by collision energy passed through the locomotive. FRA has not evaluated the Chatsworth accident to determine whether the outcome would have been different had the cab car at the rear of the train been the leading unit. However, the Chatsworth accident tragically exemplifies that risks are inherent in any mode of passenger train operation and that the safety focus must necessarily be broader than just restricting cab cars from operating as the leading units of passenger trains.

7. Whether It Was Necessary To Discuss Preemption in the NPRM

The AAJ commented that inclusion of "overbroad" preemption analysis in the NPRM was unnecessary because it has no substantive effect on the regulation and is not binding on courts. Moreover, the AAJ claimed that FRA provided no reasoned explanation for what it believed was an unauthorized attempt to expand the reach of FRSA preemption. The AAJ also stated that FRA buried the preemption discussion within the text of the preamble without any mention of it in the summary of the NPRM, and believed that the title and summary of the NPRM hid the fact that FRA appeared to circumvent Congress and declare retroactive and future application of Federal preemption to the issue of pushing passenger trains with cab cars in the lead.

In response to these comments, which are also addressed in part below, FRA notes that it did explain why it was discussing preemption in the NPRM, stating that "since issues have arisen regarding the preemptive effect of this part on the safety of operating a cab car as the leading unit of a passenger train, FRA believes that clarification of its views on the matter is needed to address any misunderstanding." 72 FR 42028. In particular, in discussing the preemptive effect of part 238, FRA sought to distinguish preemption of State regulation from a State's ability to act in a private capacity to restrict cab cars from operating as the leading units of passenger trains, as discussed above, thereby effectively achieving the same result. In fact, despite FRA's efforts to clarify its views, comments on the NPRM demonstrate that there still is confusion as to FRA's views. By the statements in the preamble of this final rule, FRA hopes to definitively clear up this confusion so that FRA's views are understood as FRA intends that they be.

Moreover, FRA believes that a reading of the NPRM shows anything but an intent to hide its views on preemption concerning the operation of a cab car as the leading unit of a passenger train. The NPRM concerned the crashworthiness of cab cars and MU locomotives and was not that large a rulemaking document. The NPRM itself contained a table of contents, which identified where "Federalism Implications" were discussed in the preamble. *See* 72 FR 42017. The section on "Federalism Implications" in turn pointed the reader further to the discussion of § 238.13 (Preemptive effect) in the section-by-section analysis. Nonetheless, to the extent that a member of the public interested in the safety of cab cars and MU locomotives may not read beyond the Summary section of this final rule, FRA is stating in the Summary that this final rule clarifies FRA's views on the preemptive effect of this part.

8. Whether FRA Has Authority To Express Its Views on Preemption

The BLET stated that FRA's comments on preemption improperly address matters reserved for the Legislative and Judicial Branches and raise serious separation-of-powers questions. The BLET termed "troubling" that FRA's views were the latest in a series of similar actions by Executive Branch agencies. The BLET stated that Congress expresses its intent and that courts address questions about the intent, and that Congress can step in and overrule the judiciary as was done with passage of the 9/11 Commission Act of 2007.

Similarly, the AAJ commented that FRA does not have authority to regulate with force of law, absent a clear and express delegation of that authority from Congress. The AAJ stated that FRA may exercise preemptive authority if Congress has explicitly delegated the authority and does so in a way that is consistent with Congressional intent. The AAJ claimed that Congress has never delegated preemptive authority to FRA and has provided instead a very limited scope of preemption under FRSA, asserting that FRA is not permitted to adopt regulations which preempt an individual's common law tort remedies. The AAJ further commented that Congress has not shown any intent to preempt State tort law actions or to prevent causes of action based on Federal law and regulations, citing case law. The AAJ cited in particular to *Sprietsma* v. *Mercury Marine*, 537 U.S. 51 (2002), to support its assertion that any Congressional desire to achieve uniformity in transportation safety regulation does not justify preemption of common law claims.

FRA notes that some of these comments overlap with other comments that FRA has addressed. As to comments questioning FRA's authority to express its views on preemption, FRA believes its authority to do so arises out of its very authority to preempt State and local laws. There is no question that the Supremacy Clause of Article VI of the U.S. Constitution provides Congress with the power to preempt State law. "Preemption may result not only from action taken by Congress itself: A Federal agency acting within the scope of its congressionally delegated authority may preempt state regulation." *Louisiana Public Service Commission* v. *FCC*, 476 U.S. 355, 369 (1986). Since Congress provided that delegation very forthrightly in Section 20106 and the Supreme Court has interpreted the statute to provide for preemption of State law by FRA regulations, there can be no real question that FRA has authority to preempt State regulation. *See* the discussion elsewhere in this preamble of the *Easterwood* and *Shanklin* cases.

By virtue of FRA's authority to preempt State law and the President's direction in Executive Order 13132 that agencies discuss the preemptive effect of their rules in the preambles to those rules, FRA may express its views as to the preemptive effect of its regulations.

The BLET surely would expect FRA to do so if a State or locality were to pass a law, or a State or local court were to issue an order, that potentially endangered the safety of the BLET's members and which FRA believed was preempted by Federal law. In this regard, in providing for national uniformity of regulation, Section 20106 protects against the potential for ever-changing and conflicting State and local standards adopted by individual juries, which could compromise railroad safety. Moreover, it would be irrational to forbid FRA from expressing its views as to the preemptive effect of its regulations when such FRA views have in fact been found to merit deference. *See Union Pacific RR* v. *California Public Utilities Comm'n*, 346 F.3d 851, 867 (9th Cir. 2003). That case, in which FRA argued that some of its regulations are preemptive and some are not, also well illustrates the benefits for the courts of FRA clearly discussing what FRA intends to preempt and what it does not. The Supreme Court has made clear that it expects such agency discussions of preemption.

As we explained in *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 718, 105 S.Ct. 2371, 2377, 85 L.Ed.2d 714 (1985), it is appropriate to expect an administrative regulation to declare any intention to pre-empt state law with some specificity:

> "[B]ecause agencies normally address problems in a detailed manner and can speak through a variety of means, * * * we can expect that they will make their intentions clear if they intend for their regulations to be exclusive.

California Coastal Com'n v. *Granite Rock Co.* 480 U.S. 572, 583 (1987).

FRA notes in particular that the case cited by the AAJ, *Sprietsma* v. *Mercury Marine*, does not apply to national uniformity of railroad safety regulation or the preemption of State common law by such regulations. *Sprietsma* involved a different statute, the Federal Boat Safety Act, which contains an express savings clause stating that "[c]ompliance with this chapter [46 U.S.C. chapter 43] or standards, regulations, or orders prescribed under this chapter does not relieve a person from liability at common law or under State law." 46 U.S.C. 4311(g). Common law standards of care are not preempted under the Federal Boat Safety Act, because Congress expressly said otherwise. (The United States itself argued as *amicus curiae* in support of the Supreme Court's holding.) Congress has, however, expressly provided for Federal preemption in the railroad safety area when the Secretary of Transportation has issued a regulation or order covering a particular subject matter. *See* prior discussion of Section 20106.

9. What Impelled FRA's Views on Preemption

The BLET asserted that FRA's discussion of preemption in the NPRM was a "naked attempt" to influence the outcome of a judicial appeal in which a railroad appellant was the defendant. The BLET stated that FRA made the outstanding claim that the possibility that the 1999 final rule would be amended at some unspecified later date preempts all State law by the complete absence of a standard, which preemption FRA then activated retroactively by publishing the NPRM. In this regard, the BLET cited the following passage from the NPRM:

> FRA specifically stated in the final rule that additional effort needed to be made to enhance corner post safety standards for cab cars and MU locomotives—leading to the NPRM that FRA is issuing today. 64 FR at 25607. However, FRA made clear that the very fact that it identified the possibility of specifying additional regulations did not nullify the preemptive effect of the final rule, both in terms of the issues addressed by the specific requirements imposed, and those as to which FRA considered specific requirements but ultimately chose to allow a more flexible approach.

72 FR 42030. The BLET asserted its belief that FRA transformed the addition of security language to the rail safety preemption statute in 2002 into preemption of State common law pertaining to standards that were not imposed in 1999. The BLET commented that the 2002 amendment to then-existing Section 20106 did nothing more than extend current safety preemption to matters of rail security and, given that the NPRM is a proposed safety rule, the BLET contended that the mere fact that Congress extended preemption from safety to security matters provided no basis whatsoever for FRA to address the subject. Further, the BLET alleged that FRA "put its thumbs on the scale of justice" in stating that FRA had prohibited cab car-forward operations for Tier II but not for Tier I equipment and that FRA's choice was intended to be preemptive of State standards. The BLET maintained that there is substantial evidence that FRA published its preamble discussion to assist Metrolink in its appeal of a California court decision in which preemption relating to cab car-forward operations was an issue. The BLET stated that when the 1999 final rule was published, FRA never even suggested that the prohibition pertaining to cab car-forward operation of Tier II passenger equipment preempted all State and local law concerning the subject of cab car-forward operation of Tier I equipment, including common law.

FRA notes that the BLET's comments highlight an inadvertent error in the NPRM in which the verb "to make" was stated in the past tense rather than the present tense. In the passage set out above, FRA had intended to state the following:

> However, FRA makes clear that the very fact that it identified the possibility of specifying additional regulations did not nullify the preemptive effect of the final rule, both in terms of the issues addressed by the specific requirements imposed, and those as to which FRA considered specific requirements but ultimately chose to allow a more flexible approach.

Emphasis added. FRA does recognize that in stating "to make" in the past tense, the passage erroneously conveys that FRA made that explicit statement in the 1999 final rule. FRA did not make that statement in the 1999 final rule. Nonetheless, in a similarly-worded passage on the next page of the NPRM, the NPRM correctly stated the following:

> FRA's decision to revisit in this NPRM subjects addressed in the 1999 final rule does not change the preemptive effect of the comprehensive requirements imposed in that rule. As noted earlier, FRA's recognition in the 1999 final rule that additional work needed to be completed to enhance the crashworthiness of cab cars and MU locomotives does not nullify the preemptive effect of the standards then imposed for this equipment.

72 FR 42031. As this passage helps makes clear, FRA's point in citing the 1999 final rule was surely not to change what was stated in that final rule. FRA's point was to note that in promulgating the 1999 final rule FRA identified the possibility of specifying additional regulations to enhance safety after the completion of additional research efforts, but that identifying that possibility did not nullify the preemptive effect of that final rule on State or local standards. In the same way, FRA's recognition in this final rule that fuller application of CEM technologies to cab cars and MU locomotives could enhance their safety is not intended to nullify the preemptive effect of the standards arising from the rulemaking. FRA reiterates that it continually strives to enhance railroad safety, has an active research program focused on doing so, and sets safety standards that it believes are necessary and appropriate for the time that they are issued with a view to amending those standards as

circumstances change. If FRA's regulations were not accorded preemptive effect merely because FRA may amend its regulations at some point in the future, preemption would never apply, nor, it seems, would preemptive effect seemingly be accorded to any DOT regulation because DOT may amend any of its regulations in the future.

In addition, FRA believes that the BLET's comments make too much out of FRA's mention of the Homeland Security Act of 2002's amendment to 49 U.S.C. 20106 that added language concerning the preemptive effect of rail security regulations and orders. *See* 72 FR 42028. FRA noted that Section 20106 had been amended and FRA stated that it was proposing to amend § 238.13 (Preemptive effect) so that the regulatory section was more consistent with the revised statutory language addressing railroad security. *Id.* After doing so, FRA then explained as follows:

> In addition, since issues have arisen regarding the preemptive effect of this part on the safety of operating a cab car as the leading unit of a passenger train, FRA believes that clarification of its views on the matter is needed to address any misunderstanding. As described below, through a variety of initiatives spanning more than a decade, FRA has comprehensively and intentionally covered the subject matter of the requirements for passenger equipment, planning for the safe use of passenger equipment, and the manner in which passenger equipment is used.

Id. It is the discussion "described below" that resulted in virtually every comment made by the BLET on FRA's preemption views. FRA reiterates those views except as they are expressly changed in this final rule. FRA clearly separated mention of the 2002 statutory amendment from the rest of the discussion. FRA notes that it proposed amending § 238.13 in part to reflect expressly that FRA's Passenger Equipment Safety Standards have a role in rail security. For example, if a passenger train collision were caused by intentional terrorist act, FRA's crashworthiness requirements would help to protect survivable space for the train occupants, FRA's fire safety standards would help lessen the likelihood that a fire would result, FRA's passenger train emergency system requirements would help facilitate both passenger escape and rescue, and other FRA standards would likely help mitigate the consequences of the act.

While FRA has addressed the BLET comment as to what was said in the 1999 final rule, FRA again emphasizes that FRA is not only authorized to express its views as to the preemptive effect of its regulations and orders but has an obligation to do so when issues arise as to their preemptive effect. The NPRM was not the first occasion for FRA to express its views on the preemptive effect of this part on the safety of operating a cab car as the leading unit of a passenger train, and FRA clarified its views in light of misunderstandings that had arisen. That some confusion appears to have remained even after FRA did so in the NPRM is reason for FRA to believe that it may not have been clear enough, which has led FRA to be detailed in its responses to all of the preemption comments on the NPRM. Preemption is both complex and important; it merits extensive discussion when that is necessary to convey a complete understanding of the issues. It was necessary in this NPRM because the preemptive effect of FRA's actions had widely been misunderstood. FRA recognizes that the NPRM was published during ongoing litigation concerning the operation of a train with a cab car as the leading unit, but the underlying incident, other incidents, and concerns as to enhancing the end structure of cab cars and MU locomotives were the impetus for issuing the NPRM and for its timing. FRA cannot stand silent about the meaning and effect of its rules because litigation is underway. Litigation is often underway or imminent somewhere. If litigation were a bar to rulemaking or to full explanations of rules FRA issues, very little rulemaking would get done. FRA tries to explain its regulatory actions fully and clearly trusting that those explanations will assist the regulated community and the courts alike and believing that it is our job to do so. FRA does that to advance railroad safety. FRA is consistently an advocate for railroad safety, and its rules and interpretations of those rules are intended to protect and enhance the safety of railroad employees and passengers, and citizens in the vicinity of railroads, and the property of everyone within range. Of course, expressions of the agency's views are likely to help or hurt the case of some particular litigant, but that is not FRA's concern. As recited above, *Union Pacific RR* v. *California Public Utilities Comm'n*, 346 F.3d 851, 867 (9th Cir. 2003), well illustrates that FRA's forthright and clear expression of its views may help one litigant on some claims and the other side on other claims in the same case. FRA does not take or alter its positions based on who the litigants are.

When, however, it appears that a court or courts have misconstrued FRA's regulations, the agency has an obligation in the interest of safety to correct the record. After all, FRA issued the regulation or interpretation as it did because that represented FRA's best expert judgment concerning how to advance railroad safety. Necessarily, in the agency's view, a misconstruction of its regulations is likely to impair railroad safety and permitting that impairment to continue is unacceptable.

Both the technical aspects of railroad safety and preemption under 49 U.S.C. 20106 are arcane and difficult subjects on which the regulated community and courts, alike, are entitled to the best explanations the technical experts at FRA can provide. In the case that appears to concern the BLET, it seems that the discussion of preemption in the NPRM did assist a California appellate court, and that is entirely appropriate.

10. Whether FRA's Views on Preemption Affect FELA

The BLET asserted that FRA's views on preemption conflict with legislatively promulgated and judicially recognized rights under the Federal Employers' Liability Act (FELA), 45 U.S.C. 51 *et seq.* (FELA provides that employees of common carriers by railroad engaged in interstate or foreign commerce may recover for work-related injuries caused in whole or in part by their employer's negligence.) The BLET stated that FELA has been liberally construed and that juries are given great leeway to determine whether there has been negligence or not. The BLET noted that FRA did not mention whether its views on preemption extended to FELA, but the BLET believed that FRA has created unnecessary tension with FELA by limiting theories of liability to violations of positive regulation—and excluding from liability that which has not been regulated. The BLET recommended that FRA avoid creating any such conflict by essentially limiting FRA's statements on preemption to what the statute expressly states and referencing the statute.

As the BLET points out, FRA made no reference to FELA in FRA's discussion of preemption in the NPRM. FRA does not understand the basis for the BLET's concern that FRA is somehow "limiting theories of liability to violations of positive regulation—and excluding from liability that which has not been regulated." Neither the NPRM nor this final rule does that. The statute and the regulation plainly state that a Federal standard of care created by regulation displaces State standards of care covering the same subject matter. State

standards of care covering other subject matter are not preempted. FRA's discussion was limited to Federal railroad safety laws, regulations, and orders for which FRA has responsibility to administer or enforce. FELA is a railroad labor law, which FRA neither administers nor enforces. FELA is also a Federal law and, therefore, not expressly a subject of preemption under 49 U.S.C. 20106. Occasionally, however, conflicts arise between Federal statutes and courts must resolve them. Courts have concluded that, in certain circumstances, Federal railroad safety laws may preclude some FELA claims.

Several courts have decided, for example, that the FRSA precludes an action under FELA where a railroad employee claims that he or she was injured because of a negligently excessive train speed, and where the train was not exceeding the speed limit set by FRSA regulations. These courts have reasoned that permitting such FELA claims would be contrary to "Congress' intent [in passing the FRSA] that railroad safety regulations be nationally uniform to the extent practicable." *Lane* v. *R.A. Sims, Jr., Inc.*, 241 F.3d 439, 443 (5th Cir. 2001); *see also Waymire* v. *Norfolk & W. Ry. Co.*, 218 F.3d 773, 776 (7th Cir. 2000); *Rice* v. *Cincinnati, New Orleans & Pac. Ry. Co.*, 955 F.Supp. 739, 740–41 (E.D.Ky. 1997); *Thirkill* v. *J.B. Hunt Transp., Inc.*, 950 F.Supp. 1105, 1107 (N.D.Ala. 1996). But *see Earwood* v. *Norfolk S. Ry. Co.*, 845 F.Supp. 880, 891 (N.D.Ga. 1993) (concluding that a FELA action based on excessive speed was not precluded by the FRSA).

Tufariello v. *Long Island R. Co.*, 458 F.3d 80, 86 (C.A.2 (N.Y.), 2006). Nothing in this final rule changes how courts resolve perceived conflicts between Federal railroad safety laws and FELA claims. As the examples cited above show, Federal courts were already applying preclusion analyses based on Section 20106 to reconcile Federal railroad safety laws, where they apply, and FELA. Courts regularly interpret Federal statutes that present potential conflicts, and FRA anticipates that courts hearing FELA cases will have little difficulty reconciling FELA and the current text of Section 20106.

11. Whether Preemption Applies Under the Locomotive (Boiler) Inspection Act

The AAR commented that FRA gave incomplete guidance on preemption by referring only to Section 20106 in the NPRM. While the AAR took no issue with what FRA stated regarding Section 20106, the AAR pointed out that preemption also applies under the Locomotive (Boiler) Inspection Act (LBIA) to requirements affecting locomotives and the NPRM would affect locomotive requirements. (The LBIA was repealed and reenacted as positive law in 49 U.S.C. ch. 207 (sections 20701–20703), "Locomotives," by Public Law 103–272 (July 5, 1994); FRA is nonetheless referring to these provisions by their former name as they are commonly known.) The AAR stated that the LBIA preempts all requirements pertaining to locomotives, regardless of whether there is a Federal requirement addressing the subject matter of a State requirement. According to the AAR, a requirement could be preempted by the LBIA even if it is not preempted under Section 20106. The AAR noted that FRA recognizes preemption under the LBIA, citing 49 CFR 230.5, the preemption provision for FRA's Steam Locomotive Inspection and Maintenance Standards, which states in part: "The Locomotive Boiler Inspection Act (49 U.S.C. 20701–20703) preempts all State laws or regulations concerning locomotive safety. *Napier* v. *Atlantic Coast Line R.R.*, 272 U.S. 605 (1926)."

The AAR added that in issuing this standard, FRA explained that while Section 20106 "would ordinarily set the standard for preemption of a rule issued under [49 U.S.C.] 20701, the broader field preemption provided by the LBIA (as interpreted by the courts) seems the more appropriate standard to apply in light of this rule's subject matter." 64 FR 62828, 62836 (Nov. 17, 1999). The AAR believed the same is true here and that to portray the scope of Federal preemption accurately, § 238.13 needs to refer to both Section 20106 and the LBIA. The AAR suggested amending § 238.13 by adding the above-referenced statement from § 230.5.

FRA believes that the AAR is correct and that preemption under the LBIA also applies to locomotives covered by part 238. FRA recognizes that the LBIA has been consistently interpreted as totally preempting the field of locomotive safety, extending to the design, the construction, and the material of every part of the locomotive and tender and all appurtenances thereof. Although the LBIA has no preemption provision, it has been held to preempt the entire field of locomotive safety. *See Napier* v. *Atlantic Coast R.R.*, 272 U.S. 605 (1926). The 1999 Passenger Equipment Safety Standards final rule was issued in part under the authority of the LBIA, sections 20701–20702, as was the NPRM in this rulemaking.

This rulemaking directly imposes requirements on locomotives, as both cab cars and MU locomotives are locomotives. They are also considered passenger cars under part 238. The subject matter of part 238 is broader than just locomotives and passenger cars, covering all passenger equipment, which includes baggage, private, and other cars. Because of the broad subject matter of part 238 and the fact that the (former) FRSA rulemaking authority now codified in 49 U.S.C. 20103 was a basis for the rule, FRA originally cited the FRSA preemption provision codified in 49 U.S.C. 20106. However, that action was not meant to exclude the possibility of preemption under the LBIA applying as well.

FRA has not been presented with an actual issue involving a passenger locomotive where FRA views on the effect of Federal preemption would differ depending on whether preemption under FRSA or the LBIA applies. Because the courts have consistently held since *Napier* in 1926 that the LBIA preempts the field of the design, the construction, and the material of every part of the locomotive and tender and all appurtenances thereof, FRA has presumed that preemption under the LBIA applies. Nevertheless, it is good regulatory practice to say so explicitly and FRA now does that. FRA amends § 238.13 at this time citing the LBIA.

V. Section-by-Section Analysis

Amendments to 49 CFR Part 238, Passenger Equipment Safety Standards

Subpart A—General

Section 238.13 Preemptive Effect

This section informs the public as to FRA's views regarding the preemptive effect of this part. As discussed above, FRA is amending this section to conform to the revisions made to Section 20106 by the 9/11 Commission Act of 2007.

FRA notes that its discussion of the comments raised on the NPRM provides detailed analysis of the preemptive effect of this part, and FRA is not repeating that discussion here. FRA also notes that the preemptive effect of this part is discussed in the section on "Federal Implications" in Section VI.D. of the preamble to this final rule.

Subpart C—Specific Requirements for Tier I Passenger Equipment

Section 238.205 Anti-Climbing Mechanism

In the NPRM, FRA proposed to amend paragraph (a) of this section to correct an error in the rule text. In relevant part, this paragraph stated that "all passenger equipment * * * shall have at both the forward and rear ends an anti-climbing mechanism capable of resisting an

upward or downward vertical force of 100,000 pounds without failure." However, FRA had intended that the words "without failure" actually read as "without permanent deformation," as stated in the preamble accompanying the issuance of this paragraph. Specifically, FRA explained in the accompanying preamble that the anti-climbing mechanism must be capable of resisting an upward or downward vertical force of 100,000 pounds "without permanent deformation." *See* 64 FR 25604; May 12, 1999. Use of the "without permanent deformation" criterion is consistent with North American industry practice, and FRA had not intended to relax that practice. Consequently, FRA had proposed to correct § 238.205(a) expressly to require that the anti-climbing mechanism be capable of resisting an upward or downward vertical force of 100,000 pounds without permanent deformation.

In comments on the NPRM, CRM was supportive of the clarification to this anti-climbing provision, but CRM raised concern about the precedent set by making the clarification retroactive. As a result, CRM wanted it made clear that the date for the change be stated prospectively in the CFR itself.

FRA brought this issue before the Task Force for its consideration. The consensus of the Task Force was to correct the rule text for all passenger equipment placed in service for the first time once the final rule takes effect, and to leave the rule text in its original for passenger equipment already placed in service. The Task Force could not cite an instance where passenger equipment subject to the requirements of this section and already placed in service had not been constructed with an anti-climbing mechanism capable of resisting an upward or downward vertical force of 100,000 pounds without permanent deformation. For this reason, the Task Force believed there was no real safety concern in leaving the rule text in its original for existing passenger equipment.

FRA agrees with the Task Force's recommendation here and finds that, under the circumstances, it is appropriate to modify the rule text to apply the clarification to all passenger equipment placed in service for the first time on or after the effective date of the final rule. The rule text modification will take place immediately for such equipment newly placed in service, given that all equipment being placed in service now should meet this requirement.

FRA notes that it has set out the entire text of this section for ease of use, although FRA is amending paragraph (a) only. No change to paragraph (b) has been made or is intended.

Section 238.209 Forward End Structure of Locomotives, Including Cab Cars and MU Locomotives

FRA is principally amending this section by revising it and adding a new paragraph (b) so that the forward end structure of a cab car or an MU locomotive may comply with the requirements of appendix F to this part in lieu of the requirements of either § 238.211 (Collision posts) or § 238.213 (Corner posts), or both, provided that the end structure is designed to protect the occupied volume for its full height, from the underframe to the anti-telescoping plate (if used) or roof rails. *See* the discussion of §§ 238.211 and 238.213 and appendix F, below.

In part because of this change, FRA is amending the heading of this section to make clear that the requirements apply to cab cars and MU locomotives. Cab cars and MU locomotives are locomotives and have been subject to the requirements of this section since its issuance. FRA has also shortened "[f]orward-facing end structure" to "[f]orward end structure," in the section heading. FRA believes that referring to the forward or front end structure is appropriate since this section already referred to the "forward end structure" in former paragraph (c) of the section, redesignated as paragraph (a)(1)(iii), and, as noted above, this section is being amended to expressly reference requirements for cab cars and MU locomotives that are stated in this final rule as applying to the forward end structure.

Nonetheless, FRA makes clear that it is not changing the original requirements of this section for the skin covering the forward-facing end of each locomotive; FRA has only redesignated these requirements as paragraph (a) of this section. FRA does note that an issue has arisen whether the skin must be made of steel plate, or whether a material of lesser yield strength may be used. FRA makes clear that the intent of this section has always been to allow for use of material of lesser yield strength that, due to its increased thickness, *e.g.,* provides strength at least equivalent to that for the steel plate specified. For instance, aluminum material of lesser yield strength may be used to comply with the requirements of paragraph (a) if it is of sufficient thickness to provide at least the strength equivalent to that of a steel plate that is ½-inch thick and has a yield strength of 25,000 pounds-per-square-inch.

Section 238.211 Collision Posts

This final rule enhances requirements for collision posts at the forward ends of cab cars and MU locomotives. The enhancements are based on the provisions of paragraphs (a) through (d) of section 5.3.1.3.1, Cab-end collision posts, of APTA SS–C&S–034–99, Rev. 2. FRA has modified the provisions of this APTA standard for purposes of their adoption as a Federal regulation.

FRA is setting out § 238.211 in its entirety in the rule text for ease of use. In the NPRM, FRA had elided paragraphs (a)(1) and (a)(2) and paragraph (b)(1) of this section, using asterisks to represent that the text of these paragraphs would be unchanged. However, FRA is including these paragraphs in this final rule so that this section, as amended, may be read more easily in its entirety.

Paragraph (b) formerly required that each locomotive, including a cab car and an MU locomotive, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, have two collision posts at its forward end, each post capable of withstanding a 500,000-pound longitudinal force at the point even with the top of the underframe and a 200,000-pound longitudinal force exerted 30 inches above the joint of the post to the underframe. These requirements were based on AAR Standard S–580, and had been the industry practice for all locomotives built since August 1990. *See* 64 FR 25606. Subsequently, industry standards for locomotive crashworthiness were enhanced, with APTA focusing on standards for passenger-occupied locomotives, *i.e.,* cab cars and MU locomotives, and the AAR focusing on standards for freight locomotives. The AAR's efforts helped support development of the locomotive crashworthiness rulemaking, published as a final rule on June 28, 2006. *See* 71 FR 36887. That final rule specifically addresses the safety of conventional locomotives and does not apply to passenger-occupied locomotives. Nevertheless, FRA believes that conceptual approaches taken in the locomotive crashworthiness final rule are applicable to this rulemaking, as discussed below. To clearly delineate the relationship between the locomotive crashworthiness final rule and part 238, FRA has inserted a cross-reference in the introductory text of paragraph (b) to indicate that since the locomotive requirements for collision posts in subpart D of part 229 became effective for locomotives manufactured on or after January 1, 2009, those more

stringent requirements—and not the requirements of this paragraph—apply to conventional locomotives.

In the NPRM, FRA proposed correcting paragraph (b)(2) so that the rule text is consistent with the clear intent of the provision. As explained in the preamble accompanying the issuance of this paragraph in the May 12, 1999 final rule, paragraph (b)(2) provides for the use of an equivalent end structure in place of the two forward collision posts described in paragraph (b)—specifically, paragraphs (b)(1)(i) and (b)(1)(ii). *See* 64 FR 25606. However, the rule text made express reference only to the collision posts in "paragraph (b)(1)(i) of this section." This provision was not intended to be limited to the collision posts described in paragraph (b)(1)(i) alone, but instead to the collision posts described in paragraph (b)(1) as a whole—both paragraphs (b)(1)(i) and (b)(1)(ii). As a result, FRA proposed to correct this clear error in the rule text.

In its comments on the NPRM, the BLET raised concern with this provision, first noting the purpose of collision posts as explained by FRA in the final rule governing the crashworthiness of freight locomotives. According to the BLET, because the height and positioning of the collision posts are what creates the survivable space during an accident, FRA imposes strict standards if a railroad wants to deviate from the AAR S–580 standard in the locomotive crashworthiness final rule. The BLET therefore found problematic that paragraph (b)(2) would provide for an equivalent end structure that could withstand the sum of the forces each collision post must withstand, in lieu of the two collision posts. The BLET believed that the level of protection provided by two collision posts is greater than the sum of the forces because of added energy dissipation provided by the outer sheeting of the locomotive superstructure. Additionally, the BLET believed that a differently-designed end structure that meets the equivalency requirement may or may not—depending upon its design and construction—provide the same amount of survivable space during an accident. Accordingly, the BLET urged FRA to revise paragraph (b)(2) in a way that addresses both of these concerns.

As FRA discussed in the NPRM, FRA proposed to correct paragraph (b)(2) of this section so that use of an equivalent end structure would be allowed only in place of the two forward collision posts described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section—not paragraph (b)(1)(i) alone. FRA sought to clear up a discrepancy between the rule text and the preamble explaining the provision, as well a lack of consistency within this paragraph (b) as a whole. FRA has interpreted this provision in accordance with the preamble to the May 12, 1999 final rule, and would not consider any locomotive front end structures constructed otherwise to be compliant.

FRA understands the BLET to be concerned that, even given this background, an end structure built in accordance with this corrected paragraph would present safety concerns. In large part for reasons discussed elsewhere in this final rule in support of new paragraph (c) of this section, FRA disagrees. Paragraph (c) of this section is essentially the counterpart to—and an enhancement of—the requirements of this paragraph (b) for new cab cars and MU locomotives. New paragraph (c) of this section applies to all cab cars and MU locomotives ordered on or after May 10, 2010, or placed in service for the first time on or after March 8, 2012. Further, as noted earlier, as a result of FRA's locomotive crashworthiness final rule cited by the BLET, paragraph (b) does not apply to conventional passenger locomotives that are manufactured on or after January 1, 2009, as they are subject to the requirements of subpart D of part 229. Paragraph (b) of this section therefore has limited applicability for new passenger locomotives, essentially only those new cab cars and MU locomotives ordered prior to May 10, 2010, and placed in service for the first time prior to March 8, 2012.

FRA notes that paragraph (b)(2) is intended to assure a minimum level of overall end frame performance that prevents intrusions into the occupied volume, including the locomotive engineer's cab. End frames designed compliant with paragraph (b)(2) are intended to act as a system to help keep objects out of the cab. FRA wishes to allow for design innovation where alternative structures can be utilized that will provide equivalent levels of protection. There are examples of alternative, end frame arrangements that provide equivalent protection and are shaped so as to help deflect the object as the end frame deforms, thereby preventing intrusion into the cab area. FRA does not believe that use of structures designed compliant with paragraph (b)(2) places engineers at greater risk than use of traditional collision post structures compliant with paragraph (b)(1).

FRA has redesignated former paragraph (c) as paragraph (d), revised it, and added a new paragraph (c) in its place. New paragraphs (c)(2)(i) and (c)(2)(ii) are similar to paragraphs (b)(1)(i) and (b)(1)(ii) of this section. One principal difference is that the final rule requires that each collision post be able to support the specified forces for angles up to 15 degrees from the longitudinal. In effect, this requires each post to support a significant lateral load, and is intended to reflect the uncertainty in the direction that a load is imparted during an impact. The requirement is also intended to encourage the use of collision posts with closed (*e.g.,* rectangular) cross-sections, rather than with open (*e.g.,* I-beam) cross-sections. Beams with open cross-sections tend to twist and bend across the weaker axis when overloaded, regardless of the direction of load. Beams with closed cross-sections are less likely to twist when overloaded, and are more likely to sustain a higher load as they deform, absorbing more energy.

Paragraph (c)(2)(iii) does not have a counterpart in paragraph (b). This paragraph requires that the collision post be able to support a 60,000-pound horizontal force applied anywhere along its length, from its attachment to floor-level structure up to its attachment to roof-level structure. This requirement is intended to provide a minimum level of collision post strength at any point along its full height—not only at its connection to the underframe or at 30 inches above that point. The requirement must also be met for any angle within 15 degrees of the longitudinal axis.

FRA notes that the forces specified in paragraph (c)(2) that the collision posts are required to withstand are more appropriately described as horizontal forces, not merely longitudinal forces, as they are applied at any angle within 15 degrees of the longitudinal axis, the same as provided in Section 5.3.1.3.1 of APTA SS–C&S–034–99, Rev. 2, on which this paragraph is based. Although the proposed rule text in the NPRM did not explicitly describe these forces as "horizontal forces," FRA is doing so in this final rule to be consistent with the APTA standard and to make the rule text more clear.

As discussed earlier, FRA received a number of comments on paragraph (c)(3), originally proposed as paragraph (c)(2) in the NPRM. FRA has modified this paragraph as a result, and this paragraph represents the consensus recommendation of RSAC. FRA had proposed that each collision post also be able to absorb a prescribed amount of energy while deforming and without separating from its supporting structure. This proposed requirement was intended to provide a level of protection similar to the SOA end frame design, as

discussed earlier in the Technical Background section of the preamble, above. To comply with this requirement, the NPRM proposed that a quasi-static test, such as the test conducted by Bombardier on the M7 design, be used to show compliance. The NPRM also presented the option of dynamic testing to demonstrate compliance.

As discussed earlier, FRA believes that dynamic performance requirements have been sufficiently validated and that dynamic testing should be included as an alternative for demonstrating compliance. However, FRA agrees with the Task Force in developing the final rule that instead of including in this paragraph an option for the dynamic testing of cab cars and MU locomotives, as was proposed in the NPRM, alternative requirements based on dynamic testing be included in appendix F to this part. Although FRA believes that the dynamic performance requirements will be applied to shaped-nose designs or CEM designs, or designs with both, these requirements may also be applied to conventional flat-nosed designs. Please *see* the "Discussion of Specific Comments and Conclusions" portion of the preamble, above, for additional guidance on the requirements of paragraph (c)(3).

As proposed in the NPRM, FRA has redesignated existing paragraph (c) as paragraph (d) of this section. No other change is intended.

There is no paragraph (e) in this final rule. In the NPRM, FRA cited examples of shaped-nosed designs that place the engineer back from the extreme forward end of the vehicle and offer the potential for significantly increased protection for the engineer in collisions. In this regard, FRA had proposed to add a paragraph (e) to provide relief from utilization of a traditional end frame structure, provided that an equivalent level of protection is afforded occupants by the components of a CEM system. *See* 72 FR 42038. The intent was to recognize that an equivalent level of protection may be provided against intrusion into occupied space, and that end frame structures could be set back from the very end of the cab car or MU locomotive as part of a CEM system. In the FRA CEM design tested in March 2006, the end frame structure was reinforced in order to support the loads introduced through the deformable anti-climber. Significantly more energy was absorbed in the deformation of the crush zone elements than the combined requirements outlined for both collision and corner posts while preserving all space for the locomotive engineer and passengers.[13] In the CEM design being procured by Metrolink, an equivalent end frame structure is placed outboard of occupied space with crush elements between the very end of the nose and the equivalent end frame structure of the cab car. For a grade-crossing collision above the underframe of the cab car, it is expected that perhaps an order of magnitude or larger of collision energy will be absorbed prior to any deformations into occupied space.

Nonetheless, FRA has decided that proposed paragraph (e) is not necessary to retain in this final rule. Dynamic performance requirements are provided as alternative requirements in appendix F to this part, and are therefore available to apply to cab cars and MU locomotives with CEM designs. The ability to apply dynamic performance requirements to the end frame structure provides the relief that was intended by the addition of proposed paragraph (e), and this final rule will help to facilitate the introduction of cab cars and MU locomotive with CEM designs.

Section 238.213 Corner Posts

This final rule enhances requirements for corner posts at the forward ends of cab cars and MU locomotives. The enhancements are based on the provisions of paragraphs (a) through (d) of Section 5.3.2.3.1, Cab end corner posts, and Section 5.3.2.3.3, Cab end-non-operator side of cab-alternate requirements of APTA SS–C&S–034–99, Rev. 2. FRA has modified the provisions of this APTA standard for purposes of their adoption as a Federal regulation. Together with the enhanced requirements for collision posts, this action will increase the strength of the front end structure of cab cars and MU locomotives up to what the main structure can support, and also require explicit consideration of the behavior of the front end structure when overloaded.

As proposed in the NPRM, FRA has revised this section in its entirety. FRA has revised this section by re-designating former paragraph (b) as paragraph (a)(2), making conforming changes to paragraph (a), and adding new paragraphs (b) and (c). FRA has made conforming changes to paragraph (a) so that it is consistent with this section in its entirety, as revised. In particular, FRA has re-stated the corner post requirements in terms of "force" resisted, rather than "load" resisted. However, FRA makes clear that no change is intended to the formerly stated requirements; on the contrary, FRA is using the same terminology throughout this section so as to minimize any confusion that may result from using different terms when the same meaning is intended.

Paragraph (b) is intended to augment the requirements of paragraph (a) for cab cars and MU locomotives ordered on or after May 10, 2010, or placed in service for the first time on or after March 8, 2012. Paragraph (b)(2) therefore requires that higher loads be resisted at the specified locations than its counterpart in paragraph (a).

Paragraph (b)(3) includes quasi-static performance requirements for demonstrating that the corner posts absorb energy while deforming. In the NPRM, proposed paragraph (b)(2)(i) contained quasi-static test requirements for demonstrating energy absorption and deformation. The proposed requirements were intended to provide a level of protection similar to the SOA end frame design, as described in the Technical Background portion of the preamble, above. A quasi-static test, similar to the test conducted by Bombardier on the M7, would be appropriate to demonstrate compliance. Additionally, proposed paragraph (b)(2)(ii) provided for dynamic qualification of the energy absorption and deformation requirements, as an alternative to demonstrating compliance quasi-statically. FRA proposed that the end structure would need to be capable of withstanding a frontal impact with a proxy object intended to approximate lading carried by a highway vehicle under specific conditions.

As discussed earlier, FRA believes that dynamic performance requirements have been sufficiently validated and that dynamic testing should be included as an alternative for demonstrating compliance. However, FRA agrees with the Task Force in developing the final rule that instead of including in this paragraph an option for the dynamic testing of cab cars and MU locomotives, as was proposed in the NPRM, alternative requirements based on dynamic testing be included in appendix F to this part. Although FRA believes that the dynamic performance requirements will be applied to shaped-nose designs or CEM designs, or designs with both, the requirements may also be applied to conventional flat-nosed designs. Please *see* the "Discussion of Specific Comments and Conclusions" portion of the preamble, above, for

[13] Tyrell, D., Jacobsen, K., Martinez, E., "A Train-to-Train Impact Test of Crash Energy Management Passenger Rail Equipment: Structural Results," American Society of Mechanical Engineers, Paper No. IMECE2006–13597, November 2006. This document is available on the Volpe Center's Web site at: *http://www.volpe.dot.gov/sdd/docs/2006/rail_cw_2006_07.pdf.*

additional guidance on the requirements of paragraph (b)(3).

FRA notes that collision posts have more available space and a stronger support structure than corner posts due to their location in the middle of the end frame. Hence, they can absorb more energy than corner posts, and the energy absorption requirements specified for collision posts in this final rule are greater than those specified for corner posts, as a result. Nevertheless, these new requirements for corner posts more than double the amount of energy required for the posts to fail, when compared to the 1990s end frame design.

Paragraph (c) prescribes the requirements for corner posts in cab cars and MU locomotives ordered on or after May 10, 2010, or placed in service for the first time on or after March 8, 2012, utilizing low-level passenger boarding on the side of the equipment opposite from where the locomotive engineer is seated. A graphical description of the forward end of a cab car or an MU locomotive utilizing low-level passenger boarding on the non-operating side of the cab end is provided in Figure 1 to subpart C. In this arrangement, the non-operating side of the vehicle is protected by two corner posts (an end corner post ahead of the stepwell and an internal corner post behind the stepwell) that are situated in front of the occupied space and provide protection for the occupied space; the rule allows for the combined contribution of both sets of corner posts to provide an equivalent level of protection to that required for the corner post design arrangement in other configurations.

As discussed earlier, FRA received a number of comments on this provision as proposed in the NPRM. In particular, the BLET raised concern that this provision could lead to a diminution of safety by designing the corner post ahead of the stepwell to be weaker than the one behind the stepwell. Although FRA has explained that safety is not diminished, the final rule contains an additional requirement that FRA review and approve plans for manufacturing cab cars and MU locomotives with this corner post design arrangement. Each plan must detail how the corner post requirements will be met, including what the acceptance criteria will be to evaluate compliance. FRA believes that this close oversight will help to alleviate concerns that the manufactured designs are in any way less safe for crewmembers and passengers to occupy.

Specifically, paragraph (c) requires that the corner post load requirements of paragraph (b) be met for the corner post on the operating side of the cab. The requirements for the two corner posts on the side opposite from the engineer's control stand are described in paragraphs (c)(2) and (c)(3). The structural requirements for the end corner post ahead of the stepwell are described in paragraph (c)(2). The higher magnitude forces applied in the longitudinal direction will result in a corner post that is wider than it is deep. The structural load requirements for the corner post behind the stepwell are described in paragraph (c)(3). The higher magnitude forces applied in the transverse direction will result in a corner post that is deeper than it is wide.

In paragraph (c)(4), FRA is also requiring that the combination of the corner post ahead of the stepwell and the corner post behind the stepwell be capable of absorbing collision energy while deforming. The requirements of this paragraph are virtually identical to those for corner ports subject to paragraph (b)(3). In the NPRM, proposed paragraph (c)(3)(i) contained quasi static test requirements for demonstrating energy absorption and deformation. Additionally, proposed paragraph (c)(3)(ii) provided for dynamic qualification of the energy absorption and deformation requirements, as an alternative to demonstrating compliance quasi-statically. As noted earlier, FRA agreed with the Task Force in developing this final rule that instead of including in this paragraph an option for the dynamic testing of cab cars and MU locomotives, as was proposed in the NPRM, alternative requirements based on dynamic testing be included in appendix F to this part. This has been done.

There is no paragraph (d) in this final rule. Similar to the proposed addition of § 238.211(e), discussed above, FRA had proposed to add a paragraph (d) to provide relief from utilization of a traditional end frame structure, provided that an equivalent level of protection is afforded occupants by the components of a CEM system. *See* 72 FR 42038. The intent was to recognize that an equivalent level of protection may be provided against intrusion into occupied space, and that end frame structures could be set back from the very end of the cab car or MU locomotive as part of a CEM system. In the FRA CEM design tested in March 2006, the end frame structure was reinforced in order to support the loads introduced through the deformable anti-climber. Significantly more energy was absorbed in the deformation of the deformable anti-climber than the combined requirements outlined for both collision and corner posts while preserving all space for the locomotive engineer and passengers. *Id.* In the CEM design being procured by Metrolink, an equivalent end frame structure is placed outboard of occupied space with crush elements between the very end of the nose and the equivalent end frame structure of the cab car. For a grade-crossing collision above the underframe of the cab car, it is expected that perhaps an order of magnitude or larger of collision energy will be absorbed prior to any deformations into occupied space.

Nonetheless, FRA has decided that proposed paragraph (d) is not necessary to retain in this final rule. Dynamic performance requirements are provided as alternative requirements in appendix F to this part, and are therefore available to apply to cab cars and MU locomotives with CEM designs. The ability to apply dynamic performance requirements to the end frame structure provides the relief that was intended by the addition of proposed paragraph (d), and this final rule will help to facilitate the introduction of cab cars and MU locomotive with CEM designs.

Appendix A to Part 238—Schedule of Civil Penalties

This appendix contains a schedule of civil penalties to be used in connection with this part. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invited comment on the proposed penalty schedule in light of the proposed changes to part 238. No comment was received.

FRA does not find it necessary to amend the penalty schedule as a result of the changes made to part 238 by this final rule. This final rule amends existing sections of part 238 for which guideline penalty amounts are already provided in the penalty schedule. As a result, the penalty schedule remains unchanged.

As noted in the NPRM, in December 2006 FRA published proposed statements of agency policy that would amend the schedules of civil penalties issued as appendixes to FRA's safety regulations, including part 238. *See* 71 FR 70589; Dec. 5, 2006. The proposed revisions are intended to reflect more accurately the safety risks associated with violations of the rail safety laws and regulations, as well as to make sure that the civil penalty amounts are consistent across all safety regulations. Although the schedules are statements of agency policy, and FRA has authority to issue the revisions without having to follow the notice and comment

procedures of the Administrative Procedure Act, FRA provided members and representatives of the general public an opportunity to comment on the proposed revisions before amending them. FRA has evaluated all of the comments received in preparing final statements of agency policy, and the schedule of civil penalties to part 238 may be revised as a result of that separate proceeding, independent of this rulemaking.

Appendix F to Part 238—Alternative Dynamic Performance Requirements for Front End Structures of Cab Cars and MU Locomotives

FRA is adding appendix F to part 238 to provide alternatives to the requirements of §§ 238.211 and 238.213. Cab cars and MU locomotives are not required to comply with both the requirements of those sections and the requirements of this appendix. Either set of requirements is adequate for the purpose, depending on the technical challenge(s) presented.

As specified in § 238.209(b), the forward end of a cab car or an MU locomotive may comply with the requirements of this appendix in lieu of the requirements of either § 238.211 or § 238.213, or both. The requirements of this appendix are intended to be equivalent to the requirements of those sections and allow for the application of dynamic performance criteria to cab cars and MU locomotives as an alternative to the requirements of those sections. The alternative dynamic performance requirements are applicable to all cab cars and MU locomotives and may, in particular, be helpful for evaluating the compliance of cab cars and MU locomotives with shaped-noses or CEM designs, or both. In any case, the end structure must be designed to protect the occupied volume for its full height, from the underframe to the anti-telescoping plate (if used) or roof rails.

FRA notes that, in developing the NPRM, concern was raised as to the safety of conducting full-scale, dynamic testing; the technical tradeoffs between quasi-static test requirements and dynamic test requirements were discussed in the Technical Background section of the preamble to the NPRM. FRA explained that there are safety concerns associated with both quasi-static and dynamic testing, and in a quasi-static test particular care must be taken due to the potential for the sudden release of stored energy should there be material failure. Proper planning and execution of each test are required. Nonetheless, FRA has revised the dynamic performance requirements to minimize safety concerns, as discussed earlier in the preamble to this final rule. (Again, by noting that caution must be exercised in planning and executing the tests, FRA does not intend in any way to oust the jurisdiction of the Occupational Safety and Health Administration of the U.S. Department of Labor with regard to the safety of employees performing the tests.)

FRA notes that the approach in this appendix is similar to that followed in the locomotive crashworthiness final rule, in which the front end structure requirements are principally stated in the form of performance criteria for given collision scenarios. *See* appendix E to part 229; 71 FR 36915. In that final rule, FRA adopted performance criteria, rather than more prescriptive design standards, to allow for greater flexibility in the design of locomotives and better encourage innovation in locomotive designs. *See* 71 FR 36895–36898. Of course, the requirements in §§ 238.211 and 238.213 are forms of performance criteria; the distinction is that the performance criteria relate to quasi-static loading conditions—instead of dynamic loading conditions.

Please *see* the "Discussion of Specific Comments and Conclusions" section in the preamble, above, for additional guidance on the requirements of this appendix and of paragraph (b)(3) in particular for cab cars and MU locomotives utilizing low-level passenger boarding on the non-operating side of the cab.

VI. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and it has been determined not to be significant under either Executive Order 12866 or DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this final rule. Document inspection and copying facilities are available at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://www.regulations.gov*. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2006–25268.

Through this final rule, FRA is enhancing its minimum requirements for the performance of collision posts and corner posts on cab cars and MU locomotives. These requirements apply only to newly constructed passenger equipment used as cab cars or MU locomotives. The requirements are based on current industry standards for front end frame structures, which, to FRA's knowledge, every cab car or MU locomotive currently in production for operation in the United States already meets. As such, the requirements are not expected to affect any units in production or planned for production for operation in the United States. This rule essentially codifies these industry standards and will likely not cause railroads to incur costs beyond those they already incur voluntarily. In this regard, it is also likely that this rule will lead to no additional safety benefits, because, as previously mentioned, industry already makes cab cars and MU locomotives that meet these requirements and is assumed to do so in the absence of this final rule.

The rule's requirements may affect cab cars and MU locomotives from other potential manufacturers of equipment for operation in the United States if the equipment is of a design that does not meet current industry standards. However unlikely this scenario, FRA's analysis considers the hypothetical costs and benefits of requiring equipment subject to this final rule from a non-compliant design to be made compliant with the rule's requirements. Since there are alternative methods to meet the requirements of this final rule, the level of cost burden would depend on the method used. For purposes of analysis, FRA selected a method that would serve as a reasonable proxy. The analysis assumes that costs would stem from slightly higher costs of producing the equipment and slightly higher energy costs resulting from operating the equipment in proportion to its assumed additional weight. (FRA notes that although the analysis assumes that the additional weight would be one quarter of one percent (0.25%) of the weight of the equipment, FRA is not making a finding that a cab car or MU locomotive would necessarily be heavier as a result of manufacturing it in compliance with this final rule.) At the same time, the analysis assumes that benefits would arise from increased safety for passengers and crewmembers—safety that is provided by a more crashworthy end frame structure that is assumed to result both

in some fatalities avoided and in injuries avoided.

In particular, assuming the number of new cab cars and MU locomotives that would not be built to these requirements and that therefore would be affected by this rule increases by 3 percent annually for the 20 years following implementation of this rule, FRA's analysis finds that, at a 7 percent discount rate, adopting this rule would cost $4,056,265 in 2007 dollars over the 20-year period. The analysis further assumes that it would not be unreasonable to attain total safety benefits for the 20-year period of $16,334,389 in 2007 dollars at a 7 percent discount rate, meaning that net benefits at a 7 percent discount rate would be $12,278,124. Analyzed at an incremental level, this rule would then result in an average cost of $1,304 per unit in 2007 dollars and would yield average benefits of $5,252 per unit in 2007 dollars. Average net benefits for each unit constructed in compliance with this rule would then be $3,948 in 2007 dollars. At a 3 percent discount rate, adopting this rule would then cost $7,367,882 in 2007 dollars and would yield total benefits of $22,081,319 in 2007 dollars. Net benefits at a 3 percent discount rate would then be $14,713,437 in 2007 dollars. Calculated at the per unit basis at a 3 percent discount rate, adopting this rule would then cost $2,369 on average per unit in 2007 dollars and would result in benefits of $7,100 on average per unit in 2007 dollars. Thus, average net benefits per unit at a 3 percent discount rate would then be $4,731 in 2007 dollars.

B. Regulatory Flexibility Act and Executive Order 13272

To ensure that the potential impact of this rule on small entities was properly considered, FRA developed this rule in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's policies and procedures to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities.

As discussed in earlier sections of this preamble, the principal goals of crashworthiness rules promulgated by FRA are twofold: first, preserve a safe space for occupants, and, next, minimize the forces that occupants are subjected to when impacting interior surfaces. The APTA standards developed in 1999, and revised in 2003 and 2006, provide that new cab cars and MU locomotives have front end structures with corner and collision posts able to sustain minimum prescribed loads and absorb collision energy. This rule codifies these industry standards, which are based on quasi-static performance criteria. This rule also includes dynamic performance criteria that can be applied to any type of front end structure design (shaped-nose, CEM, flat-nosed, or otherwise) in lieu of the quasi-static performance criteria, which should reduce the uncertainty involved in demonstrating compliance. Inclusion of these alternative criteria should also enable car builders to more easily incorporate alternative, front end structure designs, which may lead to safer, less costly, or otherwise improved cab cars and MU locomotives.

FRA notes that the crashworthiness requirements proposed in the NPRM and contained in this final rule were developed in consultation with a working group that includes Amtrak, individual commuter railroads, individual passenger car manufacturers, and APTA, which represents commuter railroads and passenger car manufacturers in rulemaking matters. As discussed in earlier sections of this preamble, the quasi-static performance criteria in the final rule are basically unchanged from the NPRM, while FRA has restated the alternative, dynamic performance criteria principally to make the criteria easier to apply.

FRA has considered all of the comments submitted to the rulemaking docket and appreciates the information provided by the many parties. No comments were received specifically regarding FRA's initial analysis of the impact of this rule on small entities. As discussed below, FRA is certifying that this final rule will result in "no significant economic impact on a substantial number of small entities."

The universe of the entities considered by FRA comprises only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. "Small entity" is defined in 5 U.S.C. 601(3) as having the same meaning as "small business concern" under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of "small entities" not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operations. The U.S. Small Business Administration (SBA) stipulates "size standards" for small entities. It provides that the largest a for-profit railroad business firm may be (and still classify as a "small entity") is 1,500 employees for "Line-Haul Operating" railroads, and 500 employees for "Short-Line Operating" railroads. Additionally, section 601(5) defines as "small entities" governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

SBA size standards may be altered by Federal agencies in consultation with SBA, and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirements are $20 million or less in annual operating revenue, adjusted annually for inflation. The $20 million limit (adjusted annually for inflation) is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment.

The principal entities subject to this rule by application of § 238.3(a)(1) are governmental jurisdictions or transit authorities that provide commuter rail service—none of which is small for purposes of the SBA (*i.e.,* no entity serves a locality with a population less than 50,000). These entities also receive Federal transportation funds. Intercity rail service providers Amtrak and the Alaska Railroad Corporation are also subject to this rule under § 238.3(a)(1), but they are not small entities and likewise receive Federal transportation funds. While other railroads are subject to this final rule by the application of § 238.3, FRA is not aware of any railroad subject to this rule that is a small entity that will be impacted by this rule. For example, railroads that provide short-haul rail passenger train service in a metropolitan or suburban area as specified in § 238.3(a)(2) are subject to this rule, but FRA is not aware that any railroad in existence that would fall in this category (and is not otherwise a commuter railroad) operates with cab cars or MU locomotives, or intends to acquire any new cab cars or MU locomotives that would be subject to the requirements of this final rule, or both. Tourist, scenic, excursion, and historic passenger railroad operations are exempt from part 238; therefore, these smaller operations would not incur any costs from this final rule.

Having made these determinations, FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The section that contains a new information collection requirement (49 CFR 238.213) and the estimated time to fulfill that requirement are both summarized in the following table. The table summarizes the information collection requirements arising out of the May 12, 1999 Passenger Equipment Safety Standards final rule, 64 FR 25540. Please note that the table does not include those information collection requirements added by the February 1, 2008 Passenger Train Emergency Systems final rule, 73 FR 6370, as they are covered under a separate approval, OMB No. 2130–0576, which is current until March 31, 2011.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
216.14—Special Notice for Repairs —Passenger Equipment.	27 railroads	9 forms	5 minutes	1
229.47—Emergency Brake Valve.				
—Marking Brake Pipe Valve as Such	27 railroads	30 markings	1 minute	1
—MU, Cab Car Locomotives—Marking Emergency Brake Valve as Such.	27 railroads	5 markings	1 minute	.08
238.7—Waivers	27 railroads	5 waivers	2 hours	10
238.15—Movement of Passenger Equipment with Power Brake Defects.				
—Defects Found at Inspection Point	27 railroads	1,000 tags	3 minutes	50
—Defects Developed en Route	27 railroads	288 tags	3 minutes	14
—Conditional requirement—Notification.	27 railroads	144 notifications	3 minutes	7
238.17—Movement of Passenger Equipment with Other Than Power Brake Defects.				
—Defects Found at Inspection Point	27 railroads	200 tags	3 minutes	10
—Defects Developed en Route	27 railroads	76 tags	3 minutes	4
—Special Requisites—Movement of Passenger Equipment with Safety Appliance Defect—Crewmember Notifications.	27 railroads	38 notifications	30 seconds	.32
238.21—Petitions for Special Approval of Alternative Standards.	27 railroads	1 petition	16 hours	16
—Petitions for Special Approval of Alternative Compliance.	27 railroads	1 petition	120 hours	120
—Petitions for Special Approval of Pre-Revenue Service Acceptance Testing Plan.	27 railroads	10 petitions	40 hours	400
—Comments on petitions	public/railroad industry	4 comments	1 hour	4
238.103—Fire Safety.				
—Procuring New Pass. Equipment—Fire Safety Analysis.	2 new railroads	2 analyses	150 hours	300
—Existing Equipment—Final Fire Safety Analysis.	27 railroads	1 analysis	40 hours	40
—Transferring/Changing Existing Equipment—Revised Fire Safety Analysis.	27 railroads	3 analyses	20 hours	60
238.107—Inspection, Testing, and Maintenance Plans—Review by Railroads.	27 railroads	12 reviews	60 hours	720
238.109—Employee/Contractor Training.				
—Training Employees and Contractors—Mech. Inspection.	7,500 employees/contractors.	2,500 employees/contractors/100 trainers.	1.33 hours	3,458
—Recordkeeping—Employee/Contractor Current Qualifications.	27 railroads	2,500 records	3 minutes	125
238.111—Pre-Revenue Service Acceptance Testing Plan.				
—Passenger Equipment That Has Previously Been Used in Revenue Service in the U.S.	9 equipment manufacturers.	2 plans	16 hours	32
—Passenger Equipment That Has Not Been Previously Used in Revenue Service in the U.S.	9 equipment manufacturers.	2 plans	192 hours	384
—Subsequent Equipment Orders	9 equipment manufacturers.	2 plans	60 hours	120
238.213—Corner Posts—Plans (New Requirement).	27 railroads	10 plans	40 hours	400
238.229—Safety Appliances.				
—Welded Safety Appliances Considered Defective: Lists.	27 railroads	27 lists	1 hour	27
—Lists Identifying Equipment with Welded Safety Appliances.	27 railroads	27 lists	1 hour	27
—Defective Welded Safety Appliances—Tags.	27 railroads	4 tags	3 minutes	.20
—Notification to Crewmembers about Non-Compliant Equipment.	27 railroads	2 notifications	1 minute	.0333
—Inspection Plans	27 railroads	27 plans	16 hours	432
—Inspection Personnel—Training	27 railroads	54 employees	4 hours	216

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Remedial action: Defect/Crack in Weld—Record.	27 railroads	1 record	2.25 hours	2
—Petitions for Special Approval of Alternative Compliance—Impractical Equipment Design.	27 railroads	15 petitions	4 hours	60
—Records of Inspection/Repair of Welded Safety Appliance Brackets/Supports.	27 railroads	3,054 records	12 minutes	611
238.230—Safety Appliances—New Equipment.				
—Inspection Record of Welded Equipment by Qualified Employee.	27 railroads	100 records	6 minutes	10
—Welded Safety Appliances: Documentation for Equipment Impractically Designed to Mechanically Fasten Safety Appliance Support.	27 railroads	15 documents	4 hours	60
238.231—Brake System.				
—Inspection and Repair of Hand/Parking Brake: Records.	27 railroads	2,500 forms	21 minutes	875
—Procedures Verifying Hold of Hand/Parking Brake.	27 railroads	27 procedures	2 hours	54
238.237—Automated Monitoring.				
—Documentation for Alerter/Deadman Control Timing.	27 railroads	3 documents	2 hours	6
—Defective Alerter/Deadman Control: Tagging.	27 railroads	25 tags	3 minutes	1
238.303—Exterior Calendar Day Mechanical Inspection of Passenger Equipment.				
—Notice of Previous Inspection for Added Equipment.	27 railroads	25 notices	1 minute	1
—Dynamic Brakes Not in Operating Mode: Tag.	27 railroads	50 tags	3 minutes	3
—Conventional Locomotives Equipped with Inoperative Dynamic Brakes: Tagging.	27 railroads	50 tags	3 minutes	3
—MU Passenger Equipment Found with Inoperative/Ineffective Air Compressor at Exterior Calendar Day Inspection: Documents.	27 railroads	4 documents	2 hours	8
—Written Notice to Train Crew about Inoperative/Ineffective Air Compressors.	27 railroads	100 notices	3 minutes	5
—Records of Inoperative Air Compressors.	27 railroads	100 records	2 minutes	3
—Record of Exterior Calendar Day Mechanical Inspection.	27 railroads	2,376,920 records	10 minutes + 1 minute	435,769
238.305—Interior Calendar Day Mechanical Inspection of Passenger Cars.				
—Tagging of Defective End/Side Doors.	27 railroads	540 tags	1 minute	9
—Records of Interior Calendar Day Inspection.	27 railroads	1,968,980 records	5 minutes + 1 minute	196,898
238.307—Periodic Mechanical Inspection of Passenger Cars and Unpowered Vehicles.				
—Alternative Inspection Intervals: Notifications.	27 railroads	2 notifications	5 hours	10
—Notice of Seats/Seat Attachments Broken or Loose.	27 railroads	200 notices	2 minutes	7
—Records of Each Periodic Mechanical Inspection.	27 railroads	19,284 records	200 hours/2 minutes	3,857,443
—Detailed Documentation of Reliability Assessments as Basis for Alternative Inspection Interval.	27 railroads	5 documents	100 hours	500
238.311—Single Car Test.				
—Tagging to Indicate Need for Single Car Test.	27 railroads	50 tags	3 minutes	3
238.313—Class I Brake Test.				
—Record for Additional Inspection for Passenger Equipment That Does Not Comply with § 238.231(b)(1).	27 railroads	15,600 records	30 minutes	7,800
238.315—Class IA Brake Test.				
—Notice to Train Crew That Test Has Been Performed.	27 railroads	18,250 verbal notices	5 seconds	25
—Communicating Signal Tested and Operating.	27 railroads	365,000 tests	15 seconds	1,521
238.317—Class II Brake Test.				
—Communicating Signal Tested and Operating.	27 railroads	365,000 tests	15 seconds	1,521
238.321—Out-of-Service Credit.				
—Passenger Car: Out-of-Use Notation	27 railroads	1,250 notes	2 minutes	42
238.445—Automated Monitoring.				

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Performance Monitoring: Alerters/Alarms.	1 railroad	10,000 alerts	10 seconds	28
—Monitoring System: Self-Test Feature: Notifications.	1 railroad	21,900 notifications	20 seconds	122
238.503—Inspection, Testing, and Maintenance Requirements—Plans.	1 railroad	1 plan	1,200 hours	1,200
238.505—Program Approval Procedures. —Submission of Program/Plans and Comments on Programs.	rail industry	3 comments	3 hours	9

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Office of Safety Information Clearance Officer, at 202–493–6292 or via e-mail at *robert.brogan@dot.gov;* or Ms. Kimberly Toone, Office of Administration Information Clearance Officer, at 202–493–6132 or via e-mail at *kimberly.toone@dot.gov*.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, 725 17th St., NW., Washington, DC 20590, Attn: FRA OMB Desk Officer, or via e-mail at *oira_submissions@omb.eop.gov*. OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this final rule in the **Federal Register.** Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

D. Federalism Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999). Executive Order 13132 requires FRA 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 Executive Order 13132, the agency may not issue a regulation with 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, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has determined that this final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule has preemptive effect. As discussed earlier, FRA is clarifying the preemptive effect of this final rule and the underlying regulations it is proposing to amend. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "essentially local safety or security hazard" exception to Section 20106. The intent of Section 20106 is to promote national uniformity in railroad safety and security standards. 49 U.S.C. 20106(a)(1). This intent was expressed even more specifically in 49 U.S.C. 20133, which mandated that the Secretary of Transportation prescribe "regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers" and consider such matters as "the crashworthiness of the cars" before prescribing the regulations. This final rule is intended to add to and enhance these regulations, originally issued on May 12, 1999, pursuant to 49 U.S.C. 20133. Thus, subject to a limited exception for essentially local safety or security hazards, this final rule establishes a uniform Federal safety standard that must be met, and State requirements covering the same subject matter are displaced, whether those State requirements are in the form of a State law, including common law, regulation, or order. In particular, FRA believes that it has preempted any State law, regulation, or order, including State common law standards of care, concerning the operation of a cab car or MU locomotive as the leading unit of a passenger train.

As discussed earlier, FRA notes that RSAC, which endorsed and recommended adoption of the requirements of this final rule, has as permanent members two organizations representing State and local interests: AASHTO and ASRSM. Both of these State organizations concurred with the RSAC recommendation endorsing the requirements of this final rule. RSAC regularly provides recommendations to the Administrator of FRA for solutions to regulatory issues that reflect significant input from its State members. As discussed earlier, FRA has received federalism concerns in comments on the NPRM from members of RSAC, from the CPUC, and from other commenters. FRA again makes clear that the RSAC recommendation to the Administrator on the NPRM neither

contained a preemption provision in the rule text, nor did it include the interpretive discussion in the preamble to the NPRM. Nor did RSAC, which includes AASHTO and ASRSM, address the comments raised on preemption in developing this final rule. Nonetheless, FRA believes that this final rule is in accordance with the principles and criteria contained in Executive Order 13132, which says "where national standards are required by Federal statutes, consult with appropriate State and local officials in developing those standards." The standards are embodied in the rule text, and the rule text was the subject of the consultations that focused principally on what the substantive requirements of the rule should be.

FRA notes that the BLET commented that FRA, in developing the NPRM, did not consult with any truly local interests, asserting that AASHTO and ASRSM are comprised of State—not local—executive branch representatives. Further, the BLET commented that there was no evidence that FRA had consulted with any member of a State or local legislative or judicial branch, or a State's attorney general. The BLET contended that FRA's preamble comments created a significant Federal question and required consultation under Executive Order 13132 that had not been performed.

FRA believes that local interests are sufficiently represented through RSAC for purposes of the consultations required to be undertaken by FRA in developing proposed regulations under Executive Order 13132. For instance, FRA understands that while all State departments of transportation are active members of AASHTO, several sub-State transportation agencies are associate members, including local transportation officials. Further, even though ASRSM is comprised of State officials, FRA has not relied on the fact that another RSAC member, APTA, itself has as members local government agencies and metropolitan planning organizations. APTA took no issue with FRA's views on preemption. Instead, APTA "applaud[ed] FRA's strong leadership on the issues surrounding Federal preemption of State and local regulation," stating in particular that "consistent standards are absolutely vital to the safe, efficient operation of the nation's rail system." Further, FRA believes it fair to consider commuter railroads on RSAC to represent local interests in part as they are generally the products of local governments for providing rail service for the benefit of their local metropolitan areas. For example, as noted earlier, Metrolink is a joint powers authority comprised of five county transportation planning agencies in southern California. These local transportation agencies are surely local interests with the meaning of Executive Order 13132 and are the appropriate ones to consult because they are the only local interests likely to have the relevant technical knowledge. Moreover, FRA did not receive any adverse comment from any local official on FRA's views as to the preemptive effect of the rulemaking. (The CPUC of course commented adversely on behalf of the State of California.) It is also worth noting in this context that local governments have no role at all under the Federal railroad safety laws in regulating railroad safety—that which is not done by the Federal Government is reserved to the States. FRA believes that it has satisfied the consultation requirements in the Executive Order.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the preemption of State laws covering the subject matter of this final rule, which occurs by operation of law under Section 20106 whenever FRA issues a rule or order, and under the LBIA (49 U.S.C. 20701–20703) by its terms. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

E. Environmental Impact

FRA has evaluated this final rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (*see* 64 FR 28545 (May 26, 1999)) as required by the National Environmental Policy Act (*see* 42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this final rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999). In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in 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 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and Tribal governments and the private sector. The final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." *See* 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

FRA stated in the NPRM that it had evaluated this rulemaking in accordance with Executive Order 13211 and had determined that the rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In comments on the NPRM, however, some commenters disagreed with FRA's determination. In sum, the

commenters claimed that this rulemaking would increase the weight of passenger rail equipment and would adversely affect energy usage because heavier railcars require more energy to operate.

FRA continues to find that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211. As discussed above, the requirements in this final rule are based on current industry standards for front end frame structures, which, to FRA's knowledge, every cab car and MU locomotive currently in production for operation in the United States already meets. As such, the standards are not expected to affect any units in production or planned for production for operation in the United States. This rule essentially codifies these industry standards and will likely not cause railroads to incur costs beyond those that they already incur voluntarily.

Moreover, even when FRA has assumed that a cab car or MU locomotive would be heavier as a result of manufacturing it to comply with the requirements of this final rule, operation of the slightly heavier cab car or MU locomotive is assumed to result in only a slightly higher energy cost. This assumed energy cost is minimal and in proportion to the assumed additional weight of the equipment—increases of one quarter of one percent (0.25%) in both the energy cost and equipment weight. Nonetheless, FRA has not made a finding that a cab car or MU locomotive would necessarily be heavier as a result of manufacturing it in compliance with this final rule.

H. Trade Impact

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In issuing the NPRM, FRA assessed the potential effect of this rulemaking on foreign commerce and believed that the proposed requirements would be consistent with the Trade Agreements Act. FRA noted that the proposed requirements are safety standards, which are not considered unnecessary obstacles to trade. Moreover, FRA sought, to the extent practicable, to state the requirements in terms of the performance desired, rather than in more narrow terms restricted to a particular design, so as not to limit different, compliant designs by any manufacturer—foreign or domestic.

In commenting on the NPRM, the CPUC concurred with FRA that the safety of passenger cars is paramount and that legitimate safety objectives are not considered unnecessary obstacles to the foreign commerce of the United States. In its comments, however, Caltrain disagreed with FRA's assertions and asked that FRA reconsider its proposal. Caltrain recommended that FRA allow alternative, proven designs to be considered when presented as components of an entire system, rather than requiring the alternative designs to meet the requirements of the regulation as written for any vehicle on any railroad.

FRA maintains that its actions in this rulemaking are consistent with the Trade Agreements Act. This final rule is a rule of general applicability, intended to apply to Tier I passenger vehicles in general use. The alternative performance requirements in appendix F provide flexibility in vehicle design for use on any railroad. FRA did not intend to specify requirements for vehicles operating under particular conditions on a particular railroad. Nonetheless, existing FRA regulations provide separate processes for considering the safety of vehicles in such circumstances, and they are also neutral with respect to the country of origin of the vehicles.

For related discussion on the international effects of part 238, please *see* the preamble to the May 12, 1999 Passenger Equipment Safety Standards final rule on the topic of "United States international treaty obligations." *See* 64 FR 25545.

I. Privacy Act

Anyone is able to search the electronic form of all comments or petitions for reconsideration received into any of FRA's dockets by the name of the individual submitting the comment or petition for reconsideration (or signing the comment or petition for reconsideration, 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 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov*.

List of Subjects in 49 CFR Part 238

Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

For the reasons discussed in the preamble, FRA amends part 238 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 238—[AMENDED]

1. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Subpart A—General

2. Revise § 238.13 to read as follows:

§ 238.13 Preemptive effect.

(a) Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety or security hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce.

(b) This part establishes Federal standards of care for railroad passenger equipment. This part does not preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by this part, including a plan or program required by this part. Provisions of a plan or program that exceed the requirements of this part are not included in the Federal standard of care.

(c) Under 49 U.S.C. 20701–20703 (formerly the Locomotive (Boiler) Inspection Act), the field of locomotive safety is preempted, extending to the design, the construction, and the material of every part of the locomotive and tender and all appurtenances thereof. To the extent that the regulations in this part establish requirements affecting locomotive safety, the scope of preemption is provided by 49 U.S.C. 20701–20703.

Subpart C—Specific Requirements for Tier I Passenger Equipment

3. Revise § 238.205 to read as follows:

§ 238.205 Anti-climbing mechanism.

(a) Except as provided in paragraph (b) of this section, all passenger equipment placed in service for the first time on or after September 8, 2000, and prior to March 9, 2010, shall have at both the forward and rear ends an anti-

climbing mechanism capable of resisting an upward or downward vertical force of 100,000 pounds without failure. All passenger equipment placed in service for the first time on or after March 9, 2010, shall have at both the forward and rear ends an anti-climbing mechanism capable of resisting an upward or downward vertical force of 100,000 pounds without permanent deformation. When coupled together in any combination to join two vehicles, AAR Type H and Type F tight-lock couplers satisfy the requirements of this paragraph (a).

(b) Except for a cab car or an MU locomotive, each locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have an anti-climbing mechanism at its forward end capable of resisting both an upward and downward vertical force of 200,000 pounds without failure. Locomotives required to be constructed in accordance with subpart D of part 229 of this chapter shall have an anti-climbing mechanism in compliance with § 229.206 of this chapter, in lieu of the requirements of this paragraph.

4. Revise § 238.209 to read as follows:

§ 238.209 Forward end structure of locomotives, including cab cars and MU locomotives.

(a)(1) The skin covering the forward-facing end of each locomotive, including a cab car and an MU locomotive, shall be:

(i) Equivalent to a ½-inch steel plate with a yield strength of 25,000 pounds-per-square-inch—material of a higher yield strength may be used to decrease the required thickness of the material provided at least an equivalent level of strength is maintained;

(ii) Designed to inhibit the entry of fluids into the occupied cab area of the equipment; and

(iii) Affixed to the collision posts or other main vertical structural members of the forward end structure so as to add to the strength of the end structure.

(2) As used in this paragraph (a), the term "skin" does not include forward-facing windows and doors.

(b) The forward end structure of a cab car or an MU locomotive may comply with the requirements of appendix F to this part in lieu of the requirements of either § 238.211 (Collision posts) or § 238.213 (Corner posts), or both, provided that the end structure is designed to protect the occupied volume for its full height, from the underframe to the anti-telescoping plate (if used) or roof rails.

5. Revise § 238.211 to read as follows:

§ 238.211 Collision posts.

(a) Except as further specified in this paragraph, paragraphs (b) through (d) of this section, and § 238.209(b)—

(1) All passenger equipment placed in service for the first time on or after September 8, 2000, shall have either:

(i) Two full-height collision posts, located at approximately the one-third points laterally, at each end. Each collision post shall have an ultimate longitudinal shear strength of not less than 300,000 pounds at a point even with the top of the underframe member to which it is attached. If reinforcement is used to provide the shear value, the reinforcement shall have full value for a distance of 18 inches up from the underframe connection and then taper to a point approximately 30 inches above the underframe connection; or

(ii) An equivalent end structure that can withstand the sum of forces that each collision post in paragraph (a)(1)(i) of this section is required to withstand. For analysis purposes, the required forces may be assumed to be evenly distributed at the end structure at the underframe joint.

(2) The requirements of this paragraph (a) do not apply to unoccupied passenger equipment operating in a passenger train, or to the rear end of a locomotive if the end is unoccupied by design.

(b) Except for a locomotive that is constructed on or after January 1, 2009, and is subject to the requirements of subpart D of part 229 of this chapter, each locomotive, including a cab car and an MU locomotive, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have at its forward end, in lieu of the structural protection described in paragraph (a) of this section, either:

(1) Two forward collision posts, located at approximately the one-third points laterally, each capable of withstanding:

(i) A 500,000-pound longitudinal force at the point even with the top of the underframe, without exceeding the ultimate strength of the joint; and

(ii) A 200,000-pound longitudinal force exerted 30 inches above the joint of the post to the underframe, without exceeding the ultimate strength; or

(2) An equivalent end structure that can withstand the sum of the forces that each collision post in paragraph (b)(1) of this section is required to withstand.

(c)(1) Each cab car and MU locomotive ordered on or after May 10, 2010, or placed in service for the first time on or after March 8, 2012, shall have at its forward end, in lieu of the structural protection described in paragraphs (a) and (b) of this section, two forward collision posts, located at approximately the one-third points laterally, meeting the requirements set forth in paragraphs (c)(2) and (c)(3) of this section:

(2) Each collision post acting together with its supporting car body structure shall be capable of withstanding the following loads individually applied at any angle within 15 degrees of the longitudinal axis:

(i) A 500,000-pound horizontal force applied at a point even with the top of the underframe, without exceeding the ultimate strength of either the post or its supporting car body structure;

(ii) A 200,000-pound horizontal force applied at a point 30 inches above the top of the underframe, without exceeding the ultimate strength of either the post or its supporting car body structure; and

(iii) A 60,000-pound horizontal force applied at any height along the post above the top of the underframe, without permanent deformation of either the post or its supporting car body structure.

(3) Prior to or during structural deformation, each collision post acting together with its supporting car body structure shall be capable of absorbing a minimum of 135,000 foot-pounds of energy (0.18 megajoule) with no more than 10 inches of longitudinal, permanent deformation into the occupied volume, in accordance with the following:

(i) The collision post shall be loaded longitudinally at a height of 30 inches above the top of the underframe;

(ii) The load shall be applied with a fixture, or its equivalent, having a width sufficient to distribute the load directly into the webs of the post, but of no more than 36 inches, and either:

(A) A flat plate with a height of 6 inches; or

(B) A curved surface with a diameter of no more than 48 inches; and

(iii) There shall be no complete separation of the post, its connection to the underframe, its connection to either the roof structure or anti-telescoping plate (if used), or of its supporting car body structure.

(d) The end structure requirements of this section apply only to the ends of a semi-permanently coupled consist of articulated units, provided that:

(1) The railroad submits to FRA under the procedures specified in § 238.21 a documented engineering analysis establishing that the articulated connection is capable of preventing disengagement and telescoping to the same extent as equipment satisfying the anti-climbing and collision post

requirements contained in this subpart; and

(2) FRA finds the analysis persuasive.

6. Revise § 238.213 to read as follows:

§ 238.213 Corner posts.

(a)(1) Except as further specified in paragraphs (b) and (c) of this section and § 238.209(b), each passenger car shall have at each end of the car, placed ahead of the occupied volume, two full-height corner posts, each capable of resisting together with its supporting car body structure:

(i) A 150,000-pound horizontal force applied at a point even with the top of the underframe, without exceeding the ultimate strength of either the post or its supporting car body structure;

(ii) A 20,000-pound horizontal force applied at the point of attachment to the roof structure, without exceeding the ultimate strength of either the post or its supporting car body structure; and

(iii) A 30,000-pound horizontal force applied at a point 18 inches above the top of the underframe, without permanent deformation of either the post or its supporting car body structure.

(2) For purposes of this paragraph (a), the orientation of the applied horizontal forces shall range from longitudinal inward to lateral inward.

(b)(1) Except as provided in paragraph (c) of this section, each cab car and MU locomotive ordered on or after May 10, 2010, or placed in service for the first time on or after March 8, 2012, shall have at its forward end, in lieu of the structural protection described in paragraph (a) of this section, two corner posts ahead of the occupied volume, meeting all of the requirements set forth in paragraphs (b)(2) and (b)(3) of this section:

(2) Each corner post acting together with its supporting car body structure shall be capable of withstanding the following loads individually applied toward the inside of the vehicle at all angles in the range from longitudinal to lateral:

(i) A 300,000-pound horizontal force applied at a point even with the top of the underframe, without exceeding the ultimate strength of either the post or its supporting car body structure;

(ii) A 100,000-pound horizontal force applied at a point 18 inches above the top of the underframe, without permanent deformation of either the post or its supporting car body structure; and

(iii) A 45,000-pound horizontal force applied at any height along the post above the top of the underframe, without permanent deformation of either the post or its supporting car body structure.

(3) Prior to or during structural deformation, each corner post acting together with its supporting car body structure shall be capable of absorbing a minimum of 120,000 foot-pounds of energy (0.16 megajoule) with no more than 10 inches of longitudinal, permanent deformation into the occupied volume, in accordance with the following:

(i) The corner post shall be loaded longitudinally at a height of 30 inches above the top of the underframe;

(ii) The load shall be applied with a fixture, or its equivalent, having a width sufficient to distribute the load directly into the webs of the post, but of no more than 36 inches and either:

(A) A flat plate with a height of 6 inches; or

(B) A curved surface with a diameter of no more than 48 inches; and

(iii) There shall be no complete separation of the post, its connection to the underframe, its connection to either the roof structure or anti-telescoping plate (if used), or of its supporting car body structure.

(c)(1) Each cab car and MU locomotive ordered on or after May 10, 2010, or placed in service for the first time on or after March 8, 2012, utilizing low-level passenger boarding on the non-operating side of the cab end shall meet the corner post requirements of paragraph (b) of this section for the corner post on the side of the cab containing the control stand. In lieu of the requirements of paragraph (b) of this section, and after FRA review and approval of a plan, including acceptance criteria, to evaluate compliance with this paragraph (c), each such cab car and MU locomotive may have two corner posts on the opposite (non-operating) side of the cab from the control stand meeting all of the requirements set forth in paragraphs (c)(2) through (c)(4) of this section:

(2) One corner post shall be located ahead of the stepwell and, acting together with its supporting car body structure, shall be capable of withstanding the following horizontal loads individually applied toward the inside of the vehicle:

(i) A 150,000-pound longitudinal force applied at a point even with the top of the underframe, without exceeding the ultimate strength of either the post or its supporting car body structure;

(ii) A 30,000-pound longitudinal force applied at a point 18 inches above the top of the underframe, without permanent deformation of either the post or its supporting car body structure;

(iii) A 30,000-pound longitudinal force applied at the point of attachment to the roof structure, without permanent deformation of either the post or its supporting car body structure;

(iv) A 20,000-pound longitudinal force applied at any height along the post above the top of the underframe, without permanent deformation of either the post or its supporting car body structure;

(v) A 300,000-pound lateral force applied at a point even with the top of the underframe, without exceeding the ultimate strength of either the post or its supporting car body structure;

(vi) A 100,000-pound lateral force applied at a point 18 inches above the top of underframe, without permanent deformation of either the post or its supporting car body structure; and

(vii) A 45,000-pound lateral force applied at any height along the post above the top of the underframe, without permanent deformation of either the post or its supporting car body structure.

(3) A second corner post shall be located behind the stepwell and, acting together with its supporting car body structure, shall be capable of withstanding the following horizontal loads individually applied toward the inside of the vehicle:

(i) A 300,000-pound longitudinal force applied at a point even with the top of the underframe, without exceeding the ultimate strength of either the post or its supporting car body structure;

(ii) A 100,000-pound longitudinal force applied at a point 18 inches above the top of the underframe, without permanent deformation of either the post or its supporting car body structure;

(iii) A 45,000-pound longitudinal force applied at any height along the post above the top of the underframe, without permanent deformation of either the post or its supporting car body structure;

(iv) A 100,000-pound lateral force applied at a point even with the top of the underframe, without exceeding the ultimate strength of either the post or its supporting car body structure;

(v) A 30,000-pound lateral force applied at a point 18 inches above the top of the underframe, without permanent deformation of either the post or its supporting car body structure; and

(vi) A 20,000-pound lateral force applied at any height along the post above the top of the underframe, without permanent deformation of

either the post or its supporting car body structure.

(4) Prior to or during structural deformation, the two posts in combination acting together with their supporting body structure shall be capable of absorbing a minimum of 120,000 foot-pounds of energy (0.16 megajoule) in accordance with the following:

(i) The corner posts shall be loaded longitudinally at a height of 30 inches above the top of the underframe;

(ii) The load shall be applied with a fixture, or its equivalent, having a width sufficient to distribute the load directly into the webs of the post, but of no more than 36 inches and either:

(A) A flat plate with a height of 6 inches; or

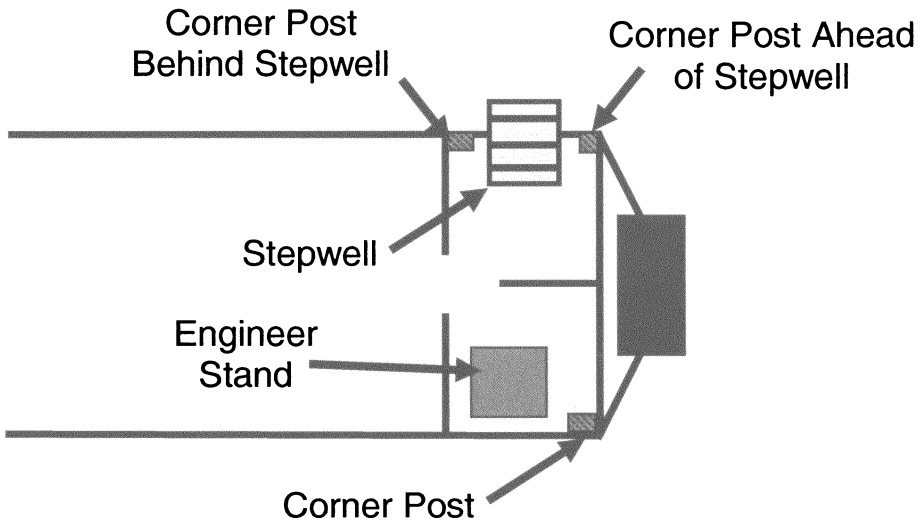
(B) A curved surface with a diameter of no more than 48 inches; and

(iii) The corner post located behind the stepwell shall have no more than 10 inches of longitudinal, permanent deformation. There shall be no complete separation of the corner post located behind the stepwell, its connection to the underframe, its connection to either the roof structure or anti-telescoping plate (if used), or of its supporting car body structure. The corner post ahead of the stepwell is permitted to fail. (A graphical description of the forward end of a cab car or an MU locomotive utilizing low-level passenger boarding on the non-operating side of the cab end is provided in Figure 1 to subpart C of this part.)

7. Add Figure 1 to Subpart C of Part 238 to read as follows:

Figure 1 to Subpart C of Part 238—

DEPICTION OF CORNER POSTS AT FORWARD END OF CAB CAR OR MU LOCOMOTIVE UTILIZING LOW-LEVEL PASSENGER BOARDING ON THE NON-OPERATING SIDE OF THE CAB END



8. Add appendix F to part 238 to read as follows:

Appendix F to Part 238—Alternative Dynamic Performance Requirements for Front End Structures of Cab Cars and MU Locomotives

As specified in § 238.209(b), the forward end of a cab car or an MU locomotive may comply with the requirements of this appendix in lieu of the requirements of either § 238.211 (Collision posts) or § 238.213 (Corner posts), or both. The requirements of this appendix are intended to be equivalent to the requirements of those sections and allow for the application of dynamic performance criteria to cab cars and MU locomotives as an alternative to the requirements of those sections. The alternative dynamic performance requirements are applicable to all cab cars and MU locomotives, and may in particular be helpful for evaluating the compliance of cab cars and MU locomotives with shaped-noses or crash energy management designs, or both. In any case, the end structure must be designed to protect the occupied volume for its full height, from the underframe to the anti-telescoping plate (if used) or roof rails.

The requirements of this appendix are provided only as alternatives to the requirements of §§ 238.211 and 238.213, not in addition to the requirements of those sections. Cab cars and MU locomotives are not required to comply with both the requirements of those sections and the requirements of this appendix, together.

Alternative Requirements for Collision Posts

(a)(1) In lieu of meeting the requirements of § 238.211, the front end frame acting together with its supporting car body structure shall be capable of absorbing a minimum of 135,000 foot-pounds of energy (0.18 megajoule) prior to or during structural deformation by withstanding a frontal impact with a rigid object in accordance with all of the requirements set forth in paragraphs (a)(2) through (a)(4) of this appendix:

(2)(i) The striking surface of the object shall be centered at a height of 30 inches above the top of the underframe;

(ii) The striking surface of the object shall have a width of no more than 36 inches and a diameter of no more than 48 inches;

(iii) The center of the striking surface shall be offset by 19 inches laterally from the center of the cab car or MU locomotive, and on the weaker side of the end frame if the end frame's strength is not symmetrical; and

(iv) Only the striking surface of the object interacts with the end frame structure.

(3) As a result of the impact, there shall be no more than 10 inches of longitudinal, permanent deformation into the occupied volume. There shall also be no complete separation of the post, its connection to the underframe, its connection to either the roof structure or the anti-telescoping plate (if used), or of its supporting car body structure. (A graphical description of the frontal impact is provided in Figure 1 to this appendix.)

(4) The nominal weights of the object and the cab car or MU locomotive, as ballasted, and the speed of the object may be adjusted

to impart the minimum of 135,000 foot-pounds of energy (0.18 megajoule) to be absorbed (Ea), in accordance with the following formula: $E_a = E_0 - E_f$

Where:

E_0 = Energy of initially moving object at impact = $\frac{1}{2} m_1 * V_0^2$.

E_f = Energy after impact = $\frac{1}{2} (m_1 + m_2) * V_f^2$.

V_0 = Speed of initially moving object at impact.

V_f = Speed of both objects after collision = $m_1 * V_0 / (m_1 + m_2)$.

m_1 = Mass of initially moving object.

m_2 = Mass of initially standing object.

(Figure 1 shows as an example a cab car or an MU locomotive having a weight of 100,000 pounds and the impact object having a weight of 14,000 pounds, so that a minimum speed of 18.2 mph would satisfy the collision-energy requirement.)

Alternative Requirements for Corner Posts

(b)(1) In lieu of meeting the requirements of § 238.213, the front end frame acting together with its supporting car body structure shall be capable of absorbing a minimum of 120,000 foot-pounds of energy (0.16 megajoule) prior to or during structural deformation by withstanding a frontal impact with a rigid object in accordance with all of the requirements set forth in paragraphs (b)(2) through (b)(4) of this appendix:

(2)(i) The striking surface of the object shall be centered at a height of 30 inches above the top of the underframe;

(ii) The striking surface of the object shall have a width of no more than 36 inches and a diameter of no more than 48 inches;

(iii) The center of the striking surface shall be aligned with the outboard edge of the cab car or MU locomotive, and on the weaker side of the end frame if the end frame's strength is not symmetrical; and

(iv) Only the striking surface of the object interacts with the end frame structure.

(3)(i) Except as provided in paragraph (b)(3)(ii) of this appendix, as a result of the impact, there shall be no more than 10 inches of longitudinal, permanent deformation into the occupied volume. There shall also be no complete separation of the post, its connection to the underframe, its connection to either the roof structure or the anti-telescoping plate (if used), or of its supporting car body structure. (A graphical description of the frontal impact is provided in Figure 2 to this appendix.); and

(ii) After FRA review and approval of a plan, including acceptance criteria, to evaluate compliance with this paragraph (b), cab cars and MU locomotives utilizing low-level passenger boarding on the non-operating side of the cab may have two, full-height corner posts on that side, one post located ahead of the stepwell and one located behind it, so that the corner post located ahead of the stepwell is permitted to fail provided that—

(A) The corner post located behind the stepwell shall have no more than 10 inches of longitudinal, permanent deformation; and

(B) There shall be no complete separation of that post, its connection to the underframe, its connection to either the roof structure or the anti-telescoping plate (if used), or of its supporting car body structure.

(4) The nominal weights of the object and the cab car or MU locomotive, as ballasted, and the speed of the object may be adjusted to impart the minimum of 120,000 foot-pounds of energy (0.16 megajoule) to be absorbed (Ea), in accordance with the following formula: $E_a = E_0 - E_f$

Where:

E_0 = Energy of initially moving object at impact = $\frac{1}{2} m_1 * V_0^2$.

E_f = Energy after impact = $\frac{1}{2} (m_1 + m_2) * V_f^2$.

V_0 = Speed of initially moving object at impact.

V_f = Speed of both objects after collision = $m_1 * V_0 / (m_1 + m_2)$.

m_1 = Mass of initially moving object.

m_2 = Mass of initially standing object.

(Figure 2 shows as an example a cab car or an MU locomotive having a weight of 100,000 pounds and the impact object having a weight of 14,000 pounds, so that a minimum speed of 17.1 mph would satisfy the collision-energy requirement.)

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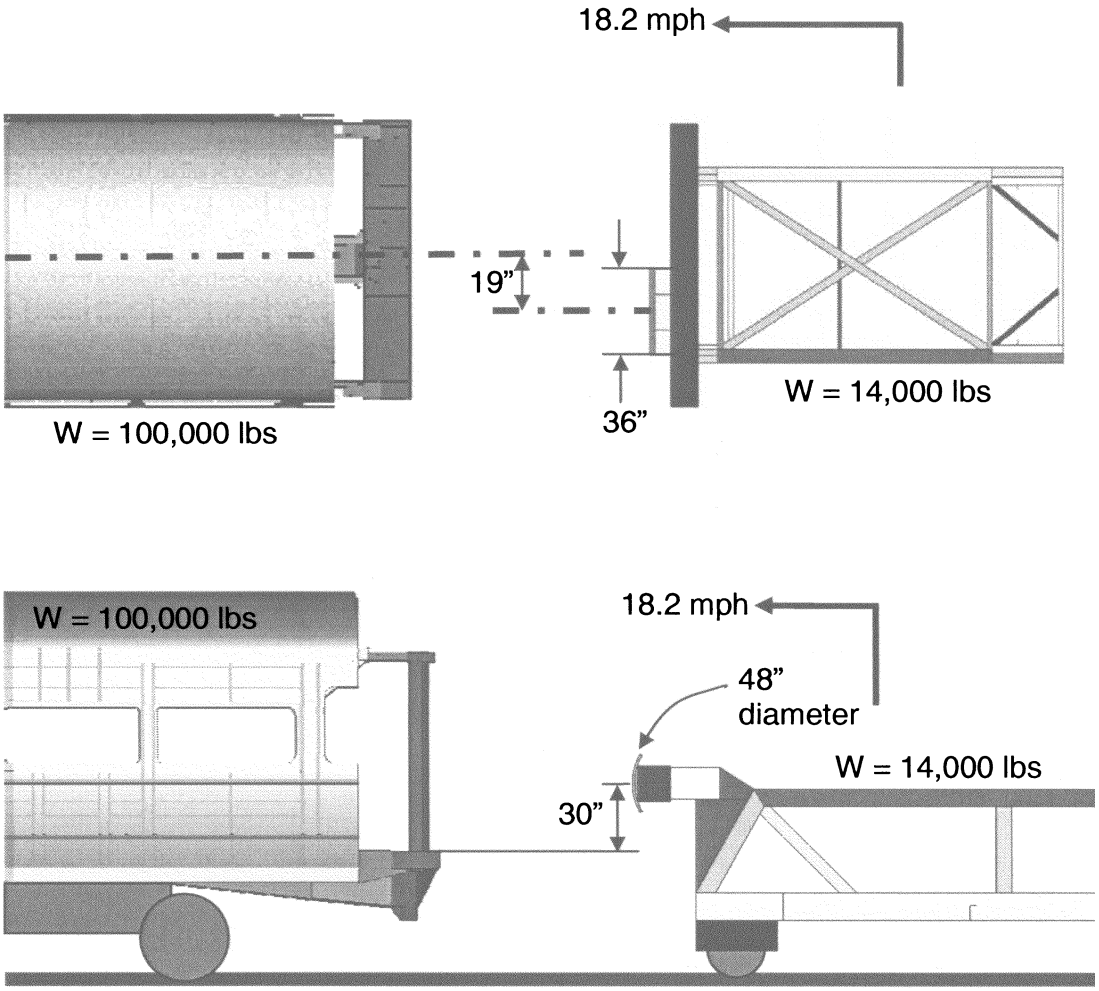
FIGURE 1 TO APPENDIX F OF PART 238–

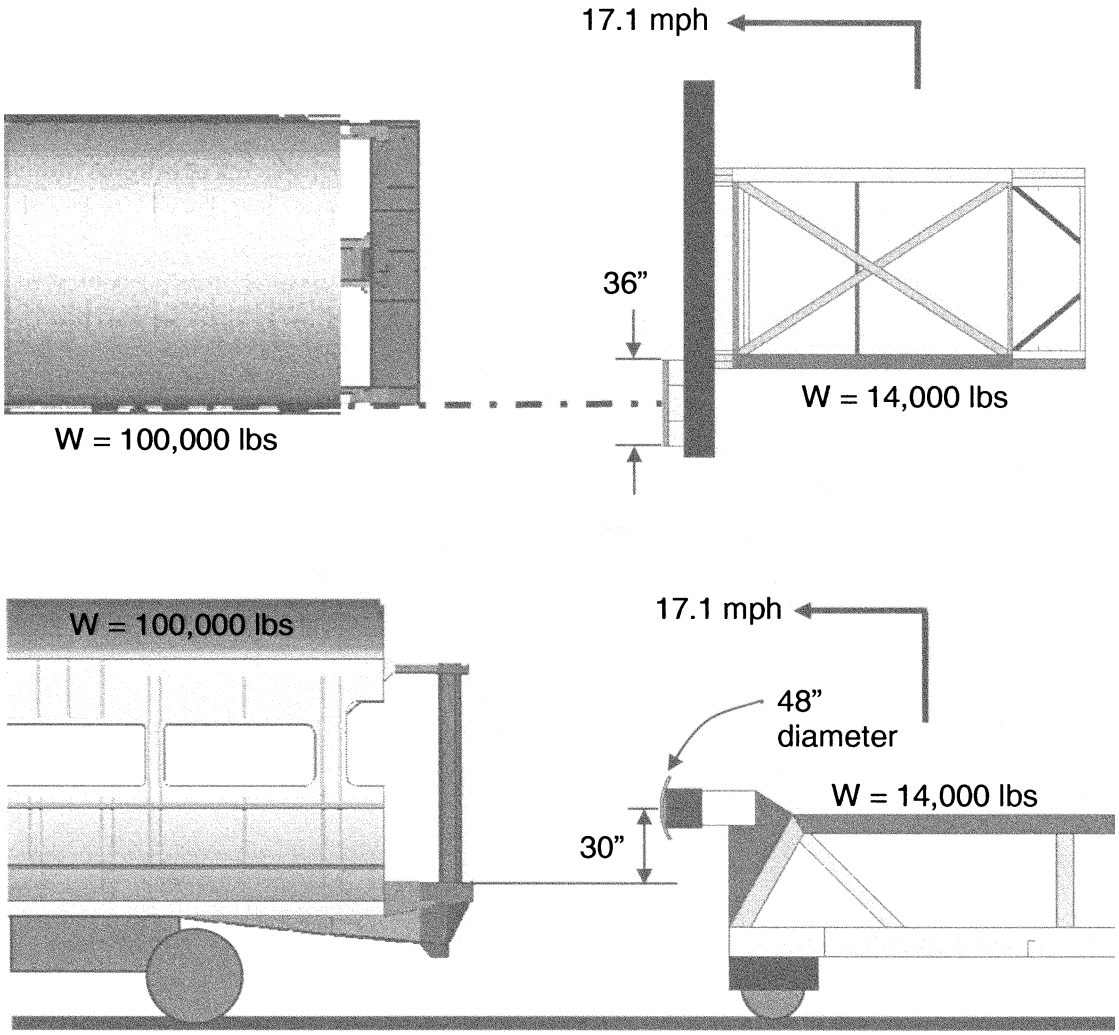
EXAMPLE OF FORWARD END OF CAB CAR OR MU LOCOMOTIVE AT IMPACT WITH PROXY OBJECT TO DEMONSTRATE COMPLIANCE WITH ALTERNATIVE, COLLISION POST PERFORMANCE STANDARD—TOP AND SIDE VIEWS



” = inches.
lbs = pounds.

FIGURE 2 TO APPENDIX F OF PART 238–

EXAMPLE OF FORWARD END OF CAB CAR OR MU LOCOMOTIVE AT IMPACT WITH PROXY OBJECT TO DEMONSTRATE COMPLIANCE WITH ALTERNATIVE, CORNER POST PERFORMANCE STANDARD—TOP AND SIDE VIEWS



” = inches.
lbs = pounds.

Issued in Washington, DC, on December 31, 2009.

Karen J. Rae,

Deputy Administrator.

[FR Doc. E9–31411 Filed 1–7–10; 8:45 am]

BILLING CODE 4910–06–C

Federal Register

Friday,
January 8, 2010

Part IV

Environmental Protection Agency

40 CFR Parts 262, 263, 264, et al.

Revisions to the Requirements for: Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 263, 264, 265, 266, and 271

[EPA–HQ–RCRA–2005–0018; FRL–9098–7]

RIN 2050–AE93

Revisions to the Requirements for: Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends certain existing regulations promulgated under the hazardous waste provisions of the Resource Conservation and Recovery Act (RCRA) regarding hazardous waste exports from and imports into the United States. Specifically, the amendments implement recent changes to the agreements concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD), establish notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country, specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, and require U.S. receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

DATES: This final rule is effective July 7, 2010. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 7, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2005–0018. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the RCRA 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 RCRA Docket is (202) 566–0270).

FOR FURTHER INFORMATION CONTACT: Laura Coughlan, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–0005; fax number: (703) 308–0514; e-mail address: *coughlan.laura@epa.gov.*

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I. General Information

A. Does This Final Rule Apply to Me?

1. OECD Revisions

The revisions regarding the OECD in this final rule affect all persons who export or import hazardous waste, export or import universal waste, or export spent lead-acid batteries (SLABs) destined for recovery operations in OECD Member countries, except for Mexico and Canada. Any transboundary movement of hazardous wastes between the United States and either Mexico or Canada will continue to be governed (or addressed) by their respective bilateral agreements and applicable regulations. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Utilities	221100	4939
Petroleum and Coal Products Manufacturing	324	29
Chemical Manufacturing	325100	28
Primary Metal Manufacturing	331	33
Fabricated Metal Product Manufacturing	332	34
Machinery Manufacturing	333	35
Computer and Electronic Product Manufacturing	334110	357

Industry sector	NAICS	SIC
Electrical Equipment, Appliance, and Component Manufacturing	335	36
Transportation Equipment Manufacturing	336	37
Miscellaneous Manufacturing	339900	39
Scrap and Waste Materials	423930	5093
Material Recovery Facilities	562920	4953

2. SLAB Revisions

The revisions regarding SLABs in this final rule affect all persons who export SLABs for reclamation in any foreign country. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Hazardous Waste Collectors	562112	4212
Recyclable Material Hauling, Long-Distance	484230	4213
Batteries, Automotive, Merchant Wholesalers	423120	5013
Lead-acid Storage Batteries, Manufacturing	335911	3691
Automotive Parts, Accessories, and Tire Stores	441310	5013
Tire Dealers	441320	5014
All other General Merchandise Stores	452990	5399
New Car Dealers	441110	5511
Recyclable Material Wholesaler	423930	5093
Other Waste Collection	562119	4212
Recyclable Material Collection	562111	4212
Services, Solid Waste Collection Marinas	713930	4493
General Freight Trucking, Long-Distance, TL	484121	4213
General Freight Trucking, Long-Distance, LTL	484122	4213
Specialized Freight Trucking	484200	4213
Freight Carriers (except air couriers), Air Scheduled	481112	4512
Freight Charter Services, Air	481212	4522
Freight Railways, Line-Haul	482111	4011
Freight Transportation, Deep Sea, to and from Domestic Ports	483113	4424
Freight Transportation, Deep Sea, to or from Foreign Ports	483111	4412

3. Exception Report Revisions for Exports Under Subparts E and H of 40 CFR Part 262

The exception report change to 40 CFR part 262, subpart E and subpart H of this final rule affect all persons who export hazardous waste, universal waste, or SLABs to any foreign country. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Utilities	221100	4939
Petroleum and Coal Products Manufacturing	324	29
Chemical Manufacturing	325100	28
Primary Metal Manufacturing	331	33
Fabricated Metal Product Manufacturing	332	34
Machinery Manufacturing	333	35
Computer and Electronic Product Manufacturing	334110	357
Electrical Equipment, Appliance, and Component Manufacturing	335	36
Transportation Equipment Manufacturing	336	37
Miscellaneous Manufacturing	339900	39
Scrap and Waste Materials	423930	5093

4. Import Revisions

The revisions regarding imports in this final rule affect all facilities receiving imported hazardous waste from a foreign country that must comply with either 264.71(a)(3) or 265.71(a)(3). This includes those hazardous waste import shipments originating in OECD Member countries, as well as in non-OECD countries. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Hazardous Waste Collectors	562112	4212
Recyclable Material Wholesaler	423930	5093
Other Waste Collection	562119	4212
Recyclable Material Collection Services, Solid Waste Collection	562111	4212
Scrap and Waste Materials	423930	5093

Industry sector	NAICS	SIC
Material Recovery Facilities	562920	4953

The lists of potentially affected entities in the above tables may not be exhaustive. The Agency's aim is to provide a guide for readers regarding those entities that potentially could be affected by this action. However, this action may affect other entities not listed in these tables. If you have questions regarding the applicability of this final rule to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

B. List of Acronyms Used in This Final Rule

Acronym	Meaning
BCI	Battery Council International.
CBI	Confidential Business Information.
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act.
CFR	Code of Federal Regulations.
EPA	U.S. Environmental Protection Agency.
FR	Federal Register.
HSWA	Hazardous and Solid Waste Amendments.
LAB	Lead-Acid Battery.
NAICS	North American Industrial Classification System.
NTTAA	National Technology Transfer and Advancement Act.
NAFTA	North American Free Trade Agreement.
OECD	Organization for Economic Cooperation and Development.
OMB	Office of Management and Budget.
OSWER	Office of Solid Waste and Emergency Response.
RCRA	Resource Conservation and Recovery Act.
RFA	Regulatory Flexibility Act.
SIC	Standard Industrial Classification.
SLAB	Spent Lead-Acid Battery.
SBREFA	Small Business Regulatory Enforcement Fairness Act.
TRI	Toxics Release Inventory.
UMRA	Unfunded Mandates Reform Act.

C. What Are the Statutory Authorities for This Final Rule?

The authority to promulgate this rule is found in sections 1006, 2002(a), 3001–3010, 3013, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6905, 6912, 6921–6930, 6934, and 6938.

II. Background

A. OECD Revisions

1. What Is the OECD?

The OECD is an international organization established in 1960 to assist Member countries in achieving sustainable economic growth, employment, and an increased standard of living, while simultaneously ensuring the protection of human health and the environment. OECD Member countries are concerned with a host of international socio-economic and political issues, including environmental issues. To address these issues, the OECD Council may negotiate Council Decisions, which are international agreements that create binding commitments on the United States under the terms of the OECD Convention, unless otherwise provided in the Articles of the 1960 Convention. One such Council Decision addresses the transboundary movement of waste, which is the subject of this final rule. There are currently thirty OECD Member countries: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The OECD country Web site for each Member country may be found at *http://www.oecd.org/infobycountry/.*

2. What OECD Decisions Form the Basis of the OECD Revisions in This Final Rule?

The current RCRA regulations regarding waste shipments destined for recovery within the OECD are found in 40 CFR part 262, subpart H. These regulations are based on the March 30, 1992, "Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery" (hereinafter referred to as the 1992 Decision) that EPA then promulgated as a final rule under RCRA on April 12, 1996 (61 FR 16289). Since that time, the OECD has made a number of changes to the waste shipment regime, necessitating changes to the RCRA regulations.

On June 14, 2001, the OECD Council amended the "Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery" by adopting "Revision of Decision C(92)39/FINAL on the Control of Transboundary Movement of Wastes Destined for Recovery Operations" (hereafter referred to as the 2001 OECD Decision). The goal of the 2001 OECD Decision was to harmonize the procedures and requirements of the OECD with those of the Basel Convention [1] and to eliminate duplicative activities between the two

[1] The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is a comprehensive global environmental agreement on hazardous and other wastes. The Convention has 172 Member countries, also known as Parties, and aims to protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous and other wastes. A copy of the convention text has been placed in the docket established for this rulemaking. More information on the Basel Convention may be found at *http://www.basel.int.*

international organizations as much as practical. These changes include revisions to the original established framework (such as reducing the levels of control from a three-tiered system to a two-tiered system), while also adding entirely new provisions (for example, the new certificate of recovery requirement). Subsequent to the 2001 OECD Decision, an addendum, C(2001)107/ADD1 (hereafter referred to as the 2001 OECD Addendum), which consists of revised versions of the notification and movement documents and the instructions to complete them, was adopted by the OECD Council on February 28, 2002. The addendum was incorporated into the 2001 OECD Decision as section C of Appendix 8, and the combined version was issued in May 2002 as C(2001)107/FINAL. The appendices of Decision C(2001)107/Final were amended three times by C(2004)20, C(2005)141, and C(2008)156.[2] The Decision, "Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as amended by C(2004)20; C(2005)141 and C(2008)156," is hereinafter referred to as the Amended 2001 OECD Decision.

B. SLAB Revisions

1. What are SLABs?

Lead-acid batteries (LABs) are secondary, wet cell batteries that contain liquid and can be recharged for many uses. They are the most widely used rechargeable batteries in the world and are mainly used as starting, lighting, and ignition (SLI) power batteries found in automobiles and other vehicles. A rechargeable SLAB is spent if it no longer performs effectively and cannot be recharged. Battery failure is most commonly attributed to water loss and grid corrosion during normal use. SLABs are considered both solid and hazardous wastes under Subtitle C of RCRA, because they are classified as spent materials that exhibit the toxicity characteristic for lead (*e.g.,* D008), and the corrosivity characteristic for the sulfuric acid electrolyte in the battery (*e.g.,* D001). For a full discussion of SLAB composition and how SLABs are managed, please *see* Sections II.B.1 and II.B.2 of the proposed rule (73 FR 58393).

2. How Must a Business Manage SLABs Intended for Domestic Recycling or Disposal?

Businesses subject to the RCRA hazardous waste regulations may choose from three options for managing hazardous waste spent lead-acid batteries. They may manage the batteries under the streamlined standards specifically for SLABs found in 40 CFR part 266, subpart G, the streamlined Universal Wastes standards for all hazardous waste batteries found in 40 CFR part 273, or the full Subtitle C hazardous waste management regulations found in 40 CFR parts 262–265, 267, 268, and 270. For the complete discussion of what these requirements entail for disposal or recycling within the United States, please *see* Section II.B.3 of the proposed rule (73 FR 58394).

3. What Does a Business Have To Do When Exporting SLABs for Recycling?

A company seeking to export SLABs may choose from the same three regulatory options described above. If they choose to follow the universal waste regulations, exporters of SLABs for reclamation are subject to the export requirements in 40 CFR part 273 (including the notice and consent requirements) or, if the SLABs are to be exported to an OECD Member country for recovery, the export requirements (including notice and consent) in 40 CFR part 262, subpart H. The second option would be for the export to follow the full subtitle C hazardous waste export regulations in 40 CFR part 262, subparts E or H. Most likely, SLAB exporters will choose to follow the regulatory provisions specific to SLABs in 40 CFR part 266, subpart G. Prior to today's rule, under part 266, SLABs that were destined for reclamation were exempt from the RCRA export requirements in 40 CFR part 262, subparts E and H (including the notice and consent requirements). Today's rule adds export requirements to part 266 that mirror those that apply to universal waste, as described later in this preamble.

C. Exception Reports for Hazardous Waste Exports

Prior to this final rule, under 40 CFR part 262, subparts E and H, exception reports were required to be submitted by the exporter to the EPA Administrator if any of the following occurred:

(1) The exporter did not receive a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the hazardous waste was accepted by the initial transporter, the exporter did not receive written confirmation from the recovery facility that the hazardous waste was received;

(3) The hazardous waste was returned to the United States.

D. Documenting Hazardous Waste Import Shipments

Prior to this final rule, under §§ 264.71(a)(3) and 265.71(a)(3), U.S. receiving treatment, storage, and disposal facilities (TSDFs) had to submit a copy of the hazardous waste manifest to EPA to document individual hazardous waste import shipments within 30 days of shipment delivery.

E. Proposed Rule

On October 6, 2008, EPA published a **Federal Register** notice seeking comment on proposed revisions to the requirements regarding the export and import of hazardous wastes from and into the United States (*see* 73 FR 58388 and following pages). First, we proposed to modify the requirements concerning the transboundary movement of hazardous waste destined for recovery among Member countries to the OECD in order to implement the Amended 2001 OECD Decision. The changes, largely in 40 CFR part 262, subpart H, included reducing the number of control levels, exempting qualifying shipments sent for laboratory analyses from certain paperwork requirements, requiring recovery facilities to submit a certificate of recovery, adding provisions for the return or re-export of wastes subject to the Amber control procedures, and clarifying certain existing provisions that were identified as potentially ambiguous to the regulated community. Second, we proposed to amend the regulations in 40 CFR part 266, subpart G regarding the management of SLABs being reclaimed to require notice and consent for those batteries intended for reclamation in a foreign country, mirroring the existing export requirements for exports of RCRA universal waste batteries, to create a more uniform practice for exporting SLABs for recovery under RCRA. Third, we proposed a technical correction in the exception reporting requirements of §§ 262.55 and 262.87(b) for hazardous waste exports to specify that all exception reports submitted to EPA be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC rather than to the Administrator to ensure better oversight of return shipments to the U.S. and compliance with the exception reporting requirements without any additional

[2] Copies of these amendments have been placed in the docket established for this rulemaking.

regulatory burden for U.S. exporters. Fourth and last, we proposed to amend: the hazardous waste import requirements in 40 CFR part 262, subpart F to require that U.S. importers give the initial transporter a copy of the EPA-provided documentation confirming EPA's consent to the import of the hazardous waste when they provide the RCRA hazardous waste manifest; and, the import shipment document submittal requirements in §§ 264.71(a)(3) and 265.71(a)(3) to require that the U.S. receiving facility submit to EPA a copy of the EPA consent documentation along with the RCRA hazardous waste manifest within thirty days of import shipment delivery. Both proposed amendments were intended to improve EPA's oversight of such imports. For a more detailed description of the proposed revisions, as well as the intended benefits of each revision, please *see* Section I.D of the proposed rule (73 FR 58390 and following pages).

The Agency received four sets of comments in response to its October 6, 2008 proposal. The more significant comments on this proposal are addressed later in this preamble, but all are addressed in background documents for today's final rule, which are in the docket. After considering all comments, we are finalizing the revisions substantially as proposed, with one modification.

III. Summary of the Final Rule

A. Changes to 40 CFR 262.10(d)

This final rule updates § 262.10(d) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in any of the OECD Member countries listed in § 262.58(a)(1) are now subject to 40 CFR part 262, subpart H. This change is necessary to conform with the scope in the updated § 262.80(a).

B. Changes to 40 CFR Part 262, Subpart E

This final rule amends the exception reporting requirements in § 262.55 to specify that all exception reports be submitted to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC rather than to the Administrator. In addition, this rule also updates § 262.58(a) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in any of the OECD Member countries listed in § 262.58(a)(1) are subject to the requirements of subpart H. Finally, this rule adds language in § 262.58(b) of subpart E to clarify that hazardous waste exports subject to subpart E and hazardous waste imports subject to subpart F are not subject to subpart H in order to reduce confusion for U.S. exporters and importers.

C. Changes to 40 CFR Part 262, Subpart H

All but the last three changes discussed below are necessary to conform to the revisions in the Amended 2001 OECD Decision. These changes range from substantive revisions and amendments to changes in terminology to simple editorial changes. Collectively, these changes serve to implement the Amended 2001 OECD Decision, as well as clarify certain sections that were previously ambiguous to the regulated community. Changes to 40 CFR part 262, subpart H include:

1. Changes in Terminology

In the Amended 2001 OECD Decision, the OECD Council updated several terms and definitions used in the 1992 Decision. EPA believes that these changes do not result in substantive changes to the intent of the requirements, but merely bring them in line with current terminology used in practice and in other international agreements. To limit any unnecessary confusion between the U.S. regulations and those of other OECD Member countries and to promote consistency with the Amended 2001 OECD Decision, this final rule adopts the following changes in terminology:

- "Transfrontier" to "transboundary";
- "Tracking document" to "movement document";
- "Amber-list controls" to "Amber control procedures";
- "Notifier" to "exporter"; and
- "Consignee" to "importer." [3]

2. The number of different levels of control is reduced from three (Green, Amber, and Red) to two (Green and Amber) and the waste lists have been updated.

The 2001 OECD Decision replaced the OECD three-tiered waste list (Green, Amber, and Red) system with a two-tiered system (Green and Amber) to conform to the Basel Convention waste lists more closely. Further, the revised OECD waste lists, as provided by the 2004 OECD Amendment, better correspond to those of the Basel Convention. Accordingly, we are making these same conforming changes to EPA's OECD rule.

Wastes subject to the Green control procedures are those wastes listed in Parts I and II of Appendix 3 to the Amended 2001 OECD Decision. Part I contains wastes listed in Annex IX of the Basel Convention, to which the OECD has made and noted adjustments, as appropriate. Part II contains additional wastes subject to the Green control procedures, which the OECD has assessed as not posing any risk to human health or the environment under its risk criteria.

Wastes subject to the Amber control procedures are those wastes listed in Parts I and II of Appendix 4 to the Amended 2001 OECD Decision. Part I contains wastes listed in Annexes II and VIII of the Basel Convention, to which the OECD has made and noted adjustments, as appropriate. Part II contains additional wastes subject to the Amber control procedures, which the OECD has assessed as posing a risk to human health or the environment under its risk criteria. Further, all wastes formerly appearing on the Red list are subject to the Amber control procedures.

U.S. importers and exporters of hazardous waste subject to the subpart H requirements of 40 CFR part 262 should be aware that wastes listed in Part I of both the new OECD Amber and Green waste lists have not retained their OECD waste codes. Consequently, the relevant Basel waste codes should be used when implementing the export and import procedures. However, wastes listed in Part II of both the new OECD Amber and Green waste lists do retain their original OECD waste codes, as listed in the 1992 Decision. This two-part system is necessary to ensure that wastes not yet explicitly listed under the Basel Convention will continue to have the same level of control applied to them when destined for recovery under the Amended 2001 OECD Decision.

Both the Green waste list and the Amber waste list are cited in § 262.89. This rule amends § 262.89(d) to incorporate by reference the most current OECD waste lists from the Amended 2001 OECD Decision. Further, the elimination of the Red list allows for the consolidation of the provisions currently found in § 262.89(b) and (c), which appears in new final § 262.89(b).

[3] The change from "consignee" to "importer" is only being made in 40 CFR part 262, subpart H, and does not affect the use of consignee in 40 CFR part 262, subpart E.

3. References to Unlisted Wastes Have Been Eliminated in Favor of "Wastes Not Covered in Appendices 3 and 4 of the OECD Decision"

Section 262.83(d) previously addressed the general notification requirements for unlisted wastes. Today's rule renumbers this section as § 262.83(c) since the previous § 262.83(c) addressed "Red-list wastes," which is no longer included in the final rule. Today's rule also replaces the term "unlisted wastes" with the phrase "wastes not covered in Appendices 3 and 4 of the OECD Decision,"[4] so that wastes not on these lists are not automatically subject to the Amber control procedures. Rather, "wastes not covered in Appendices 3 and 4 of the OECD Decision" will be subject to the domestic rules and regulations of the countries of concern.

4. Transboundary Movements May Now Qualify for a Laboratory Analysis Exemption

The Amended 2001 OECD Decision allows Member countries to decide through their domestic laws and regulations that waste samples normally subject to the Amber control procedures will only be subject to the Green control procedures (*e.g.,* the existing controls normally applied in commercial transactions) if such samples are destined for laboratory analyses to assess its physical or chemical characteristics, or to determine its suitability for recovery operations, and providing that the amount of the waste samples qualifying for this exemption are not more than the minimum quantity reasonably needed to perform the analyses adequately in each particular case up to a maximum of twenty-five kilograms (25 kg/55 lbs). Analytical samples also must be appropriately packaged and labeled and must be carried out under the terms of all applicable international transport agreements. Furthermore, any transboundary movement of such samples through non-OECD Member countries shall be subject to international law and to all applicable national laws and regulations.

This final rule allows waste samples that are sent for laboratory analyses to be controlled under the Green control procedures, as opposed to the Amber control procedures, provided they meet the same conditions as set forth in the Amended 2001 OECD Decision.

U.S. exporters should be aware, however, that even if their shipments qualify for the laboratory analyses exemption under U.S. domestic law, some Member countries may elect to still apply the Amber control procedures to such shipments, requiring the exporter of a waste sample for laboratory analyses to inform the competent authorities of such a movement. Therefore, we recommend that U.S. exporters check with the competent authorities of each country to find out if they require the Amber control procedures for a sample that would qualify for the laboratory analyses exemption.

5. Recovery Facilities Must Submit a Certificate of Recovery

This final rule implements the Amended 2001 OECD Decision's requirement that a duly authorized representative of the recovery facility submit a certificate of recovery to all interested parties (*i.e.,* exporter, country of export, country of import), documenting that recovery of the waste has been completed. A valid certificate of recovery is defined as a signed, written and dated statement that affirms that the waste was recovered in the manner agreed to by the parties to the contract.[5] This final rule also requires, as does the Amended 2001 OECD Decision, that the recovery facility send the certificate of recovery as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the waste by the recovery facility to the exporter and competent authorities of the countries of export and import by mail, e-mail followed by mail, or fax followed by mail. This final rule incorporates the certificate of recovery provisions of the Amended 2001 OECD Decision in § 262.83(e).

The Amended 2001 OECD Decision states that the completion of block 19 of the OECD movement document, and the submission of signed copies to the exporter and relevant competent authorities, fulfils the certificate of recovery requirement. Although the OECD movement document is recommended, the Amended 2001 OECD Decision does not require recovery facilities to use it.

While some recovery facilities may not be subject to the import and other requirements because they are not importing RCRA hazardous waste, these entities should be aware that the competent authorities of the exporting Member countries may still impose the conditions outlined in the Amended 2001 OECD Decision before the transactions can be completed. Thus, if the waste is considered non-hazardous in the United States, EPA would not require a certificate of recovery from a U.S. facility. However, the competent authority of the country of export may require a certificate of recovery, and may require that the exporter include such a requirement in the contract between the exporter and importer.

6. Amendments to the Notification Requirements

The Amended 2001 OECD Decision introduced a series of notification requirements that oblige EPA to make conforming amendments to its hazardous waste regulations. Specifically, this final rule amends § 262.83(e) (which has been renumbered as § 262.83(d)) by incorporating several new items that must be included in the notification, including:

- Exporter and importing recovery facility e-mail address;
- E-mail address for importer (if different from the importing recovery facility);
- Address, telephone, fax, and e-mail of intended transporter(s);
- Means of transport envisioned; and
- Specification of the type of recovery operation(s) that will be used.

7. Amendments to Procedures for Exports to Pre-Approved Facilities

Under the Amended 2001 OECD Decision and its predecessor, a pre-approved recovery facility (also known as a pre-consented recovery facility) is one that has been identified in advance by the competent authority having jurisdiction over that facility as acceptable for receiving certain hazardous waste imports under simplified and accelerated notification procedures. For these facilities, the competent authority must inform the OECD secretariat that the facility is pre-approved, and the waste types that are acceptable for recovery. Pre-approval may be granted for a specific time frame

[4] Section 262.81 in the final revisions to the regulatory text in 40 CFR part 262, subpart H defines "OECD Decision" as "Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as Amended by C(2004)20; C(2005)141 and C(2008)156" for the purposes of the subpart.

[5] Under both the 1992 Decision and the Amended 2001 OECD Decision, transboundary movements of wastes subject to the Amber control procedures may only occur under the terms of a valid written contract, or chain of contracts, or equivalent arrangements between facilities controlled by the same legal entity, starting with the exporter and terminating at the recovery facility. The contracts must: (a) Clearly identify the generator of each type of waste, each person who shall have legal control of the wastes and the recovery facility; (b) provide that relevant requirements of the OECD Decisions are taken into account and binding on all parties; and (c) specify which party to the contract shall assume responsibility for ensuring alternative management of the wastes including, if necessary, the return of the wastes.

and may be revoked at any time by the relevant competent authority.

The Amended 2001 OECD Decision established a time period for objection to transboundary movements to pre-approved facilities and lengthened the allowable coverage period for notifications. Specifically, the Decision established a time period of seven (7) working days during which the relevant competent authorities may object to the transboundary movements of waste to pre-approved facilities. The Decision also established that the allowable coverage period for general notifications (or the period of time for which consent may be granted) may extend up to three (3) years. Today's final rule amends the current regulations to incorporate these changes in § 262.83(b)(2)(ii) to reflect the seven (7) day time period and in § 262.83(b)(2)(i) to reflect the allowable coverage period of up to three (3) years for notifications.

8. New Procedures for the Pretreatment of Hazardous Wastes at R12/R13 Recovery Facilities

The final rule incorporates the Amended 2001 OECD Decision's new requirements for R12 and R13 recovery facilities. R12 and R13 recovery facilities are transfer and storage/accumulation facilities, respectively, that do not recover the wastes themselves. Because hazardous wastes destined for recovery may have to undergo treatment before a R1–R11 [6] recovery facility actually recovers them, the OECD considers R12 and R13 facilities as "intermediate or temporary operations." The primary reason for the new requirements is to ensure that the subsequent R1–R11 recovery operation receives the hazardous waste and completes its recovery in an environmentally sound manner.

Specifically, when the notification document lists an R12/R13 recovery facility, the exporter must indicate in the same notification document the recovery facility or facilities where the subsequent R1–R11 recovery operation takes place or may take place. In addition, the R12/R13 recovery facility shall:

- Certify the receipt of the hazardous waste by sending a copy of the duly completed movement document within three (3) working days of the receipt of such wastes to the exporter and all competent authorities concerned;
- Retain the original movement document for three (3) years;
- Certify the completion of the R12/R13 recovery operation by submitting a certificate of recovery as soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation at that facility and no later than one (1) calendar year following the receipt of the waste by the R12/R13 recovery facility; and
- Send the certificate of recovery to the exporter and to the competent authorities of the countries of export and import by either mail, e-mail followed by mail, or by fax followed by mail.

The control procedures applied to the transboundary movement of hazardous waste from an R12/R13 recovery facility to a subsequent R1–R11 recovery facility vary depending on whether these facilities are located within the same Member country or in a different Member country.

When the subsequent R1–R11 recovery facility is located within the same Member country, the R12/R13 recovery facility must obtain from the subsequent R1–R11 recovery facility a certificate that the "final" recovery of the hazardous waste at that facility has been completed within one (1) calendar year following the delivery of the hazardous waste to the R1–R11 facility. The format of the certificate of recovery is not fixed, but it must, at a minimum, identify the code number of the notification document and the serial number of the movement documents to which it pertains. The R12/R13 recovery facility must then transmit the certification document prepared by the R1–R11 recovery facility to the competent authorities of the countries of import and export as soon as possible, but no later than one (1) calendar year following the delivery of the hazardous waste to the R1–R11 recovery facility.

When the subsequent R1–R11 facility is not located in the same Member country as the R12/R13 facility, a new notification must be made for the transboundary movement of hazardous waste by the R12/R13 recovery facility. In addition, the applicable procedures differ depending upon the country where the final recovery operation occurs. In particular, if the final R1–R11 recovery facility is located in the initial country of export, then the normal Amber control procedures shall apply. In this case, the R12/R13 facility must submit a new notification document to its competent authority and obtain consent from its competent authority and from the initial country of export to the export of the hazardous waste back to that country for final recovery. If, however, the final R1–R11 recovery facility is located in a country different from the initial country of export, then the Amber control procedures shall apply, but also the movement will in effect be treated as a "re-export" of waste to a third country. In this case, not only is a new notification document required, but the competent authority of the initial country of export must also be notified of the transboundary movement, and consent must be obtained from the original country of export and the new countries of import, export, and transit. For example, if a hazardous waste is exported from the United States to a R12/R13 facility in France, and then will be sent to a subsequent R1–R11 recovery facility in Germany, the R12/R13 facility in France must submit a notification to and obtain consent from France (the new country of export), the United States (the original country of export) and Germany (the new country of import for final recovery).

The final rule incorporates all of these requirements in § 262.82(f).

9. New Provisions Regarding Mixtures of Hazardous Wastes

The Amended 2001 OECD Decision contains controls and provisions related to the mixture of hazardous waste. Specifically, the Amended 2001 OECD Decision defines a mixture of hazardous waste as one that results from the intentional or unintentional mixing of two or more different hazardous wastes. However, under the Amended 2001 OECD Decision, a single shipment of hazardous wastes, consisting of two or more wastes, where each is separated, is not considered a mixture of hazardous waste.

The Amended 2001 OECD Decision also provides that:

- A mixture of two or more Green wastes should be subject to the Green control procedures. However, the regulated community should be aware that some OECD Member countries may require, by domestic law that mixtures of different Green wastes be subject to the Amber control procedures.
- A mixture consisting of a Green waste and more than a "de minimis" amount of Amber waste is subject to the Amber control procedures. In the absence of internationally accepted criteria, the term "de minimis" should

[6] Recovery operations R1 through R11 are defined as follows: R1, use as a fuel (other than in direct incineration) or other means to generate energy; R2, solvent reclamation/regeneration; R3, recycling/reclamation of organic substances which are not used as solvents; R4, recycling/reclamation of metals and metal compounds; R5, recycling/reclamation of other inorganic materials; R6, regeneration of acids or bases; R7, recovery of components used for pollution abatement; R8, recovery of components used from catalysts; R9, used oil re-refining or other reuses of previously used oil; R10, land treatment resulting in benefit to agriculture or ecological improvement; and, R11, uses of residual materials obtained from any of the operations numbered R1–R10.

be defined according to national regulations and procedures.

• A mixture containing two or more Amber wastes is subject to the Amber control procedures.

In this final rule, EPA has revised the text in § 262.82(a) to clarify that only those wastes and waste mixtures considered hazardous under U.S. national regulations will be subject to the Amber control procedures within the United States. This is consistent with longstanding EPA policy, and should minimize confusion for the regulated community. For example, under the existing RCRA hazardous waste regulations, any mixture of an Amber waste that exhibits one or more of the hazardous characteristics of ignitability, corrosivity, reactivity, or toxicity under RCRA with a Green waste shall be considered an Amber waste if the mixture still exhibits one or more of the RCRA hazardous waste characteristics and, thus, be subject to the Amber control procedures. Conversely, if the resulting mixture no longer exhibits one or more of the RCRA hazardous characteristics, it will instead be considered a Green waste, and be subject to the Green control procedures.

Because other OECD Member countries may require that the mixtures listed above (that the U.S. sometimes considers subject to the Green control procedures) be subject to the Amber control procedures, the final rule includes notes stating that other OECD Member countries may subject such mixtures to the Amber control procedures. In such cases, U.S. importers and exporters should be prepared to follow the Amber control procedures within those OECD Member countries.

Finally, the Amended 2001 OECD Decision requires that notification for a transboundary movement of a mixture of hazardous wastes falling under the Amber control procedures should be made by the person performing the mixing activity (the generator of the mixture) or any other person acting as an exporter in place of the person performing the mixing activity. In the notification, relevant information on each fraction of the waste, including its code numbers, has to be given in order of importance. This final rule imposes these requirements in 40 CFR 262.82(a)(3).

10. New Provisions Regarding the Return and Re-Export of Hazardous Wastes Subject to the Amber Control Procedures

This final rule adopts the Amended 2001 OECD Decision's more precise provisions (than the earlier 1992 Decision) on measures to be taken in case a transboundary movement of hazardous waste is subject to the Amber control procedures and cannot be completed as intended (*e.g.,* not in accordance with the notification, consents given by the competent authorities, or the terms of the contract). There may be a number of reasons for this non-completion, for example, an accident during the transport of the hazardous waste, improper notification, or any illegal action taken by someone involved with the movement of the hazardous waste.

The Amended 2001 OECD Decision provides that if this uncompleted movement of hazardous waste (hereafter referred to as the "incident"), takes place in the country of import, the competent authority of that country shall immediately inform the competent authority of the country of export. The competent authorities of the concerned countries are to cooperate in resolving the incident by making all necessary arrangements to ensure the best alternative management of the hazardous waste. If alternative arrangements cannot be made to recover these wastes in an environmentally sound manner in the country of import, the hazardous waste must be returned to the country of export or re-exported to a third country.

(a) Return of Hazardous Waste to the Country of Export

Under the Amended 2001 OECD Decision, the return of the hazardous waste to the country of export is to take place within ninety (90) days from the time when the country of export was informed of the incident, unless the concerned countries agree to another period of time. The competent authorities of both countries of export and transit (if applicable) are to be informed about the return of the hazardous waste and the reasons for its return. These authorities are prohibited from opposing or preventing the return of the hazardous waste to the country of export, so long as the movement complies with the requirements set out by the country of export's domestic law. If the waste is returned through a country of transit, the competent authority of that country is to be notified and consent obtained in accordance with the normal Amber control procedures.

When the incident occurs in the United States, the U.S. importer must inform EPA of the need to return the shipment. EPA will then inform the countries of export and transit, citing the reason(s) for returning the waste, and request written consent to the return by any transit country as needed. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides a copy of the transit country's consent to the U.S. importer. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste unless otherwise informed by EPA in writing of an alternate timeframe for the return.

When the incident involves an export shipment from the United States, the U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the shipment unless otherwise informed by EPA in writing of an alternate timeframe for the return. The U.S. exporter must also submit an exception report to EPA.

(b) Re-Export of Hazardous Waste From the Country of Import to a Third Country

Under the Amended 2001 OECD Decision, the re-export from the country of import to a third country is considered a new transboundary movement of hazardous waste. As a result, the Amber control procedures are applicable. The initial importer becomes the exporter of the hazardous waste and, consequently, assumes all responsibilities as an exporter. In addition, the notification must also include the competent authority of the initial country of export who, in accordance with the Amber control procedures, may object to the re-export if the movement does not comply with the requirements set out by its domestic law. Re-export of a hazardous waste shipment from the United States to a third country may therefore only occur after the importer (acting as the new exporter) submits a notification to EPA in compliance with the notice and consent procedures of § 262.83 and obtains consent from the original country of export, the new country of import, and any transit countries.

(c) Return of Hazardous Waste From the Country of Transit to the Country of Export

If the incident takes place in the country of transit, the exporter should make arrangements so that the hazardous waste still can be recovered in an environmentally sound manner in the recovery facility of the importing country to where it was originally destined. The competent authority of the country of transit is to immediately inform the competent authorities of the countries of export and import and any

other countries of transit. If the exporter is unable to arrange for the recovery of the hazardous waste in an environmentally sound manner at the recovery facility to where it was originally destined, the hazardous waste should be returned, adhering to subsection (a) above, to the country of export within ninety (90) days from the time when the country of export was informed of the incident or such other period of time as the concerned countries agree. The competent authorities of the country of export and the countries of transit are to be informed of the return, but they are prohibited from opposing or preventing the return of the hazardous wastes to the country of export, so long as the movement complies with the requirements set out by the country of export's domestic law.

When the United States is the transit country where the incident occurs, the U.S. transporter must inform EPA of the need to return the shipment. EPA will then inform the country of export, citing the reason(s) for returning the waste. The U.S. transporter must then complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste unless otherwise informed by EPA in writing of an alternate timeframe for the return.

When the waste shipment from the incident originated in the United States, the U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of transit informs EPA of the need to return the shipment unless otherwise informed by EPA in writing of an alternate timeframe for the return. The U.S. exporter must also submit an exception report to EPA.

This final rule sets forth these re-export and return provisions of the Amended 2001 OECD Decision in §§ 262.82(c), 262.82(d), and 262.82(e).

11. SLABs Are Now Covered by EPA's OECD Rule

This final rule updates § 262.80(a) and § 262.89(a) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in any of the OECD Member countries listed in § 262.58(a)(1) are subject to 40 CFR part 262, subpart H.

12. Technical Corrections to EPA's OECD Rule

This final rule makes several technical corrections to EPA's current OECD rule, including corrections to capitalization, syntax, and punctuation errors. In these changes, EPA is not making any substantive revisions, but is seeking to eliminate any confusion on the part of the regulated community by striving for consistency both within the regulations and with the terms of the Amended 2001 OECD Decision. Some examples of these types of revisions include changing "Subpart" to "subpart," "OECD member" to "OECD Member," and "thirty days" to "thirty (30) days."

13. Change to the Submittal Address for Exception Reports

This final rule amends the exception reporting requirements in § 262.87(b) to specify that all exception reports are to be submitted to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC rather than the Administrator.

D. Changes to 40 CFR 263.10(d)

This final rule updates § 263.10(d) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in any of the OECD Member countries listed in § 262.58(a)(1) are now subject to 40 CFR part 262, subpart H. This change is necessary to conform with the scope in the updated § 262.80(a).

E. Changes to 40 CFR 264.12(a)(2) and 40 CFR 265.12(a)(2)

This final rule amends §§ 264.12(a)(2) and 265.12(a)(2) by, among other things, requiring owners or operators of recovery facilities to submit a certificate of recovery as soon as possible after the recovery is completed, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste. This change is necessary to conform to the Amended 2001 OECD Decision.

F. Changes to 40 CFR 264.71(a)(3) and 40 CFR 265.71(a)(3)

This final rule amends §§ 264.71(a)(3) and 265.71(a)(3) by requiring owners or operators of facilities receiving imported hazardous wastes to submit to EPA a copy of the relevant written documentation of EPA's consent to the import along with a copy of the RCRA hazardous waste manifest for the incoming shipment within thirty (30) days of shipment delivery. This will enable EPA to match the individual shipment manifest to the consent for an annual notice from a foreign exporter.

G. Changes to 40 CFR 266.80(a)

EPA is amending the table located at 40 CFR 266.80 by including two additional rows to the current table. These additional rows contain the new provisions that require exporters and transporters of SLABs being sent to a foreign country for reclamation to meet the universal waste requirements concerning the export of SLABs for reclamation.

Specifically, exporters will need to either comply with the requirements in 40 CFR part 262, subpart H when the shipments are destined to any of the OECD Member countries listed in § 262.58(a)(1), or with the following requirements when the shipments are destined for any country not listed in § 262.58(a)(1):

- Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;
- Export such SLABs only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of 40 CFR part 262 of this chapter; and
- Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

The transporter of SLABs being sent to a foreign country for reclamation will need to comply with the applicable requirements in 40 CFR part 262, subpart H when the shipments are destined to any of the OECD Member countries listed in § 262.58(a)(1). For export shipments of SLABs destined for a country not listed in § 262.58(a)(1), such as Canada or Mexico, the transporter will not be able to accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent, and will have to ensure that:

- A copy of the EPA Acknowledgment of Consent accompanies the shipment; and
- The shipment is delivered to the foreign facility designated by the person initiating the shipment.

The new requirements at 40 CFR 266.80 will ensure greater protection of human health and the environment through notification, tracking, and management of SLABs. In addition to harmonizing the RCRA hazardous waste regulations for SLABs with the notification and consent requirements in the RCRA universal waste rules, today's final rule harmonizes the export requirements for SLABs with the Amended 2001 OECD Decision. (Note that the exemption from the RCRA hazardous waste manifest requirements for exporters and transporters of SLABs for reclamation will continue to remain in effect, although SLAB shipments for recovery to any of the OECD Member

countries listed in § 262.58(a)(1) must be accompanied by a movement document per § 262.84 that is separate from the RCRA hazardous waste manifest.)

The table located at 40 CFR 266.80 describes the various kinds of SLAB handlers and their respective legal requirements. Some SLAB handlers may find that more than one description located in the table applies to their SLAB management activities. It is the SLAB handler's responsibility to read all seven descriptions and carefully consider any and all requirements which may apply.

1. Export Shipments of SLABs to OECD Member Countries Listed in § 262.58(a)(1)

Exporters and transporters of SLABs destined for reclamation in any of the OECD Member countries listed in § 262.58(a)(1) will have to comply with all applicable sections of 40 CFR part 262, subpart H for wastes subject to the Amber control procedures. For a complete listing of the final OECD requirements, exporters and transporters should consult the regulatory text for 40 CFR part 262, subpart H in this final rule. In addition to the changes in subpart H discussed in earlier sections, the applicable Amber control procedures include, but are not limited to, the following:

(a) Notification of Intent To Export

Exporters of SLABs destined for reclamation are required to comply with the Amber control procedures in § 262.83. Under the Amber control procedures, an exporter must submit a complete notification to EPA of its intent to export at least 45 days before the export is scheduled to leave the United States (or at least ten days if the shipment is going to a pre-approved facility in the country of import). The notification can cover export activities spanning a period of up to and including 12 months (or up to three years, depending on the procedures of the importing country, if the shipment is going to a pre-approved facility in the country of import). Exporters may use the OECD Notification form in Appendix 8 of the Amended 2001 OECD Decision, or whatever notification form may be required by the country of import, but are not required by EPA to do so.

A complete notification includes, but is not limited to:

- Contact information and the EPA ID number (if applicable) for the exporter;
- Point of departure from country of export;
- A waste description and quantity of the hazardous waste being exported;
- The RCRA waste code(s) (if applicable), United Nations number, and OECD waste code for the hazardous waste (SLABs are classified as Amber waste A1160 under the Amended 2001 OECD Decision);
- Planned mode(s) of transportation;
- Contact information for all intended transporters;
- Contact information and the OECD recovery operation code(s) (*e.g.*, R1–R13) for both the importer and the final recovery facility (if different sites);
- The requested period of exportation;
- A list of all transit countries, along with the points of entry and departure, through which the hazardous waste will be sent; and
- A certification by the exporter that a contract or chain of contracts or equivalent arrangements among all parties to the final shipment are in place and are legally enforceable in all concerned countries.

If the notification is complete, EPA will forward it to the importing country and any transit country(ies). Within three working days of receiving the notification, the importing country must send either an Acknowledgement of Receipt or a list of items that the notification lacks directly to U.S. EPA, to the exporter, and to any countries of transit. The countries of import and transit have thirty (30) days from the date on the Acknowledgement of Receipt (seven days for shipments going to pre-approved facilities) to object or consent explicitly to the proposed shipment. Any explicit objection or consent by the country of import or transit will be sent simultaneously to U.S. EPA, the exporter, and any other interested country (*e.g.*, of import or transit). If no objections are submitted within the thirty day (30) period (seven days for shipments going to pre-approved facilities), under the provisions of the Amended 2001 OECD Decision, tacit (or implied) consent is assumed and the movement of the hazardous wastes may commence.

The subsequent SLAB shipments must be in accordance with the information from the notification that was reviewed and approved by the receiving country in its consent. Any changes to the information listed in the notification, such as changes to proposed total amounts to be exported or the ports of entry to be used, would require renotification and shipments could not take place until either tacit or written consent was obtained.

(b) Shipment Tracking

Under § 262.84, shipments of SLABs that are exported must be accompanied by a movement document from the initiation of the shipment until it reaches the final recovery facility. This movement document is described in § 262.84 and is different from the RCRA hazardous waste manifest. Exporters may use the OECD Movement form in Appendix 8 of the Amended 2001 OECD Decision, or whatever movement form may be required by the country of import, but are not required by EPA to use any particular form. Exporters must provide the initial transporter with the movement document. Transporters are prohibited from accepting a shipment of SLABs without such a movement document, and are required to ensure that the movement document accompanies the shipment from the initiation of the shipment until it reaches the final recovery facility. The movement document must include all the information from the notification, as well as the following:

- Date movement commenced;
- Name (if not the exporter), address, telephone and fax numbers, and e-mail of person originating the movement document (Note that this person is equivalent to the primary exporter under 40 CFR part 262, subpart E);
- Company name and EPA ID number (if applicable) of all transporters;
- Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;
- Any special precautions to be taken by transporter(s) during transportation;
- Certification/declaration signed by the exporter that no objection to the shipment has been lodged; and
- Appropriate signatures for each custody transfer (*e.g.*, transporter, importer, and owner or operator of the recovery facility).

(c) Annual Reporting

Under § 262.87(a), any person exporting SLABs who meets the definition of primary exporter in § 262.51 or who initiates the movement document under § 262.84 will have to submit to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, an annual report summarizing the types, quantities, frequency, and ultimate destination of all SLABs exported during the previous calendar year. Reports are due by March 1st of every year.

(d) Exception Reporting

Under § 262.87(b), any person exporting SLABs who meets the definition of primary exporter in § 262.51 or who initiates the movement

document under § 262.84 must file an exception report with the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, if either of the following occurs:

- Within ninety (90) days from the date the SLAB shipment was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the SLAB shipment was received; or
- The SLAB shipment is returned to the United States.

(e) Recordkeeping

Under § 262.87(c), any person exporting SLABs who meets the definition of primary exporter in § 262.51 or who initiates the movement document under § 262.84 must keep the following records:

- A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned (*e.g.*, export, transit, and import) for a period of at least three (3) years from the date the SLAB shipment was accepted by the initial transporter;
- A copy of each annual report for a period of at least three (3) years from the due date of the report;
- A copy of any exception reports and a copy of each confirmation of delivery (*i.e.*, movement document) sent by the recovery facility to the exporter for at least three (3) years from the date the SLAB shipment was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and
- A copy of each confirmation of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed the processing of the SLAB shipment.

2. Export Shipments of SLABs to Countries Not Listed in § 262.58(a)(1)

(a) Notification of Intent To Export

Exporters of SLABs destined for reclamation in countries not listed in § 262.58(a)(1), such as Canada or Mexico, are required to comply with the primary exporter notification requirements in § 262.53, and may export the SLABs only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent, as defined in 40 CFR part 262, subpart E. Specifically, the exporter has to submit a complete notification of its intent to export to EPA at least 60 days before the export is scheduled to leave the United States. The notification can cover export activities spanning a period of up to and including 12 months. This complete notification contains:

- Contact information and the EPA ID number (if applicable) for the primary exporter;
- A description and quantity of the SLABs to be exported;
- The RCRA waste code(s) (if applicable), U.S. DOT proper shipping name, hazard class, and United Nations number as identified in 49 CFR parts 171 through 177;
- Planned mode(s) of transportation and type(s) of containers;
- A description of the manner in which the SLABs will be treated, stored, or disposed of (including recovery) in the receiving country;
- The planned frequency and time period of exportation;
- A list of all transit countries through which the SLABs will be sent, and a description of the approximate length of time the hazardous waste will remain in each country and the nature of its handling while there;
- All points of entry to and departure from each foreign country through which the SLABs will pass; and
- The name and site address of the consignee [7] and any alternate consignee.

If after proper notification, the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the exporter. If, on the other hand, the receiving country objects to the receipt of the hazardous waste or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

The subsequent SLAB shipments must be in accordance with the information from the notification that was reviewed and approved by the receiving country in its consent. Any changes to the information listed in the notification (with the exception of changes to the primary exporter's telephone number, the listed means of transportation, or a decrease in the total amount to be exported) would require renotification and shipments could not take place until the exporter received an EPA Acknowledgement of Consent for the renotification.

(b) Shipment Documentation and Tracking

Exporters of SLABs must provide a copy of the EPA Acknowledgment of Consent for the SLAB shipment to the transporter transporting the shipment for export. Transporters are prohibited from accepting a SLAB export shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition, the transporter must ensure that:

- A copy of the EPA Acknowledgment of Consent accompanies the SLAB export shipment; and
- The SLAB export shipment is delivered to the facility designated by the person initiating the shipment.

Unlike SLAB export shipments to countries listed in § 262.58(a)(1) that must comply with 40 CFR part 262, subpart H, SLAB export shipments destined for countries not listed in § 252.58(a)(1) do not have any shipment tracking documentation requirements or exception reporting requirements because they are exempt from the RCRA hazardous waste manifest requirements and are not required to comply with the movement document requirements in § 262.84.

(c) Annual Reporting

Exporters of SLABs must follow the requirements applicable to a primary exporter detailed in § 262.56 "Annual reports" (a)(1) through (4), (6), and (b). Specifically, exporters will have to file with the EPA Administrator an annual report summarizing the types, quantities, frequency, and ultimate destination of all SLABs exported during the previous calendar year. Reports are due by March 1st of every year.

(d) Recordkeeping

Under § 262.57, exporters of SLABs must keep the following records:

- A copy of each notification of intent to export for at least three years from the date the SLAB export shipment was accepted by the initial transporter;
- A copy of each EPA Acknowledgment of Consent for at least three years from the date the SLAB export shipment was accepted by the initial transporter; and
- A copy of each annual report for at least three years from the due date of the report.

H. Changes to 40 CFR 271.1

This final rule amends Table 1 and Table 2 of § 271.1 by adding references to the revisions which amend 40 CFR part 262, subpart E to reflect that subpart E implements the Hazardous and Solid Waste Amendments of 1984.

[7] As noted previously, this is equivalent to the "importer" in the final revisions to 40 CFR part 262, subpart H.

IV. Discussion of Comments Received in Response to the Proposed Rulemaking and the Agency's Responses

The Agency received comments from four entities: the Basel Action Network (BAN), a nongovernmental organization focused on the Basel Convention and in particular on the issue of illegal trade in hazardous wastes to developing countries; the Association of Battery Recyclers (ABR), a national trade association representing the lead recycling industry; Johnson Controls, Inc. (JCI), a global supplier of batteries to the automotive aftermarket and original equipment manufacturers; and Dow Chemical Company (DOW), a global chemical manufacturer. The comments were focused on specific issues or provisions in the proposed rule. To the extent that comments were not submitted on various aspects or provisions of the proposal, the Agency is finalizing those portions of the proposal, as-is, except in one case. That exception is discussed in section C below.

A. OECD Revisions

BAN argued that EPA should subject all wastes on the OECD amber list to amber control procedures when being exported regardless of whether the materials are RCRA hazardous wastes. This comment is outside the scope of this rulemaking, as EPA did not propose any changes to the fundamental regulatory framework regarding the applicability of the OECD provisions in 40 CFR part 262, subpart H (*see* Section II.A.5 of the proposed rule at 73 FR 58393). Moreover, it is important to recognize that the Amended 2001 OECD Decision and its predecessor have long recognized and allowed a Member country to determine if a waste on an OECD list is hazardous based on its "national procedures" (*see* Annex I, Section II.4 of the "Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery" and Chapter II, Section B.4 of the Amended 2001 Decision). Discussion on how RCRA implementation of "national procedures" impacts transboundary movements of wastes subject to the RCRA exemptions, exclusions and recycling provisions can be found in the April 12, 1996, preamble to the original OECD rule (61 FR 16290–16316). EPA is therefore finalizing the scope of the OECD provisions in subpart H, as proposed.

BAN also commented that EPA should prohibit all exports of OECD amber listed wastes to non-OECD countries for any reason. ABR similarly commented that EPA should prohibit all exports of SLABs to non-OECD countries. EPA cannot grant this request since the statute does not give EPA the legal authority to implement an outright ban on hazardous waste exports. Specifically, RCRA section 3017 prohibits exports of hazardous waste unless either: (1) The shipments are covered under and conform to the terms specified in an agreement between the U.S. and the receiving country; or (2) the exporter has submitted written notification to EPA, obtained written consent from the receiving country via EPA, attached a copy of the written consent to the RCRA hazardous waste manifest for each shipment, and ensures that the shipments comply with the terms of the receiving country's consent. Moreover, section 3017 directs the State Department, on behalf of EPA, to forward a copy of the notification to the intended country of import within 30 days of EPA receiving a complete notification concerning a proposed waste export that would not be covered under the terms of an existing international agreement. Therefore, an outright ban regarding all exports of any individual hazardous waste (*e.g.* SLABs) or all hazardous wastes to non-OECD countries would require changes to the statutory language and is outside the scope of this regulatory action.

In practice, EPA has rarely received inquiries for hazardous waste exports to non-OECD countries. When approached by potential exporters who ask about exporting hazardous wastes to non-OECD countries that are, however, parties to the Basel Convention, it is EPA's practice to actively discourage such exports by informing them of the Basel Convention prohibition on transboundary shipments of hazardous waste between Basel Parties and a non-Party like the United States in the absence of a formal agreement per Article 11 of the Basel Convention (*e.g.,* the U.S.-Canada bilateral agreement, the U.S.-Mexico bilateral agreement, or the OECD multilateral agreement). The United States has no agreement with a non-OECD country for exports of RCRA hazardous wastes. A review of hazardous waste export notices between 1995–2007 indicates no approved or even proposed exports of RCRA hazardous waste to a non-OECD country. In the interest of transparency, however, EPA intends to post online at *http://www.epa.gov/epawaste/hazard/international/hazard/index.htm* summary information for all future notices we receive concerning a proposed export of RCRA hazardous waste to a non-OECD country. The online information will list the exporter name, exporter address, waste text description, proposed receiving country, and consent status (*e.g.,* notice submitted to foreign country, whether the foreign country consents or objects). Moreover, EPA's cover letters for notices concerning exports to non-OECD countries will remind the countries, when appropriate, of the relevant Basel hazardous waste listing and the Basel Convention prohibition on transboundary shipments of hazardous waste between Basel Parties and a non-Party like the United States.

In another comment, BAN asserted that EPA has not yet implemented the 1986 OECD Council Decision-Recommendation C(86)64(final) [8] ("1986 OECD Decision-Recommendation"), and should do so immediately. This comment is outside the scope of this rulemaking, as EPA proposed revisions to the OECD provisions to implement the Amended 2001 OECD Decision.

Finally, BAN suggested that the U.S. should simultaneously ratify the Basel Convention and the Basel Ban Amendment. However, ratification of the Basel Convention, with or without the Basel Ban Amendment, would require Congressional action to provide EPA the legislative authority to implement either of these, and thus, is outside the scope of this rulemaking.

Dow stated that it supported EPA revising the existing regulations to implement the Amended 2001 OECD Decision, and that the revisions will clarify and streamline the import and export process among OECD Member countries.

B. SLAB Revisions

Three of the commenters recognized the need to require notification and consent for SLABs being exported for reclamation in a foreign country, and all four commenters supported EPA establishing the notice and consent export requirements.

As part of ABR's comment suggesting that EPA ban all exports of SLABs to non-OECD countries (which is discussed in the previous section), ABR submitted data that analyzed export shipments of SLABs and other lead scrap based on the harmonized tariff code classifications between 2006–2008. The data indicated shipments of lead scrap and/or SLABs to non-OECD

[8] "Decision-Recommendation of the Council on Exports of Hazardous Wastes from the OECD area," issued June 5, 1986. This document is available online at *http://webdomino1.oecd.org/horizontal/oecdacts.nsf/linkto/C(86)64,* and a copy has been placed in the docket established for this rulemaking.

countries (*e.g.,* China and India). ABR asserted that this data demonstrates that many exporters were mislabeling their SLAB shipments as non-battery scrap, and that EPA might be underestimating the amount of SLABs that were exported for reclamation between 2006–2008. However, after reviewing the analysis conducted by ABR, who generally supports the proposed rule, we do not believe that ABR's data would lead to a significantly different answer, and cause EPA to reconsider its position. In particular, ABR's data indicated total exports of SLABs and lead scrap were approximately 220,000 metric tons in 2006 and approximately 250,000 metric tons in 2007, with about 8% of the total exports in 2006 going to non-OECD countries. In comparison, EPA's data on SLAB exports estimated that 269,171 metric tons were exported in 2006, and that 1.77% went to non-OECD countries. Because the maximum annual amount of SLABs exported between 2006–2007 based on ABR's data is less than the annual amount based on EPA's data, the Agency believes it most appropriate that the data used in the economic analysis for the proposed rule should continue to be used, and not revised to include the ABR data in the economic analysis for the final rule. As a general note, if anyone has specific knowledge pertaining to specific export shipments that they believe are in violation of the RCRA hazardous waste regulations, we encourage them to submit it using EPA's Web site at *http://www.epa.gov/compliance/complaints/index.html.*

ABR further commented that adding export requirements to 40 CFR part 266, subpart G that reference the 40 CFR part 262 requirements was confusing, and instead recommended that EPA simply require that all SLABs destined for export to be managed as Universal Waste batteries under 40 CFR part 273. EPA does not agree that requiring all SLABs that will be exported in the future be managed under 40 CFR part 273 would be easier or less confusing. EPA's policy has long allowed collectors and managers of SLABs destined for recycling to choose either Part 273 or Part 266 (*see* Section IV.B.2.b of the 1995 Final Universal Waste Rule at 60 FR 25504 and following pages). We believe that having the same export requirements for SLAB exports in 40 CFR part 273 and 40 CFR part 266, subpart G is the most straightforward approach to ensuring that SLAB exports for reclamation are appropriately controlled, and the references to requirements in 40 CFR part 262 should be no more confusing than the previously established references to 40 CFR parts 261 and 268. EPA is therefore finalizing the 40 CFR part 266, subpart G requirements as proposed.

JCI commented that a three-year time period for notice and consent of exports (as opposed to a one-year time period) would reduce the burden on U.S. exporters while still providing sufficient notification to the importing country of proposed shipments. While the Amended 2001 OECD Decision does allow importing countries to issue extended consents that last for up to three years when the proposed shipment is destined for a facility that the importing country has "pre-approved" for such imports, OECD countries are neither required to pre-approve facilities nor to issue such extended consents. The international agreements covering exports from the United States that are in place with Canada, Mexico, and the OECD all specify a one-year time period as the standard maximum length of time that a notification and consent can cover. Consistent with those agreements and with all other RCRA export regulatory requirements in 40 CFR parts 261, 262 and 273, EPA is therefore retaining the one-year time period for SLABs being exported under 40 CFR part 266, subpart G.

Dow made a general comment of support for the revisions to the SLAB regulations.

C. Export Exception Report Technical Correction and Import Revisions

BAN and Dow both made a general comment of support for the proposed technical corrections regarding export exception reports and import consent documentation submissions, as proposed. Therefore, EPA is finalizing the technical corrections as proposed. The final rule however, does not include the proposed requirement in 40 CFR part 262, subpart F that RCRA hazardous waste importers give a copy of the EPA-provided import consent documentation to the initial transporter along with the RCRA hazardous waste manifest.

According to longstanding EPA policy, any party who helped arrange for the importation (*e.g.,* a broker, a transporter, or the waste management facility), may be considered an importer.[9] Because EPA's consents are currently communicated only to the competent authority of the exporting country, the proposal stated that EPA would need to provide or otherwise make available to U.S. importers the documentation confirming the Agency's consent. We asked for comment in the proposed rule on how best to provide the consent documentation to the RCRA importer, but received no comments on this issue. Foreign notices we receive regarding proposed imports of hazardous waste do not generally identify the party acting as the importer under the RCRA regulations, but the notices always have to list the foreign generator, the waste to be imported, the intended management of the waste, and the U.S. TSDF that will dispose of or recover the imported hazardous waste.

Since we should be able to reliably identify the TSDF, and the TSDF should have enough knowledge of their individual customers and contracts to match up the incoming shipment manifests with the EPA-provided import consent documentation, we have decided to provide the import consent documentation directly to the TSDF listed on each consent document and require each TSDF receiving hazardous waste from a foreign source to send back a copy of the relevant import consent documentation along with a signed copy of the RCRA hazardous waste manifest within 30 days of delivery. Because receiving facilities would have received the consent documentation directly under the proposal for those instances when they were acting as the RCRA importer of record, making this change is a logical outgrowth of the proposal and does not require a supplemental notice.

V. Future Rulemaking

1. Changes to OECD Member Country List

Qualified countries may be invited to accede to the OECD Convention as new Members. The OECD Convention defines qualified countries as those that have demonstrated the basic values shared by all Members: An open market economy, democratic pluralism, and respect for human rights. Any decision to invite a new country to become a Member of the OECD must be unanimous, although abstentions may be allowed. Thus, no new Member may be admitted over the objection of the United States (or any other Member country).

In order to accommodate changes in OECD membership as quickly as possible, EPA will publish in the **Federal Register** any future amendments to the list of OECD Member countries set forth in

[9] *See* June 25, 1985, memo from John H. Skinner, Director of the Office of Solid Waste to Harry Seraydarian, Director, Toxics and Waste Management Division, EPA Region IX, "Determining Who Assumes Generator Responsibilities for Importations of Hazardous Waste."

§ 262.58(a)(1), as a final rule without prior notice and opportunity for comment. EPA believes that the Agency would be able to make a "good cause" finding under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B) to make these future amendments without prior notice and comment. EPA believes notice and an opportunity for comment on future amendments to § 262.58(a)(1) to reflect the updates to the OECD list of Member countries would be unnecessary, because the United States, as an OECD Member country, is legally obligated to implement OECD Decisions with respect to all OECD Member countries.

2. Changes to OECD Waste List

The OECD waste list is incorporated by reference and cited in § 262.89(d). If the OECD amends its waste list in the future by decision of the OECD Council (with the concurrence of the United States), EPA will publish a notice of these amendments in the **Federal Register** as a final rule without prior notice and an opportunity for comment. EPA believes that the Agency would be able to make a "good cause" finding under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these future amendments without prior notice and comment because the purpose of § 262.89(d) is solely informational—to provide an up-to-date reference of the OECD waste list. Public comment on such updates is unnecessary, as EPA would have no discretion to modify this list.

VI. Costs and Benefits of the Final Rule

A. Introduction

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. The Agency's economic assessment conducted in support of this final action evaluates costs, cost savings, benefits, and other impacts, such as environmental justice, children's health, unfunded mandates, regulatory takings, and small entity impacts. To conduct this analysis, we developed and implemented a methodology for examining the impacts, and followed appropriate guidelines and procedures for examining equity considerations, children's health, and other impacts.

B. Analytical Scope

This analysis assesses the final integration of the Amended 2001 OECD Decision into the existing U.S. regulations governing shipments (export/import/transit) of hazardous wastes destined for recovery between the U.S. and other OECD Member countries. In addition, we assess the newly final export regulations for SLABs to OECD and non-OECD countries. Also incorporated into the analysis is the requirement that a receiving facility subject to 40 CFR parts 264 or 265 submit to EPA a copy of the documentation confirming EPA's consent to the import when it submits to EPA the RCRA hazardous waste manifest for the import shipment of hazardous waste. Finally, this action revises the current language in §§ 262.55 and 262.87(b) to require exception reports to be submitted directly to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, rather than to the EPA Administrator. There is no discernable cost impact associated with this final requirement for exception reports to be submitted directly to the Director.

First, we assessed potential cost impacts (positive and negative) of the final revisions to the OECD rule, including:

- Exemptions for wastes destined for laboratory analyses,
- The requirement to provide a certificate of recovery,
- Information collection requirements associated with the exchange and accumulation recovery operations, and
- The notification requirements related to the return of wastes.

Next, we assessed potential cost impacts (positive and negative) of the final revisions to the SLAB regulations, including:

- Notification requirements for SLAB exporters,
- The renotification requirements associated with any changes to the original SLAB export notification,
- The annual reporting requirements,
- Additional reporting requirements (if requested by EPA), and
- SLAB exporter recordkeeping requirements.

Finally, we analyzed the final requirements that a receiving facility subject to 40 CFR parts 264 or 265 submit to EPA a copy of the documentation confirming EPA's consent to the import when it submits to EPA the RCRA hazardous waste manifest for the import shipment of hazardous waste.

We also included an estimate for potentially affected entities to read the regulation, which is, by default, a necessary requirement for understanding the regulation. Cost impacts associated with reading the regulation are assessed for exporters, importers, and transporters.

C. Cost Impacts

The total incremental cost for the OECD portion of the final rule during the first year of implementation, including reading the rule, is estimated to be $14,494. This is a net impact estimate that includes a total net incremental cost increase to the regulated community of $13,656, and a total net cost increase to EPA of $838. The total incremental annual net cost for the OECD portion after the first year of implementation, excluding reading the rule, is estimated to be $9,700.

The total incremental cost for the SLAB portion of the final rule during the first year of implementation, including reading the rule, is estimated at $850,000. The first year total incremental cost is expected to be about $780,000 for the affected U.S. industry and about $71,000 for EPA. The total incremental annual cost after the first year of implementation, excluding reading the rule, is estimated to be $400,000.

The combined total cost of the final rule (OECD portion, plus SLAB portion, plus import consent documentation portion) is estimated at $910,000 for the first year. Approximately 93% of this total is attributable to the SLAB portion of the rule, followed by the EPA import consent documentation requirements representing about 5% of the total. The OECD portion accounts for less than 2% of the total first year cost of the rule. After the first year, the total incremental cost of the final rulemaking is estimated at $460,000.

Cost estimates presented in this section are based on our estimates for the number of potentially affected importers, exporters, and transporters. Numerous data sources were used in the derivation of these estimates, including: RCRAInfo, the Waste International Tracking System (WITS), industry consultations, the Biennial Report, the International Trade Commission (ITC), Environment Canada, and SEMARNAT [10] data. A full explanation of the data sources, analytical methodology, assumptions, and limitations associated with the findings presented above is presented in our Cost Assessment [11] document prepared in support of this final action. This document is available in the docket to today's rule.

[10] Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT).

[11] *Cost Assessment for the Final Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries, Exports of Spent Lead-Acid Batteries from the U.S., and Import Consent Documentation.*

D. Benefits

We have prepared a qualitative assessment of the benefits anticipated from this action. Overall, this action is expected to result in improved regulatory efficiency of the affected materials, while ensuring improved data collection and enhanced enforcement capabilities. Specific benefits include the following:

- Increasing regulatory efficiency by implementing provisions in the Amended 2001 OECD Decision that were meant to clarify the scope of control and make the control procedures more precise;
- Helping to improve market efficiency by allowing exporters to ship wastes more quickly and store for shorter periods of time;
- Encouraging the environmentally sound recovery of hazardous wastes, thereby reducing the risks associated with treatment and disposal; and
- Providing for the improved ability to acquire information regarding the quantities of SLABs exported from the U.S. and the destination facilities to which the SLABs are exported.

VII. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the Federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt more stringent HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts Federal requirements that are more stringent than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (*see also* 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

B. Effect on State Authorization

Because of the Federal government's special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries. Although States do not receive authorization to administer the Federal government's export functions in 40 CFR part 262, subpart E, import functions in 40 CFR part 262, subpart F, import/export functions in 40 CFR part 262, subpart H, or the import/export related functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt those provisions in today's rule that are more stringent than existing Federal requirements to maintain their equivalency with the Federal program (*see* for example, 40 CFR 271.10(e)). Today's rule contains many amendments to 40 CFR part 262, subpart H, a number of which are more stringent. The rule also contains amendments to § 262.10, § 262.55, § 262.58, § 263.10(d), § 264.12(a)(2), § 264.71, § 265.12(a)(2), and § 265.71, almost all of which are more stringent. The States that have adopted 40 CFR part 262, subparts E and H, 40 CFR part 263, 40 CFR part 264 or 40 CFR part 265 must adopt the provisions listed above that are more stringent. In addition, States that have adopted management standards for spent lead-acid batteries analogous to 40 CFR part 266, subpart G must adopt the changes in today's rule which are more stringent.

States are not required to adopt the amendments in this rule that are not more stringent. However, EPA strongly encourages States to incorporate all the import and export related requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a State has already incorporated 40 CFR part 262, subparts E, and H, the import/export manifest and OECD movement document related requirements in § 263.10(d), the import manifest and OECD movement document submittal requirements in §§ 264.12(a)(2), 264.71, 265.12(a)(2), and 265.71, or the management provisions for SLABs in 40 CFR part 266, subpart G. When a State adopts the import/export provisions in this final rule, care should be taken not to replace Federal or international references with State terms.

The provisions of today's notice take effect in all States on July 7, 2010, since these import and export requirements will be administered by the Federal government as a foreign policy matter, and will not be administered by States.

VIII. 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." This action may raise novel legal or policy issues [3(f)(4)] arising out of legal mandates, although it is not economically significant. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866. Any changes made in response to OMB's recommendations have been documented in the docket for this action.

This final rule is projected to result in a net increase in costs to certain importers, exporters, and transporters of affected hazardous wastes. Increased costs are also projected for the Federal government. The total net cost of this rule is estimated to be $910,000 during the first year following rule implementation. Exporters are projected to account for approximately 69 percent of this total. Benefits of this action include increased regulatory efficiency, reduced risks associated with the treatment and disposal of hazardous wastes, and improved data collection.

The total net cost estimate for this rule is significantly below the $100 million threshold [12] established under part 3(f)(1) of the Order. Thus, this rule is not considered to be an economically significant action. However, in an effort to comply with the spirit of the Order, we have prepared an economic assessment [13] in support of this final rule. The RCRA docket established for today's rulemaking contains a copy of this document.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2308.02.

The final rule requires that the affected sources submit the following:

• *Under the final OECD revisions:* U.S. recovery facilities will have to submit a certificate of recovery to the foreign exporter, and to the competent authority of the country of export and EPA, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste; U.S. facilities that exchange or accumulate waste shipments (*e.g.,* R12/R13 facilities) before final recovery at another facility (*e.g.,* R1–R11 facilities) will have to prepare and provide a certificate of recovery for the R12/R13 recovery operations, and provide and maintain a copy of the certificate of recovery for the subsequent R1–R11 recovery operations; U.S. recovery facilities, including R12/R13 facilities, that must re-export or otherwise return the hazardous waste shipment will have to submit new notification documents and comply with the associated Amber control procedures; and U.S. exporters will have to keep records of the additional certifications of recovery and any R12/R13 certifications they receive from recovery facilities in other OECD Member countries.

• *Under the final SLAB revisions:* SLAB exporters will have to comply with the full subpart H requirements if going to the OECD Member countries listed in § 262.58(a)(1) (*e.g.,* submitting notices, originating a movement document for each shipment, keeping records of all confirmations of receipt and recovery they receive, submitting exception reports and annual reports, and recordkeeping); and comply with portions of the subpart E requirements if going elsewhere (*e.g.,* submitting notices, providing a copy of EPA's Acknowledgement of Consent for each shipment, submitting annual reports and recordkeeping).

• *Under the final import documentation revisions:* U.S. receiving facilities will have to submit to EPA copies of the documentation confirming EPA's consent to the import each time they submit to EPA a copy of the RCRA hazardous waste manifest for each hazardous waste import shipment within thirty (30) days of shipment delivery.

All affected sources will have to retain records of this paperwork for a period of three (3) years, which is consistent with the RCRA hazardous waste requirements of §§ 262.53, 262.56, 262.57, 262.83, 262.87, 264.71 and 265.71. The collection of the requested information is mandatory, as it is needed by EPA as a part of its overall compliance and enforcement program for the protection of human health and the environment.

The estimated annual public reporting burden for the new paperwork requirements in the final rule is 4.63 hours/year per respondent under the final OECD revisions; 20.74 hours/year per respondent under the final SLAB revisions; and 8.44 hours/year per respondent under the final import consent documentation. The annual public recordkeeping burden is estimated to average 10.20 hours/year per respondent under the final OECD revisions, and 0.25 hours/year per respondent under the final SLAB revisions. The total annual public burden is estimated to be 14,854 hours at a cost of $832,400 during the first year of implementation, and 8,799 hours at a cost of $381,400 after the first year. The capital and start-up costs plus total operation and maintenance costs are expected to be negligible. Burden is defined at 5 CFR 1320.3(b).

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. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

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 will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that a substantial number of potentially affected small businesses (importers, exporters, and transporters) will not experience significant negative economic impacts. For the purpose of our impact analyses, small business is defined either by the number of employees or by the dollar amount of sales. The level at which a business is considered small is determined for each North American Industrial Classification System (NAICS) code by the Small Business Administration. No small governmental jurisdiction or small not-for-profit organizations are expected to be affected by this action.

While a significant number of exporters may be small businesses, the results of our analysis indicate that the cost to individual small entities in each potentially affected sector (as identified by NAICS codes) is likely to be insignificant. This determination was made by comparing annual compliance costs under the rule to the average annual sales of small business in the industry sectors likely affected by the rule. According to the U.S. Small Business Administration's small business size standards, firms in most of these industry sectors are classified as a

[12] This $100 million threshold applies to both costs, and cost savings.

[13] *Cost Assessment for the Final Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries, Exports of Spent Lead-Acid Batteries from the U.S., and Import Consent Documentation (Cost Assessment).*

"small business" if they have fewer than 750 employees. For purposes of this analysis, the Agency examined a subset of small entities expected to face the largest relative impacts as measured by cost to sales ratios. The average annual gross sales of the potentially impacted small companies within this subset with fewer than 20 employees were found to range from $0.4 million to $4.1 million, depending upon the NAICS sector. The annual compliance costs for these companies, as a percentage of average annual gross sales, was found to range from 0.01 percent to 0.08 percent. The regulatory flexibility screening analysis prepared in support of this determination is incorporated into the *Cost Assessment,* which is available in the docket established for this rule.

D. Unfunded Mandates Reform Act of 1995

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations (*e.g.,* the Amended 2001 OECD Decision, the U.S.-Canada bilateral waste agreement). Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. Finally, 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. As explained previously, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations because of the Federal government's special role in matters of foreign policy.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Specifically, this final rule does not have Federalism implications because the State and local governments do not administer the export and import requirements under RCRA. Thus, Executive Order 13132 does not apply to this action.

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

This final rule does not have Tribal implications, as specified in Executive Order 13175. No Tribal governments are known to own or operate businesses that may be affected by this rule. Thus, Executive Order 13175 does not apply to this final rule.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children residing in the United States. This rule is intended to improve regulatory efficiency, enhance waste tracking procedures, and increase accountability among all parties associated with international shipments, and does not directly affect the level of protection provided to human health or the environment in the United States.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This rule will not seriously disrupt energy supply, distribution patterns, prices, imports or exports. In fact, this rule is designed to improve regulatory efficiency and improve information collection, in part by implementing revisions and clarifications to the existing regulations.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and/or adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment in the United States. This rule is intended to improve regulatory efficiency, enhance waste tracking procedures, and increase accountability among all parties associated with international shipments.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 7, 2010.

List of Subjects

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, International

organizations, Labeling, Packaging and containers, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste, Imports.

40 CFR Part 264

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Exports, Spent lead-acid batteries, Recycling, Waste treatment and disposal.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Dated: December 23, 2009.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Section 262.10(d) is amended by revising paragraph (d) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(d) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from the countries listed in § 262.58(a)(1) for recovery must comply with subpart H of this part. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in 40 CFR 261.3 and is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G.

* * * * *

3. 262.55 is amended by revising the introductory text to read as follows:

§ 262.55 Exception reports.

In lieu of the requirements of § 262.42, a primary exporter must file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

* * * * *

4. Section 262.58 is revised to read as follows:

§ 262.58 International agreements.

(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) of this section for purposes of recovery is subject to subpart H of this part. The requirements of subparts E and F of this part do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in 40 CFR 261.3 and is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G.

(1) For the purposes of subpart H, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

(2) For the purposes of subpart H of this part, Canada and Mexico are considered OECD Member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: A designated OECD Member country for purposes other than recovery (*e.g.,* incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of subparts E and F of this part, and is not subject to the requirements of subpart H of this part.

5. Subpart H is revised to read as follows:

Subpart H—Transboundary Movements of Hazardous Waste for Recovery Within the OECD

Sec.

262.80 Applicability.
262.81 Definitions.
262.82 General conditions.
262.83 Notification and consent.
262.84 Movement document.
262.85 Contracts.
262.86 Provisions relating to recognized traders.
262.87 Reporting and recordkeeping.
262.88 Pre-approval for U.S. recovery facilities [Reserved].
262.89 OECD waste lists.

Subpart H—Transboundary Movements of Hazardous Waste for Recovery Within the OECD

§ 262.80 Applicability.

(a) The requirements of this subpart apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in § 262.58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:

(1) Meets the Federal definition of hazardous waste in 40 CFR 261.3; and

(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G.

(b) Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste,

becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.

§ 262.81 Definitions.

The following definitions apply to this subpart.

Competent authority means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.

Countries concerned means the OECD Member countries of export or import and any OECD Member countries of transit.

Country of export means any designated OECD Member country listed in § 262.58(a)(1) from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

Country of import means any designated OECD Member country listed in § 262.58(a)(1) to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

Country of transit means any designated OECD Member country listed in § 262.58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

Exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, *exporter* is interpreted to mean a person domiciled in the United States.

Importer means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.

OECD area means all land or marine areas under the national jurisdiction of any OECD Member country listed in § 262.58. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

OECD means the Organization for Economic Cooperation and Development.

Recognized trader means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.

Recovery facility means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.

Recovery operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.
R2 Solvent reclamation/regeneration.
R3 Recycling/reclamation of organic substances which are not used as solvents.
R4 Recycling/reclamation of metals and metal compounds.
R5 Recycling/reclamation of other inorganic materials.
R6 Regeneration of acids or bases.
R7 Recovery of components used for pollution abatement.
R8 Recovery of components used from catalysts.
R9 Used oil re-refining or other reuses of previously used oil.
R10 Land treatment resulting in benefit to agriculture or ecological improvement.
R11 Uses of residual materials obtained from any of the operations numbered R1–R10.
R12 Exchange of wastes for submission to any of the operations numbered R1–R11.
R13 Accumulation of material intended for any operation numbered R1–R12.

Transboundary movement means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.

§ 262.82 General conditions.

(a) *Scope.* The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in § 262.80(a). The OECD Green and Amber lists are incorporated by reference in § 262.89(d).

(1) Listed wastes subject to the Green control procedures.

(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to existing controls normally applied to commercial transactions.

(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures set forth in this subpart.

(2) Listed wastes subject to the Amber control procedures.

(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures set forth in this subpart.

(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in § 262.58(a)(1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

(A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in § 262.80(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts.

Note to Paragraph (a)(2): Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of this subpart. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (*e.g.,* the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this subpart.

(3) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S.

national procedures as defined in § 262.80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

Note to Paragraph (a)(3)(i): The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, *de minimis* or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

Note to Paragraph (a)(3)(ii): The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a *de minimis* amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in § 262.80(a), such wastes are subject to the Amber control procedures.

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in § 262.80(a), such wastes are subject to the Green control procedures.

(b) *General conditions applicable to transboundary movements of hazardous waste:* (1) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transboundary movement must be in compliance with applicable international transport agreements; and

Note to Paragraph (b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non-OECD Member country must be conducted in compliance with all applicable international and national laws and regulations.

(c) *Provisions relating to re-export for recovery to a third country:* (1) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in § 262.58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification must comply with the notice and consent procedures in § 262.83 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty (30) days to object to the proposed movement.

(i) The thirty (30) day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.

(ii) The transboundary movement may commence if no objection has been lodged after the thirty (30) day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) In the case of re-export of Amber wastes to a country other than those listed in § 262.58(a)(1), notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in paragraph (c)(1) of this section, in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first country of import.

(d) *Duty to return or re-export wastes subject to the Amber control procedures.* When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste must be returned to the country of export or re-exported to a third country. The provisions of paragraph (c) of this section apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

(1) Return from the United States to the country of export: The U.S. importer must inform EPA at the specified address in § 262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

(2) Return from the country of import to the United States: The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with § 262.87(b).

(e) *Duty to return wastes subject to the Amber control procedures from a country of transit.* When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate:

(1) Return from the United States (as country of transit) to the country of export: The U.S. transporter must inform EPA at the specified address in § 262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

(2) Return from the country of transit to the United States (as country of export): The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must

submit an exception report to EPA in accordance with § 262.87(b).

(f) *Requirements for wastes destined for and received by R12 and R13 facilities.* The transboundary movement of wastes destined for R12 and R13 operations must comply with all Amber control procedures for notification and consent as set forth in § 262.83 and for the movement document as set forth in § 262.84. Additional responsibilities of R12/R13 facilities include:

(1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1–R11 recovery operation takes place or may take place.

(2) Within three (3) days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three (3) years.

(3) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one (1) calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. Washington, DC 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail.

(4) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one (1) calendar year following delivery of the waste, a certification from the R1–R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility must promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.

(5) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located:

(i) In the initial country of export, Amber control procedures apply, including a new notification;

(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

(g) *Laboratory analysis exemption.* The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms (25 kg). Waste destined for laboratory analysis must still be appropriately packaged and labeled.

§ 262.83 Notification and consent.

(a) *Applicability.* Consent must be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to this subpart. Hazardous wastes subject to the Amber control procedures are subject to the requirements of paragraph (b) of this section; and wastes not identified on any list are subject to the requirements of paragraph (c) of this section.

(b) *Amber wastes.* Exports of hazardous wastes from the United States as described in § 262.80(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of paragraph (b)(1) or paragraph (b)(2) of this section are met.

(1) Transactions requiring specific consent:

(i) *Notification.* At least forty-five (45) days prior to commencement of each transboundary movement, the exporter must provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in paragraph (d) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one (1) year. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to § 262.84.

(ii) *Tacit consent.* If no objection has been lodged by any countries concerned (*i.e.,* exporting, importing, or transit) to a notification provided pursuant to paragraph (b)(1)(i) of this section within thirty (30) days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; renotification and renewal of all consents is required for exports after that date.

(iii) *Written consent.* If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty (30) days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one (1) calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) *Notification.* The exporter must provide EPA a notification that contains all the information identified in paragraph (d) of this section in English, at least ten (10) days in advance of commencing shipment to a pre-approved facility. The notification must indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "OECD Export Notification—Pre-approved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in paragraph (b)(1)(i) of this section may cover a period of up to three (3) years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own

movement document pursuant to § 262.84.

(ii) Exports to pre-approved facilities may take place after the elapse of seven (7) working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

(c) *Wastes not covered in the OECD Green and Amber lists.* Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in § 262.89(d), but which are considered hazardous under U.S. national procedures as defined in § 262.80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with paragraph (b) of this section. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in § 262.89(d), and are not considered hazardous under U.S. national procedures as defined by § 262.80(a) are subject to the Green control procedures.

(d) *Notifications submitted under this section must include the information specified in paragraphs (d)(1) through (d)(14) of this section:* (1) Serial number or other accepted identifier of the notification document;

(2) Exporter name and EPA identification number (if applicable), address, telephone, fax numbers, and e-mail address;

(3) Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;

(4) Importer name (if not the owner or operator of the recovery facility), address, telephone, fax numbers, and e-mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

(5) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;

(6) Country of export and relevant competent authority, and point of departure;

(7) Countries of transit and relevant competent authorities and points of entry and departure;

(8) Country of import and relevant competent authority, and point of entry;

(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

(10) Date(s) foreseen for commencement of transboundary movement(s);

(11) Means of transport envisaged;

(12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in § 262.89(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;

(13) Specification of the recovery operation(s) as defined in § 262.81.

(14) Certification/Declaration signed by the exporter that states:

> I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement.
>
> Name: _____
>
> Signature: _____
>
> Date: _____

Note to Paragraph (d)(14): The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

(e) *Certificate of Recovery.* As soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under § 262.85.

§ 262.84 Movement document.

(a) All U.S. parties subject to the contract provisions of § 262.85 must ensure that a movement document meeting the conditions of paragraph (b) of this section accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in paragraphs (a)(1) and (2) of this section.

(1) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water, (in accordance with the manifest routing procedures at § 262.23(c)).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the movement document with the manifest (in accordance with the routing procedures for the manifest in § 262.23(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document must include all information required under § 262.83 (for notification), as well as the following paragraphs (b)(1) through (b)(7) of this section:

(1) Date movement commenced;

(2) Name (if not exporter), address, telephone, fax numbers, and e-mail of primary exporter;

(3) Company name and EPA ID number of all transporters;

(4) Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;

(5) Any special precautions to be taken by transporter(s);

(6) Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows:

> I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:
>
> 1. All necessary consents have been received; OR
>
> 2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty (30) day tacit consent period; OR
>
> 3. The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.
>
> (Delete sentences that are not applicable)
>
> Name: _____
>
> Signature: _____
>
> Date: _____

(7) Appropriate signatures for each custody transfer (*e.g.,* transporter, importer, and owner or operator of the recovery facility).

(c) Exporters also must comply with the special manifest requirements of 40 CFR 262.54(a), (b), (c), (e), and (i) and importers must comply with the import

requirements of 40 CFR part 262, subpart F.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the movement document (*e.g.,* transporter, importer, and owner or operator of the recovery facility).

(e) Within three (3) working days of the receipt of imports subject to this subpart, the owner or operator of the U.S. recovery facility must send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under § 262.81, the facility shall retain the original of the movement document for three (3) years.

§ 262.85 Contracts.

(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (b)(1) through (b)(4) of this section:

(1) The generator of each type of waste;

(2) Each person who will have physical custody of the wastes;

(3) Each person who will have legal control of the wastes; and

(4) The recovery facility.

(c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

(d) Contracts must specify that the importer will provide the notification required in § 262.82(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to Paragraph (e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

Note to Paragraph (g): Although the United States does not require routine submission of contracts at this time, the OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.

§ 262.86 Provisions relating to recognized traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable Federal laws.

(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of this subpart associated with being an exporter or importer.

§ 262.87 Reporting and recordkeeping.

(a) *Annual reports.* For all waste movements subject to this subpart, persons (*e.g.,* exporters, recognized traders) who meet the definition of primary exporter in § 262.51 or who initiate the movement documentation under § 262.84 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or the person who initiates the movement document under § 262.84 is required to file an annual report for waste exports that are not covered under this subpart, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section.) Such reports shall include all of the following paragraphs (a)(1) through (a)(6) of this section specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR

part 261, subpart C or D), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in § 262.89(d), DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this subpart, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter or initiator of the movement document under § 262.84 that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) *Exception reports.* Any person who meets the definition of primary exporter in § 262.51 or who initiates the movement document under § 262.84 must file an exception report in lieu of the requirements of § 262.42 (if applicable) with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(1) He has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

(3) The waste is returned to the United States.

(c) *Recordkeeping.* (1) Persons who meet the definition of primary exporter in § 262.51 or who initiate the movement document under § 262.84 shall keep the following records in paragraphs (c)(1)(i) through (c)(1)(iv) of this section:

(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of delivery (*i.e.,* movement document) sent by the recovery facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

(iv) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed processing the waste shipment.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.88 Pre-approval for U.S. recovery facilities [Reserved].

§ 262.89 OECD waste lists.

(a) *General.* For the purposes of this subpart, a waste is considered hazardous under U.S. national procedures, and hence subject to this subpart, if the waste:

(1) Meets the Federal definition of hazardous waste in 40 CFR 261.3; and

(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G.

(b) If a waste is hazardous under paragraph (a) of this section, it is subject to the Amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in § 262.81.

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in § 262.82.

(d) The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA–HQ–RCRA–2005–0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F–75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* To contact the EPA Docket Center Public Reading Room, call (202) 566–1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

Section 263.10(d) is amended by revising paragraph (d) to read as follows:

§ 263.10 Scope.

* * * * *

(d) A transporter of hazardous waste subject to the Federal manifesting requirements of 40 CFR part 262, or subject to the waste management standards of 40 CFR part 273, or subject to State requirements analogous to 40 CFR part 273, that is being imported

from or exported to any of the countries listed in 40 CFR 262.58(a)(1) for purposes of recovery is subject to this Subpart and to all other relevant requirements of subpart H of 40 CFR part 262, including, but not limited to, 40 CFR 262.84 for movement documents.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

8. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

9. Section 264.12 is amended by revising paragraph (a)(2) to read as follows:

§ 264.12 Required notices.

(a) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

* * * * *

10. Section 264.71 is amended by revising paragraphs (a)(3) and (d) to read as follows:

§ 264.71 Use of manifest system.

(a) * * *

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

* * * * *

(d) Within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

11. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

12. Section 265.12 is amended by revising paragraph (a)(2) to read as follows:

§ 265.12 Required notices.

(a) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

* * * * *

13. Section 265.71 is amended by revising paragraphs (a)(3) and (d) to read as follows:

§ 265.71 Use of manifest system.

(a) * * *

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

* * * * *

(d) Within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other countries concerned. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

14. The authority citation for part 266 is revised to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

15. In § 266.80(a) the table is revised to read as follows:

§ 266.80 Applicability and requirements.

(a) * * *

If your batteries . . .	And if you . . .	Then you . . .	And you . . .
(1) Will be reclaimed through regeneration (such as by electrolyte replacement).	.....	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261 and § 262.11 of this chapter.
(2) Will be reclaimed other than through regeneration.	generate, collect, and/or transport these batteries.	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261 and § 262.11, and applicable provisions under part 268.
(3) Will be reclaimed other than through regeneration.	store these batteries but you aren't the reclaimer.	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.
(4) Will be reclaimed other than through regeneration.	store these batteries before you reclaim them.	must comply with 40 CFR 266.80(b) and as appropriate other regulatory provisions described in 266.80(b).	are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.
(5) Will be reclaimed other than through regeneration.	don't store these batteries before you reclaim them.	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.
(6) Will be reclaimed through regeneration or any other means.	export these batteries for reclamation in a foreign country.	are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA. You are also exempt from part 262, except for 262.11, and except for the applicable requirements in either: (1) 40 CFR part 262 subpart H; or (2) 262.53 "Notification of Intent to Export, 262.56(a)(1) through (4)(6) and (b) "Annual Reports," and 262.57 "Recordkeeping".	are subject to 40 CFR part 261 and § 262.11, and either must comply with 40 CFR part 262, subpart H (if shipping to one of the OECD countries specified in 40 CFR 262.58(a)(1)), or must: (a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a) (1) through (4), (6), and (b) and 262.57; and (b) Export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and (c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.
(7) Will be reclaimed through regeneration or any other means.	Transport these batteries in the U.S. to export them for reclamation in a foreign country.	are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	must comply with applicable requirements in 40 CFR part 262, subpart H (if shipping to one of the OECD countries specified in 40 CFR 262.58(a)(1)), or must comply with the following: (a) you may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgment of Consent; (b) you must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment; and

If your batteries . . .	And if you . . .	Then you . . .	And you . . .
			(c) you must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

16. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

17. Section 271.1(j) is amended by adding the following entry to Table 1 and Table 2 in chronological order by date of publication in the **FEDERAL REGISTER,** to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
*	*	*	*
Jan. 8, 2010	Exports of hazardous waste	[Insert FR page numbers]	July 7, 2010.

* * * * *

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	**Federal Register** reference
*	*	*	*
July 7, 2010	Exports of hazardous waste	3017(a)	[Insert **Federal Register** reference for publication of final rule].

* * * * *

[FR Doc. E9–31081 Filed 1–7–10; 8:45 am]

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Federal Register

Friday,
January 8, 2010

Part V

The President

Proclamation 8470—National Mentoring Month, 2010

Proclamation 8471—National Slavery and Human Trafficking Prevention Month, 2010

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 8470 of January 4, 2010

National Mentoring Month, 2010

By the President of the United States of America

A Proclamation

Every day, mentors in communities across our Nation provide crucial support and guidance to young people. Whether a day is spent helping with homework, playing catch, or just listening, these moments can have an enormous, lasting effect on a child's life. During National Mentoring Month, we recognize those who give generously of themselves by mentoring young Americans.

As tutors, coaches, teachers, volunteers, and friends, mentors commit their time and energy to kids who may otherwise lack a positive, mature influence in their lives. Their impact fulfills critical local needs that often elude public services. Our government can build better schools with more qualified teachers, but a strong role model can motivate students to do their homework. Lawmakers can put more police officers on our streets and ensure our children have access to high-quality health care, but the advice and example of a trusted adult can keep kids out of harm's way. Mentors are building a brighter future for our Nation by helping our children grow into productive, engaged, and responsible adults.

Many of us are fortunate to recall a role model from our own adolescent years who pushed us to succeed or pulled us back from making a poor decision. We carry their wisdom with us throughout our lives, knowing the unique and timeless gift of mentorship. During this month, I encourage Americans to give back by mentoring young people in their communities who may lack role models, and pass that precious gift on to the next generation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2010 as National Mentoring Month. I call upon public officials, business and community leaders, educators, and Americans across the country to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of January, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–312
Filed 1–7–10; 11:15 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8471 of January 4, 2010

National Slavery and Human Trafficking Prevention Month, 2010

By the President of the United States of America

A Proclamation

The United States was founded on the principle that all people are born with an unalienable right to freedom—an ideal that has driven the engine of American progress throughout our history. As a Nation, we have known moments of great darkness and greater light; and dim years of chattel slavery illuminated and brought to an end by President Lincoln's actions and a painful Civil War. Yet even today, the darkness and inhumanity of enslavement exists. Millions of people worldwide are held in compelled service, as well as thousands within the United States. During National Slavery and Human Trafficking Prevention Month, we acknowledge that forms of slavery still exist in the modern era, and we recommit ourselves to stopping the human traffickers who ply this horrific trade.

As we continue our fight to deliver on the promise of freedom, we commemorate the Emancipation Proclamation, which became effective on January 1, 1863, and the 13th Amendment, which was sent to the States for ratification on February 1, 1865. Throughout the month of January, we highlight the many fronts in the ongoing battle for civil rights—including the efforts of our Federal agencies; State, local, and tribal law enforcement partners; international partners; nonprofit social service providers; private industry and nongovernmental organizations around the world who are working to end human trafficking.

The victims of modern slavery have many faces. They are men and women, adults and children. Yet, all are denied basic human dignity and freedom. Victims can be abused in their own countries, or find themselves far from home and vulnerable. Whether they are trapped in forced sexual or labor exploitation, human trafficking victims cannot walk away, but are held in service through force, threats, and fear. All too often suffering from horrible physical and sexual abuse, it is hard for them to imagine that there might be a place of refuge.

We must join together as a Nation and global community to provide that safe haven by protecting victims and prosecuting traffickers. With improved victim identification, medical and social services, training for first responders, and increased public awareness, the men, women, and children who have suffered this scourge can overcome the bonds of modern slavery, receive protection and justice, and successfully reclaim their rightful independence.

Fighting modern slavery and human trafficking is a shared responsibility. This month, I urge all Americans to educate themselves about all forms of modern slavery and the signs and consequences of human trafficking. Together, we can and must end this most serious, ongoing criminal civil rights violation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2010 as National Slavery and Human Trafficking Prevention Month, culminating in the annual celebration of National Freedom Day on February 1. I call

upon the people of the United States to recognize the vital role we can play in ending modern slavery, and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of January, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–313
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