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

WHEN: Tuesday, June 8, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–09–0069; FV09–930–2 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2009–2010 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages for the 2009–2010 crop year under the Federal marketing order regulating tart cherries grown in seven States (order). The percentages are 32 percent free and 68 percent restricted and establish the proportion of cherries from the 2009 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the order. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: *Effective Date:* May 28, 2010.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734–5243, Fax: (301) 734–5275, or E-mail: *Kenneth.Johnson@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This final rule will establish final free and restricted percentages for tart cherries for the 2009–2010 crop year, beginning July 1, 2009, through June 30, 2010.

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

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District One—Northern Michigan; District Two—Central Michigan; District Three—Southern Michigan; District Four—New York; District Seven—Utah; and District Eight—Washington. Districts Five, Six, and Nine (Oregon, Pennsylvania, and Wisconsin, respectively) will not be regulated for the 2009–2010 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon, Pennsylvania, and Wisconsin, handlers in those districts are not subject to volume regulation during the 2009–2010 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The

Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years, to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from either the current year's USDA crop forecast or from an average of such other crop estimates the Board votes to use. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the crop forecast for the regulated districts to obtain preliminary percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 18, 2009, and computed, for the 2009–2010 crop year, an optimum supply of 183 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds.

The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 284 million pounds; a 31 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 183 million pounds which resulted in the 2009–2010 poundage requirements (adjusted optimum supply) of 152 million pounds. The carryin figure reflects the amount of cherries that handlers actually had in inventory at the beginning of the 2009–2010 crop year. Subtracting the adjusted optimum supply of 152 million pounds from the USDA crop estimate, (284 million pounds) results in a surplus of 131 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (269 million pounds) and resulted in a restricted percentage of 49 percent for the 2009–2010 crop year. The free percentage was 51 percent (100 percent minus 49 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2009–2010 year:

		Millions of pounds
Optimum Supply Formula:		
(1) Average sales of the prior three years		183
(2) Plus desirable carryout		0
(3) Optimum supply calculated by the Board at the June meeting		183
Preliminary Percentages:		
(4) USDA crop estimate		284
(5) Carryin held by handlers as of July 1, 2008		31
(6) Adjusted optimum supply for current crop year		152
(7) Surplus		131
(8) USDA crop estimate for regulated districts		269
	Free	Restricted
(9) Preliminary percentages (item 7 divided by item 8 x 100 equals restricted percentage; 100 minus restricted percentage equals free percentage).	51	49

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry. No later than September 15, the Board must recommend final free and restricted percentages to the Secretary.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board met on September 10, 2009, and recommended final free and restricted percentages. The actual production reported by the Board was 355 million pounds, which is a 71 million pound increase from the USDA crop estimate of 284 million pounds. The Board adjusted the optimum supply figure from 183 million pounds calculated for preliminary percentages to 176 million pounds when calculating the final percentages. This adjustment was made because the sales figure for June 2009, which is used to compute three-year average sales, was estimated for preliminary percentages, but was based on actual numbers for final percentages.

A 52 million pound carryin (based on handler reports) was subtracted from the optimum supply of 176 million pounds which resulted in the 2009–2010 poundage requirements (adjusted optimum supply) of 124 million pounds. Subtracting the adjusted optimum supply of 124 million pounds from the USDA crop estimate (355 million pounds), results in a surplus of 231 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (338 million

pounds) and resulted in a restricted percentage of 68 percent for the 2009–2010 crop year. The free percentage was 32 percent (100 percent minus 68 percent).

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2009–2010 crop year:

	Million pounds
Optimum Supply Formula:.	
(1) Average sales of the prior three years	176
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board	176
Final Percentages:.	
(4) Board reported production	355
(5) Plus carryin held by handlers as of July 1, 2009	52
(6) Tonnage available for current crop year	407
(7) Surplus (item 6 minus item 3)	231
(8) Production in regulated districts	338

	Free	Percentages restricted
(9) Final Percentages (item 7 divided by item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	32	68

The USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are available to handlers for free use. Approximately 18 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler in proportion to each handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1997/98 through 2008/09, approximately 96 percent of the U.S. tart cherry crop, or 244.4 million pounds, was processed annually. Of the 244.4 million pounds of tart cherries processed, 61 percent was frozen, 27 percent was canned, and 12 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 34,650 acres in 2008/09. This represents a 31 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2009/10 crop is large in size at 355 million pounds. This production level is 71.5 million pounds greater than the 283.6 million pounds estimated by the National Agricultural Statistics Service (NASS) in June. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help

increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic, which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin."

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, along with the districts in Utah, New York, and Washington are the restricted areas for this crop year and their combined total production is 338 million pounds. A 68 percent restriction means 108 million pounds is available to be shipped to primary markets from these four states. Production levels of 10.7 million pounds for Wisconsin, 2.7 million pounds for Oregon, and 3.8 million pounds for Pennsylvania (the unregulated areas in 2009/10), result in an additional 17.2 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 18 million pounds being available for the primary market. The 108 million pounds from Michigan, Utah, Washington, and New York, the 17.2 million pounds from the other producing states, the 18 million pound release, and the 52 million pound carryin inventory gives a total of 195.2 million pounds being available for the primary markets.

The econometric model is used to estimate the impact of establishing a reserve pool for this year's crop. With the volume controls, grower prices are estimated to be approximately $0.12 per pound higher than without volume controls.

The use of volume controls is estimated to have a positive impact on growers' total revenues. With regulation, growers' total revenue from processed cherries are estimated to be $17.3 million higher than without restrictions. The without restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

It is concluded that the 68 percent volume control would not unduly burden producers, particularly smaller growers. The 68 percent restriction would be applied to the growers in Michigan, New York, Utah, and Washington. The growers in the other three states covered under the marketing order will benefit from this restriction.

Recent grower prices have been as high as $0.44 per pound in 2002–03 when there was a crop failure. Prices in the last two crop years have been $0.268 in 2007–08 and $0.372 per pound in 2008–09. At current production levels, yield is estimated at approxiamately 10,251 poounds per acre. At this level of yield the cost of production is estimated to be $0.25 per pound (costs were estimated by represenataives of Michigan State University with input provided by growers for the current crop). While grower prices have not been established in the 2009–10 crop year, some processors have received an initial payment of ten cents per pound. Additional payments by processors will be based on the volume of packed crop for the 2009–10 marketing year. The final grower price will likely be around $0.15 per pound for the combined free and restricted production. Thus, this year's grower price even with regulation is estimated to be below the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0036 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that

can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002/03 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2009–2010 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2009 of the free and restricted percentages proposed to be established by this rule (32 percent free and 68 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2009–2010 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

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

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 17, 2010 (75 FR 12702). Copies of the rule were mailed or sent via facsimile to all Board members and alternates. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending April 1, 2010, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. The commenters, both representing processors of canned tart cherry products, opposed the increased volume regulation from the preliminary percentages to the final percentages.

Both commenters stated that the products they produce are not in oversupply and the volume regulation percentages at the increased level are burdensome to their companies' operations.

The first commenter stated that they utilize all of the diversion activities like: export activity, new products, donated products, grower diversion activity and putting product in the reserve. Since they package all of their products in steel cans at harvest the increase in the volume regulation forced them to purchase frozen products to put in the reserve to satisfy the increased reserve obligation. They do not market frozen cherries in any form. They also stated that the grower diversion certificates they had became less valuable because they are treated as production and the increased percentage is applied to those; and therefore they can only utilize 32 percent of the orchard diverted pounds to satisfy regulation on the pounds processed for their sales.

Finally, the first commenter stated that they will not support the renewal of the order as it is currently being implemented. The cost of regulation is limiting available funds to promote and increase utilization of their products. They believe this was not the intent of the marketing order.

The second commenter stated that the frozen tart cherry handlers over the years have repeatedly encouraged over production by producers. The commenter reiterated that their products (canned cherries) are not in excess supply. Their company was shocked and totally unprepared for the increase in regulation to 68 percent. According to the commenter, this increased regulation will result in severe financial consequences, including job losses and a diminished level of investment in new products for the company. This commenter asked USDA to reconsider this level of regulation and asked for relief from this level of regulation even if it would only extend to the canned cherry segment of the industry.

In response to the commenters, the tart cherry marketing order regulations do not apply to handlers according to the type of cherry products they pack. The order applies to the industry as a whole, regardless of which market segment individual handlers are involved in. The reserve formula under the order is designed to ensure that aggregate market needs can be met with

free percentage cherries and does not differentiate between product types.

When the Board met in June 2009 and made its recommendation for preliminary free and reserve percentages, it utilized a crop estimate of 284 million pounds. It also computed a surplus of 131 million pounds, according to the order formula. The actual crop materialized at a much higher level (355 million pounds). The larger crop, combined with a higher carryin inventory than initially estimated and a lower optimum supply due to lower sales from previous years, resulted in a larger surplus than initially estimated. These changes resulted in a higher restricted percentage and a lower free percentage than initially recommended by the Board as preliminary percentages. However, the reserve formula under the order is designed to ensure that aggregate market needs can be met with free percentage cherries. The Board followed the formula prescribed in the order in making its recommendation concerning volume regulation.

In addition, the marketing order does not dictate what types of products must be placed in the reserve or the products that can be used to satisfy a handler's restricted obligation. Handlers can use whatever form of product that is available to them to meet their restricted obligation. This provision takes into account that handlers process different types of products.

The Board is continuing to work with USDA to solve the oversupply situation and most recently made a recommendation to add another feature to their grower diversion program to remove more cherries from production to bring supply more in line with demand. The industry also has an active domestic promotion program designed to help increase the demand for tart cherries.

The Board has also made a recommendation to make grower diversion certificates more valuable to the handler by making them not be counted as production. This recommendation is under consideration by the USDA.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping tart cherries from the 2009–2010 crop. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a fifteen day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.256 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.256 Final free and restricted percentages for the 2009–2010 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2009, which shall be free and restricted, respectively, are designated as follows: Free percentage, 32 percent and restricted percentage, 68 percent.

Dated: May 21, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–12770 Filed 5–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0028; Airspace Docket No. 10–AWP–1]

Amendment of Area Navigation Route Q–15; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Area Navigation Route Q–15 by modifying a segment of the airway to provide adequate separation from restricted area R–2508 Complex, CA. This action is necessary for the safety and management of instrument flight rules (IFR) operations within the National Airspace System (NAS).

DATES: *Effective Date:* 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On February 24, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Area Navigation Route Q–15 in California (75 FR 8286). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. With the exception for the order of the points listed, (Q–15 route has been reversed to comply with policy that odd numbered routes be described with the points listed from South to North,) this amendment is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by replacing the DOBNE waypoint of Q–15 with the KENNO waypoint to adequately provide the additional lateral separation from the boundary of R–2508 and Q–15. The operational benefits of this change will positively impact the day-to-day traffic flow on Q–15 within the NAS.

Area Navigation Routes are published in paragraph 2006 of FAA Order 7400.9T, dated August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Area Navigation Route listed in this document would be subsequently published in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies an RNAV route in California.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Polices and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006 Area Navigation Routes

* * * * *

Q–15 CHILY to LOMIA

CHILY	Fix	(Lat. 34°42′49″ N., long. 112°45′42″ W.)
DOVEE	Fix	(Lat. 35°26′51″ N., long. 114°48′01″ W.)
BIKKR	WP	(Lat. 36°34′00″ N., long. 116°45′00″ W.)
KENNO	WP	(Lat. 37°17′53″ N., long. 117°18′37″ W.)
RUSME	WP	(Lat. 37°29′39″ N., long. 117°31′12″ W.)
LOMIA	WP	(Lat. 39°13′12″ N., long. 119°06′23″ W.)

Issued in Washington, DC, May 18, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–12402 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0697; Airspace Docket No. 09–ACE–10]

Amendment of Class E Airspace; Beatrice, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Beatrice, NE. Decommissioning of the Shaw non-directional beacon (NDB) at Beatrice Municipal Airport, Beatrice, NE, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective Date:* 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On March 15, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Beatrice, NE, reconfiguring controlled airspace at Beatrice Municipal Airport (75 FR 12166) Docket No. FAA–2009–0697. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace for the Beatrice, NE area. Decommissioning of the Shaw NDB and cancellation of the NDB approach at Beatrice Municipal Airport has made this action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE NE E5 Beatrice, NE [Amended]

Beatrice Municipal Airport, NE
(Lat. 40°18′05″ N., long. 96°45′15″ W.)
Beatrice VOR/DME
(Lat. 40°18′05″ N., long. 96°45′17″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Beatrice Municipal Airport, and within 2.4 miles each side of the 320° radial from the Beatrice VOR/DME extending from the 6.5-mile radius to 7.5 miles northwest of the airport, and within 2.4 miles each side of the 003° radial from the Beatrice VOR/DME extending from the 6.5-mile radius to 7.5 miles north of the airport.

Issued in Fort Worth, Texas, on May 13, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–12723 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1184; Airspace Docket No. 09–ASW–39]

Amendment of Class E Airspace; Manila, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Manila, AR. Decommissioning of the Manila non-directional beacon (NDB) at Manila Municipal Airport, Manila, AR has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective Date:* 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On March 15, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Manila, AR, reconfiguring controlled airspace at Manila Municipal Airport (75 FR 12162) Docket No. FAA–2009–1184. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace for the Manila, AR area. Decommissioning of the Manila NDB and cancellation of the NDB approach at Manila Municipal Airport has made this action necessary for the safety and management of IFR operations at the airport. Adjustment to the geographic coordinates also will be made in accordance with the FAA's National Aeronautical Charting Office. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the

safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Manila Municipal Airport, Manila, AR.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ASW AR E5 Manila, AR [Amended]

Manila Municipal Airport, AR
(Lat. 35°53′40″ N., long. 90°09′16″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Manila Municipal Airport.

Issued in Fort Worth, Texas, on May 13, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–12363 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1177; Airspace Docket No. 09–ASW–34]

Amendment of Class E Airspace; Batesville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Batesville, AR. Decommissioning of the Independence County non-directional beacon (NDB) at Batesville Regional Airport, Batesville, AR, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On March 15, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Batesville, AR, reconfiguring controlled airspace at Batesville Regional Airport (75 FR 12165) Docket No. FAA–2009–1177. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace for the Batesville, AR area. Decommissioning of the Independence County NDB and cancellation of the NDB approach at Batesville Regional Airport has made this action necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Batesville Regional Airport, Batesville, AR.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ASW AR E5 Batesville, AR [Amended]

Batesville Regional Airport, AR
(Lat. 35°43′34″ N., long. 91°38′51″ W.)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Batesville Regional Airport and within 4 miles each side of the 260° bearing from the airport extending from the 9.3-mile radius to 12.2 miles west of the airport.

Issued in Fort Worth, Texas, on May 13, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–12368 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1181; Airspace Docket No. 09–ASW–36]

Amendment of Class E Airspace; Mountain View, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Mountain View, AR. Decommissioning of the Wilcox non-directional beacon (NDB) at Mountain View Wilcox Memorial Field Airport, Mountain View, AR, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective Date:* 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On March 15, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Mountain View, AR, reconfiguring controlled airspace at Mountain View Wilcox Memorial Field Airport (75 FR 12163) Docket No. FAA–2009–1181. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace for the Mountain View, AR area. Decommissioning of the Wilcox NDB and cancellation of the NDB approach at Mountain View Wilcox Memorial Field Airport has made this action necessary for the safety and management of IFR operations at the airport. Adjustment to the geographic coordinates also will be made in accordance with the FAA's National Aeronautical Charting Office. With the exception of editorial changes, and the changes described above, the rule is the same as that proposed in the NPRM.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ASW AR E5 Mountain View, AR [Amended]

Mountain View Wilcox Memorial Field Airport, AR
(Lat. 35°51′52″ N., long. 92°05′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Wilcox Memorial Field Airport, and within 1.8 miles each side of the 273° bearing from the airport extending from the 6.4-mile radius to 11.5 miles west of the airport, and within 2 miles each side of the 093° bearing from the airport extending from the 6.4-mile radius to 12.1 miles east of the airport.

Issued in Fort Worth, Texas, on May 13, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–12362 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1179; Airspace Docket No. 09–ASW–35]

Amendment of Class E Airspace; Magnolia, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Magnolia, AR. Decommissioning of the Magnolia non-directional beacon (NDB) at Magnolia Municipal Airport, Magnolia, AR has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On February 5, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Magnolia, AR, reconfiguring controlled airspace at Magnolia Municipal Airport (75 FR 5904) Docket No. FAA–2009–1179. The Magnolia NDB is being decommissioned and approach procedures relating to it cancelled. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace for the Magnolia, AR area. Decommissioning of the Magnolia NDB and cancellation of the NDB approach at Magnolia Municipal Airport has made this action necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Magnolia Municipal Airport, Magnolia, AR.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ASW AR E5 Magnolia, AR [Amended]

Magnolia Municipal Airport, AR
(Lat. 33°13′39″ N., long. 93°13′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Magnolia Municipal Airport.

Issued in Fort Worth, Texas, on May 7, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–12361 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1167; Airspace Docket No. 09–ASW–33]

Establishment of Class E Airspace; Marianna, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace for Marianna, AR to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Marianna/Lee County Airport—Steve Edwards Field, Marianna, AR. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective Date:* 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On March 15, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace for Marianna, AR, creating controlled airspace at Marianna/Lee County Airport—Steve Edwards Field (75 FR 12161) Docket No. FAA–2009–1167. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA.

No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Marianna/Lee County Airport—Steve Edwards Field, Marianna, AR. This action is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Marianna/Lee County Airport—Steve Edwards Field, Marianna, AR.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW AR E5 Marianna, AR [New]

Marianna/Lee County Airport—Steve Edwards Field
(Lat. 34°46′58″ N., long. 90°48′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Marianna/Lee County Airport—Steve Edwards Field.

Issued in Fort Worth, Texas, on May 13, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–12364 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0151]

RIN 1625–AA00

Safety Zone; America's Discount Tire 50th Anniversary, Fireworks Display, South Lake Tahoe, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters in South Lake Tahoe, CA, in support of America's Discount Tire 50th Anniversary Fireworks Display. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from 10 a.m. on July 11, 2010, to 9:50 p.m. on July 13, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0151 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2010–0151 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Ensign Elizabeth Ellerson at 415–399–7436, or e-mail *Elizabeth.M.Ellerson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule, because it would be impracticable to complete the rulemaking process before the event occurs. Because of the dangers posed by the pyrotechnics used in these fireworks displays, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is

in the public interest to have these regulations in effect during the event.

Background and Purpose

America's Discount Tire will sponsor their 50th Anniversary Celebration Fireworks Display on July 11 and 13, 2010, on the navigable waters of South Lake Tahoe, CA. The fireworks display is meant for entertainment purposes. This safety zone establishes a temporary restricted area on the waters surrounding the fireworks launch site during loading of the pyrotechnics, and during the fireworks displays. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barges. The Coast Guard has granted the event sponsor a marine event permit for the fireworks displays.

Discussion of Rule

The Coast Guard is establishing a safety zone for the waters of South Lake Tahoe, CA, centered around the fireworks launch site. This site will be located in position: 38°56′56.06″ N, 119°57′54.21″ W (NAD 83). During the set up of the fireworks and until the start of the fireworks displays, the temporary safety zone will apply to the navigable waters around the fireworks sites within a radius of 100 feet, but during the displays themselves, the size of the safety zone will expand to encompass all navigable waters within 1,000 feet of the launch site. Thus, enforcement of the zone will be as follows:

1. From 10 a.m. until 4:30 p.m., and from 4:33 p.m. until 4:45 p.m. on July 11, 2010, the safety zone will encompass all navigable waters within 100 feet of the fireworks launch site.

2. From 8 a.m. until 9:30 p.m., and from 9:38 p.m. until 9:50 p.m. on July 13, the safety zone will encompass all navigable waters within 100 feet of the fireworks launch site.

3. From 4:30 p.m. until 4:33 p.m. on July 11, 2010, and from 9:30 p.m. to 9:38 p.m. on July 13, 2010, the safety zone will encompass all navigable waters within 1,000 feet of the fireworks launch site.

4. The safety zone will not be enforced during other areas of the effective period.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the fireworks sites while the fireworks are set up, and until the conclusion of the scheduled displays. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barges to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant. The entities most likely to be affected are pleasure craft engaged in recreational activities. In addition, the rule will only restrict access for a limited time. Last but not least, the Public Broadcast Notice to Mariners will notify the users of local waterway to ensure that the safety zone will result in minimum impact.

Small Entities

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

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

Although this rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing, it will not have a significant economic impact on a substantial number of small entities for several reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time; (ii) vessel traffic can pass safely around the area; (iii) vessels engaged in recreational activities and sightseeing have ample space outside of the affected areas of South Lake Tahoe, CA to engage in these activities; and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–315 to read as follows:

§ 165.T11–315 Safety Zone; 50th Anniversary Celebration, Fireworks Display, South Lake Tahoe, CA.

(a) *Location.* This temporary safety zone is established for the waters of South Lake Tahoe, CA. The fireworks launch site is located in position: 38°56′56.06″ N, 119°57′54.21″ W (NAD 83).

(1) From 10 a.m. until 4:30 p.m., and from 4:33 p.m. until 4:45 p.m. on July 11, 2010, the safety zone will encompass all navigable waters within 100 feet of the fireworks launch site.

(2) From 8 a.m. until 9:30 p.m., and from 9:38 p.m. until 9:50 p.m. on July 13, 2010, the safety zone will encompass all navigable waters within 100 feet of the fireworks launch site.

(3) From 4:30 p.m. until 4:33 p.m. on July 11, 2010, and from 9:30 p.m. to 9:38 p.m. on July 13, 2010, the safety zone will encompass all navigable waters within 1,000 feet of the fireworks launch site.

(b) Definitions. As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) Regulations.

(1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zones on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547.

(d) Enforcement period. This section will be enforced from 10 a.m. to 4:45 p.m. on July 11, 2010, and from 8 a.m. to 9:50 p.m. on July 13, 2010.

Dated: May 12, 2010.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–12739 Filed 5–26–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0023]

RIN 1625–AA00

Safety Zone; Wicomico Community Fireworks, Great Wicomico River, Mila, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Great Wicomico River in the vicinity of Mila, VA in support of the Wicomico Community Fireworks event. This action is intended to restrict vessel traffic movement on the Great Wicomico River to protect mariners from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. on July 3, 2010, until 10 p.m. on July 4, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0023 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0023 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 23, 2010, we published a notice of proposed rulemaking (NPRM) entitled, Safety Zone: Wicomico Community Fireworks, Great Wicomico River, Mila, VA, in the **Federal Register** (75 FR 8005). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

On July 3, 2010 the Wicomico Church will sponsor a fireworks display on the Great Wicomico River at position 37°50′31″ N/076°19′42″ W (NAD 1983). The fireworks are launched on land and the safety zone is intended to keep mariners away from any fall out that may enter in the water. Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to the Great Wicomico River within 420 feet of the fireworks display will be temporarily be restricted.

Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of the Great Wicomico River in the vicinity of Mila, Virginia. This safety zone will encompass all navigable waters within 420 feet of the fireworks display located at position 37°50′31″ N/076°19′42″ W (NAD 1983). This regulated area will be established in the interest of public safety during the Wicomico Community Fireworks event and will be enforced from 9 p.m. to 10 p.m. on July 3, 2010, with a rain date of July 4, 2010. Access to the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

Discussion of Comments and Changes

No comments were received regarding this rule.

Regulatory Analyses

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

Regulatory Planning and Review

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration and maritime advisories will be issued allowing the mariners to adjust their plans accordingly. However, this rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the Great Wicomico River from 9 p.m. to 10 p.m. on July 3, 2010.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a safety zone around a fireworks display. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0023 to read as follows:

§ 165.T05–0023 Safety Zone; Wicomico Community Fireworks, Great Wicomico River, Mila, VA

(a) *Regulated Area.* The following area is a safety zone: Specified waters of the Great Wicomico River located within a 420 foot radius of the fireworks display at approximate position 37°50′31″ N/ 076°19′42″ W (NAD 1983) in the vicinity of Mila, VA.

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

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

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

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

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

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

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

(d) *Enforcement Period.* This regulation will be enforced on July 3, 2010, from 9 p.m. until 10 p.m., with a rain date of July 4, 2010, from 9 p.m. until 10 p.m.

Dated: May 6, 2010.

M.S. Ogle,

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

[FR Doc. 2010–12682 Filed 5–26–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Treatment of Cigarettes and Smokeless Tobacco as Nonmailable Matter

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 601.11, pertaining to the mailing of tobacco cigarettes and smokeless tobacco. These provisions implement specific requirements of the Prevent All Tobacco Cigarettes Trafficking (PACT) Act, which restricts the mailability of cigarettes and smokeless tobacco.

DATES: *Effective Date:* June 29, 2010.

FOR FURTHER INFORMATION CONTACT: Anthony Alverno, 202–268–2997, or Mary Collins, 202–268–5440.

SUPPLEMENTARY INFORMATION:

On May 5, 2010, the Postal Service published a proposed rule **Federal Register** (75 FR 24534–24541) to implement the Prevent All Cigarette Trafficking (PACT) Act of 2009, Public Law 111–154. The Act's purposes include requiring Internet-based and other remote sellers of cigarettes and smokeless tobacco to comply with laws applied to other tobacco retailers by:

- Creating disincentives for the illegal smuggling of tobacco products;
- Enhancing enforcement tools to deal with cigarette smuggling;
- Stemming trafficking, which increases the collection of Federal, state, and local excise taxes on cigarettes and smokeless tobacco; and
- Preventing youth access through Internet and contraband sales.

Section 3 of the PACT Act pertains to the Postal Service and creates a new Section 1716E of Title 18, U.S. Code. Section 3 of the PACT Act provides that, subject to certain exceptions, cigarettes, including roll-your-own tobacco and smokeless tobacco are nonmailable. Exceptions in the PACT Act permit the mailing of cigarettes and/or smokeless tobacco in narrowly defined circumstances, as described below.

- Noncontiguous States: Intrastate shipments within Alaska or Hawaii;
- Business/Regulatory Purposes: Shipments transmitted between verified and authorized tobacco industry businesses for business purposes, or between such businesses and Federal or state agencies for regulatory purposes;
- Certain Individuals: Infrequent, lightweight shipments mailed between adult individuals;
- Consumer Testing: Shipments of cigarettes sent by verified and authorized manufacturers to adult smokers for consumer testing purposes; and
- Public Health: Shipments by Federal agencies for public health purposes under similar rules applied to manufacturers conducting consumer testing.

The PACT Act provides that the Postal Service cannot accept or transmit any package that it knows, or has reasonable cause to believe, contains nonmailable cigarettes or smokeless tobacco. As in the proposed rule, the final rule explains that the Postal Service has reasonable cause to not accept for delivery or transmit a package based on:

- A statement on a publicly available website, or an advertisement, by any person that the person will mail matter which is nonmailable under this section in return for payment; or
- The fact that the mailer or other person on whose behalf a mailing is being made is on the U.S. Attorney General's List of Unregistered or Noncompliant Delivery Sellers.

Nonmailable cigarettes and smokeless tobacco deposited in the mail are subject to seizure and forfeiture. Senders of nonmailable cigarettes or smokeless tobacco are subject to criminal fines, imprisonment, and civil penalties.

Section 6 of the PACT Act provides that the nonmailability provisions, as well as the noncontiguous states exception, take effect 90 days after enactment. With respect to the remaining exceptions, the PACT Act requires the Postal Service to promulgate a final rule no later than 180 days after enactment of the PACT Act. 18 U.S.C. 1716E(b)(3)(B)(i), (4)(B)(i), (5)(C)(i). The Postal Service is accordingly publishing this final rule to be effective on June 29, 2010. In this manner, all of the provisions, including the exceptions will be available to mailers as of June 29, 2010.

Response to Comments Received

The Postal Service received several comments in response to the proposed rule. We discuss the comments below and our response to each.

One commenter, an association of state officials engaged in legal and law enforcement issues, expressed favorable comments on the proposed rule. The commenter stated that "strong and effective implementation" of the PACT Act would further the Act's stated objectives, and the proposed rule furthers those criteria. The commenter explicitly endorsed the "reasonable cause" standard in proposed section 601.11.2, by noting that it provides "a workable and effective means of identifying packages that are nonmailable under the PACT Act." The commenter also expressed support for the proposed rule's prohibition of cigarettes and smokeless tobacco in international mail.

A second commenter offered suggestions on several aspects of the proposed rule. First, the commenter suggested that a cross-reference in 601.11.2 was a typographical error, and the Postal Service has corrected the error in the final rule. Second, the commenter recommended that DMM 601.11.5.1b specify more detailed documentation requirements regarding a mailer's official licensing. This recommendation is well-taken, and although the Postal Service does not believe that it should be incorporated into the final rule at this time, the Postal Service will take the recommendation under advisement and will apply it as necessary in its administration of the application process.

The same commenter also offered suggestions about the "certain individuals" exception in DMM 601.11.6. The commenter noted that the proposed rule neglected to include explicit restriction of the exception to noncommercial uses, including gifts not connected in any way with a commercial transaction. The Postal Service agrees with this recommendation and has incorporated language in DMM 601.11.6 to address the specific concerns. In a suggestion shared with comments by a consumer advocacy group, the commenter also recommended that a sender under the certain individuals exception be required to make his or her required affirmation in writing, under penalty of perjury, rather than orally. The PACT Act does not require that this affirmation be in writing, however, and the Postal Service believes that such a requirement would diminish administrative efficiency while not contributing appreciably to compliance or enforcement, given the additional procedures for verifying recipient age.

Finally, the commenter recommended that the consumer testing exception be revised in two ways. Under the commenter's proposal, the written certification in proposed DMM 601.11.7.1d (restyled as subparagraph b in the final rule) should include all of the conditions of 18 U.S.C. 1716E(b)(5)(A)(v), not just the requirement that no payment be made by the recipient. (The consumer advocacy group suggested similar changes and that other conditions for the exception be incorporated within the certification.) The citation to clause 1716E(b)(5)(A)(v) is inapposite, however: The cited provision specifies general conditions for the exception, but not for the mailer's certification. The certification requirements are set forth expressly in 18 U.S.C. 1716E(b)(5)(C)(ii)(II), and the Postal

Service believes it has accurately captured them in the proposed and final rules. The commenter also submits that the proposed DMM 601.11.7.2d is overbroad, in that it implies that a recipient can only receive one consumer-test mailing from any manufacturer at all in a 30-day period, rather than one mailing from any one manufacturer. In response to the commenter's suggestion, the final rule has been revised accordingly to track the language of the statute.

As noted above, the Postal Service received a comment from a consumer advocacy group that touched on several aspects of the proposed rule. The commenter recommended that mailers under the business/regulatory purposes and consumer testing exceptions be required to update their applications for all changes in pertinent information and that the mailers be required annually to verify the continuing accuracy of their information. As explained below, the Postal Service has clarified the updating requirement in the final rule. The commenter also noted that, as proposed, the consumer testing exception in DMM 601.11.7.2b6 would not apply to recipients "residing" in a state that prohibits such shipments, whereas the corresponding PACT Act provision applies to any individuals "located" in such a state. The observation is apt, and the Postal Service has revised the final rule accordingly.

The commenter suggested that the advice in DMM 601.11.2 regarding penalties is insufficiently specific and offers more detailed language for different types of violations. The Postal Service believes that this suggestion is unnecessary and goes beyond the intent of the proposed language, which is simply to alert mailers of the potential consequences of noncompliant mailings. To the extent that greater specificity might be desired, that specificity can be found in the text of the PACT Act itself. *See* 18 U.S.C. 1716E(c)–(e). The commenter also recommended that the Postal Service require mailers under the consumer testing exception to provide a list of all potential recipients and that the Postal Service not accept any such mailing to individuals not listed. The Postal Service declines this suggestion as unnecessary, given that the mailer is already obligated to maintain records on all mailings. Moreover, it is unclear how such a requirement would enhance Postal Service administration or serve any clear purpose. The commenter further advised that the Postal Service should bar any consumer test mailings that weigh significantly more than 12 packs of cigarettes, or 12 ounces. While the Postal Service appreciates the desire for more specific guidelines, the Postal Service declines the proposal, as a weight-based standard is an ill-fitting proxy for a content-based regulation, and the proposal could bar a substantial amount of legitimate mailings. For example, a lesser number of packs combined with heavier non-cigarette matter could penetrate a weight cap without transgressing the PACT Act's 12-pack limit. Finally, the commenter advises that pipe tobacco, "little cigars," and other tobacco products labeled as such may present challenges in applying the PACT Act. The concern is duly noted and discussed further in response to two of the other comments.

The Postal Service received one comment from a tribal nation. The comment notes a lack of tribal consultation concerning the proposed rule, citing a Presidential Memorandum on Consultation (November 5, 2009), a treaty commitment, and Executive Order 13175. The Presidential memorandum and Executive Order 13175 apply to "agencies" as defined in 44 U.S.C. 3502(1), however, and not specifically to the Postal Service, which is an independent establishment of the executive branch. 39 U.S.C. 101; see *Kuzma* v. *United States Postal Service,* 798 F.2d 29, 32 (2d Cir. 1986), *cert. denied,* 479 U.S. 1043 (1987); see also *Shane* v. *Buck,* 658 F. Supp. 908,914–15 (D. Utah 1985), aff'd, 817 F.2d 87 (10th Cir. 1987). The proposed rule is not limited in effect to any tribal nation or to tribal nations generally; rather, it applies to all users of the mails nationwide in the same manner as all other postal regulations. Moreover, the Postal Service has also provided adequate notice and an opportunity for meaningful and timely input through the rulemaking process, and the commenter is invited to contact the persons identified in this notice to arrange any further consultations that the commenter would find helpful.

The commenter also advised that the Postal Service should forgo enforcement of the PACT Act's mailability requirements until after the Department of Justice has compiled the List of Unregistered or Noncompliant Delivery Sellers required by Section 2A(e) of the PACT Act. The Postal Service understands that the list may not be available until 180 days after the PACT Act's enactment, but notes that Congress has directed the mailability provisions to take effect 90 days after enactment. Until the list is available, it cannot be used for enforcement of the mailability rules. Nevertheless, the Postal Service notes that the statute provides other criteria, including a mailer's advertising, for determining whether it has reasonable cause to believe a mailing contains nonmailable tobacco products.

One commenter questioned whether infrequent lightweight shipments of tobacco between individuals would be allowed under the PACT Act. Consistent with the PACT Act and the proposed rule, the final rule permits individual customers to send shipments of cigarettes and smokeless tobacco to other individuals in certain contexts. All intra-State shipments will be permitted within Alaska and Hawaii, including shipments between two individuals located within one of those states. Otherwise, individual customers may mail small quantities of cigarettes and smokeless tobacco in domestic mail, subject to the requirements to the "certain individuals" exception described in DMM 601.11.6. This includes mail to Army Post Office (APO), Fleet Post Office (FPO), and Diplomatic Post Office (DPO) locations where cigarettes and smokeless tobacco are not restricted by the host country. See *Overseas Military/Diplomatic Mail* in the *Postal Bulletin.*

One commenter advised that the regulation is unnecessary, while another expressed concern that the proposed rule would lead to loss of employment for postal employees and higher postage increases. To clarify, the Postal Service is implementing requirements imposed by the PACT Act. The Postal Service does not have discretion to waive the Act's requirements. One of the consequences of the legislation is to prohibit sales transactions of cigarettes and smokeless tobacco conducted by mail. One of the commenters further suggested that clove cigarettes, which the commenter believed to be classified as cigars, purchased from vendors abroad would appear to fall within the scope of the proposed rule. Under Section 907(a)(1)(A) of the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31), flavored cigarettes and tobacco products marketed as cigarettes, including those with clove flavoring, are prohibited in the United States. To the extent that bona fide cigars are concerned, a cigar is defined, for purposes of the PACT Act, as any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, unless, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, the product is likely to be offered to, or purchased by, consumers as a cigarette. The PACT Act and the proposed rule's mailability prohibitions would not apply to imported tobacco products that are, in

fact, classified by U.S. Federal authorities as cigars. Other requirements may, however, apply to imported, mailable tobacco products, and as such, foreign mailers should contact private counsel or customs authorities to determine any applicable importation requirements.

Another commenter inquired whether it would be permissible to mail two to three cans of "snus" from Sweden to a friend in the United States. Because the Postal Service understands snus to be a form of smokeless tobacco, as defined by the PACT Act, it would fall within the scope of the rules at hand. As explained in the proposed rule, the complex verification requirements for the PACT Act's exceptions, combined with the strict consequences of any noncompliance, render it impracticable for these requirements to be made applicable to mail originating or destinating outside of the United States. Therefore, the Postal Service does not believe that any alternative exists at this time to allow U.S. persons to send or receive smokeless tobacco products, such as snus, in international mail under the PACT Act's exceptions.

Two comments were received from retail associations. One expressed full support for the proposed rule, and offered no changes in connection with the rulemaking. The other association offered several suggestions. First, the commenter suggested that the required markings be changed from "PERMITTED TOBACCO PRODUCT" to "PERMITTED TOBACCO MAILING," for consistency with the PACT Act. This suggestion is well-taken and adopted in the final rule. The commenter also suggested that for certain exceptions, the term "PERMITTED" be deleted from the marking. The Postal Service believes that the term "PERMITTED" is acceptable in the context of all exceptions, since it serves as an instruction to personnel that the mailing is permissible and not prohibited from the mail. The commenter also suggested that the Postal Service require an oath or affirmation for all exceptions to the effect that all taxes have been paid on the tobacco product being mailed. As the commenter noted, the consumer testing exception requires that all taxes be paid on consumer testing samples; however, Congress did not impose similar restrictions in the context of other exceptions. The Postal Service disagrees with the commenter that oaths or affirmations regarding tax compliance are necessary upon mailing under the other exceptions, particularly considering that the exceptions' collective scope excludes all commercial transactions with consumers, where the issue of taxation would be most acute. Finally, the commenter suggested that postal retail locations include signage to the effect that it is illegal to mail tobacco (subject to certain exceptions) and that severe penalties apply. The commenter noted that its suggestion does not need to be part of the final rule. The Postal Service appreciates that there is a need for public education, but agrees with the commenter that such signage need not be part of the final rule.

One commenter questioned whether the scope of the proposed rule as it applies to "little cigars," which the commenter states are roughly the same size as a cigarette, are often wrapped in reconstituted tobacco, and often have a filter. The commenter stated that the definitions used in the PACT Act are ambiguous and should be clarified. In particular, the commenter suggested that the definition in the proposed rule incorporate Alcohol, Tobacco, and Firearms Revenue Ruling 73–22 with respect to the classification of little cigars. The Postal Service disagrees with the commenter that the definitions should be further clarified at this time, and notes that the definitions are taken directly from the definitions in the PACT Act. The Postal Service does not believe this rulemaking can resolve all of the issues presented by the commenter, particularly since the product described in the commenter's letter is not uniform.

One commenter, a tobacco company, offered several observations on the proposed rule. First, with respect to the business/regulatory purposes exception, the commenter stated that the requirement for advance applications by mailers would prove to be an administrative burden on the Postal Service and would result in delays. The commenter offered similar observations on the consumer testing exception and suggested that the Postal Service simply require registration in advance. The Postal Service appreciates these concerns and is examining methods to streamline the process, including the possible use of a standardized form for applications, should the anticipated volume of applications so warrant. However, Congress specifically charged the Postal Service with verifying that mailings under these exceptions are sent by businesses with all proper licenses, an obligation that inheres a measure of due diligence.

Second, the commenter advised that the required markings on the packages comply with section 2A(b) of the Jenkins Act, which requires that delivery sellers apply the following marking to eligible shipments: "CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS." The commenter further suggested that the Postal Service either not require its own separate markings or else unify its required markings for simplicity. The Postal Service disagrees with this suggestion. As an initial matter, section 2A(b) of the Jenkins Act applies to shipments of delivery sellers. Such shipments are explicitly prohibited from the mail, with the exception of shipments entirely within Alaska and Hawaii. Consequently, this marking is not pertinent to excepted postal shipments, since delivery sales may not be sent via U.S. mail (except within Alaska and Hawaii). Moreover, unique markings on excepted postal shipments are essential, because the acceptance and delivery rules vary according to the applicable exception, and the markings offer important guidance to postal personnel responsible for handling tobacco shipments. As an example, the minimum age for delivery of a consumer testing or public health cigarette sample is always 21; however, a shipment delivered to an individual may be subject to a lower minimum age (18 or 19, depending on State or local law). There is no way for postal employees to apply the correct minimum age requirement absent the use of a unique marking.

Third, the commenter suggested that the Postal Service work with interested parties to further enhance these rules in order to streamline the overall process of compliance. The Postal Service welcomes the opportunity to further improve these rules and encourages customers to continue to submit their ideas for improvement.

Another comment submitted by a tobacco company offered several suggestions on the proposed rule. First, the commenter disagreed with the proposed rule's requirement that excepted shipments (except intra-State shipments in Alaska and Hawaii) use "hold for pickup" service. The commenter believed that this requirement would be unduly burdensome and would affect its business operations. The commenter offered several illustrations to show the difficulties imposed by the hold for pickup requirement and urged that it not be incorporated in the final rule. The Postal Service appreciates the commenter's concerns; however, the final rule maintains the requirement for Express Mail with hold for pickup for the business/regulatory purposes,

certain individuals, consumer testing, and public health exceptions because such a measure will enable the Postal Service to focus its resources on implementing the PACT Act's unique delivery requirements, which have no precedent in postal operations. This, in turn, will enable the Postal Service to tailor the training it must give to personnel involved in the delivery of packages, which in turn will provide better controls to prevent tobacco from reaching minors. Nevertheless, the Postal Service's management is in the process of examining whether its services should be changed to align better with the PACT Act's requirements. The PACT Act's short timeframe for implementation does not permit the Postal Service to develop more creative product solutions that may serve the commenter's needs at this early stage.

The commenter also raised several questions about the application process. Specifically, the commenter queried whether a form will be created and submitted. At this time, the final rule speaks of an application letter. Between the final rule's publication in the **Federal Register** and its effective date or some time thereafter, however, the Postal Service may decide to develop a form for use in the application process. The Postal Service will update its DMM regulations should a form be instituted in lieu of an application letter.

The commenter also questioned the application process, and suggested that rules regarding updates to applications be clarified. As noted above, the PACT Act charges the Postal Service with verifying the eligibility of a customer using the business/regulatory purposes, consumer testing, and public health exceptions. Consequently, the final rule requires that a mailer maintain the accuracy of all information in its application. Additionally, with respect to the business/regulatory purposes exception, the Postal Service is explicitly charged with responsibility of verifying the eligibility of the addressees to which business/regulatory mailings are sent. For this reason, a mailer cannot mail to an addressee until the eligibility of that addressee is verified, which implies that the applicant must await the issuance of an updated eligibility letter listing the addressee as an eligible recipient of a business/regulatory mailing.

The commenter also questioned the use of eligibility numbers issued by the Pricing and Classification Service Center (PCSC). The point of the eligibility number is simply to facilitate the organization of Return Receipts sent to the PCSC for shipments under the business/regulatory purposes, consumer testing, and public health exceptions. For clarity, the final rule indicates that each authorization letter under those exceptions will be assigned its own unique number. In addition, the final rule is clarified to state that the eligibility number must appear in the return address of the return receipt, and mailings must be returned to sender if the mailer's eligibility number is missing in the address block of the return receipt.

The commenter questioned the requirement that the applicant must reapply if no mailings take place every six months. The goal of this objective is to prevent eligible mailers from allowing information in their applications to become stale. The Postal Service nevertheless understands the potential paperwork burden on applicants and has determined to change this requirement from six months to three years. The Postal Service believes that that time frame is adequate to address the commenter's concerns while continuing to meet the Postal Service's administrative needs.

Finally, the commenter questioned whether the final rule will include regulations governing all exceptions, and if not, then whether any shipments may be tendered under the various exceptions. The PACT Act nonmailability rules and intra-Alaska/intra-Hawaii exception become effective on June 29, 2010, which is 90 days after the enactment of the PACT Act. Although the PACT Act grants the Postal Service up to 180 days (or through September 27, 2010) to implement rules to implement the business/regulatory purposes, certain individuals, consumer testing, and public health exceptions, the Postal Service has undertaken to unify its rulemaking into a single, final rule. The Postal Service does not have the discretion to postpone the effectiveness of the start date of the nonmailability prohibitions, and postponement of the final rule would have no effect insofar as the criminal and civil penalties of the PACT Act are concerned. Finally, the commenter suggested that the final rule be delayed until all of its concerns are addressed. Because delay in issuance of the final rule would imply that no mailer could send cigarettes or smokeless tobacco under any of the exceptions (excluding the noncontiguous states exception), the commenter's suggestion is not adopted.

A commenter noted that the proposed rule does not expressly provide that pipe tobacco is mailable. The PACT Act restricts the mailability of items that the Postal Service has reasonable cause under the PACT Act to believe contain cigarettes or smokeless tobacco, as those terms are defined in Section 1 of the Jenkins Act of 1949 (15 U.S.C. 375(2), (12) (as amended)). If a product falls outside of the PACT Act's definitions for cigarettes or smokeless tobacco, then the product is not subject to the PACT Act's restrictions, except where it happens to fall within the scope of the PACT Act's reasonable cause standard. The fact that the PACT Act explicitly acknowledges the mailability of cigars, but not pipe tobacco or other extraneous tobacco products, does not suggest the nonmailability of those other tobacco products.

The commenter went on to state that cigars and pipe tobacco must be mailable in all cases, citing Section 8 of the PACT Act. Section 8 expresses the sense of Congress that states should still be able to tax the remote sales of tobacco products. Section 8 of the PACT Act is not an affirmative statement of mailability. More significant than this statement of general intent is the PACT Act's operative provision, codified at 18 U.S.C. 1716E(a)(1), that the Postal Service "shall not accept for delivery or transmit through the mails any package that it * * * has reasonable cause to believe contains [nonmailable] cigarettes or smokeless tobacco." Thus, Congress generally directed that a package be refused if the Postal Service has reasonable cause to believe it contains nonmailable cigarettes or smokeless tobacco. To the extent that Section 8 has any bearing on the instant rulemaking, it does not pose a conflict: States remain generally empowered to impose and collect taxes on tobacco products to the extent that those products can legally be sent through the mail or otherwise.

The commenter further requested guidelines as to the burden of proof for a mailer to contest an initial finding of nonmailability. The amount and type of evidence required to overcome reasonable cause would depend on the facts of a particular case.

Finally, the commenter expressed concern that, to the extent the proposed rule's "reasonable cause" standard relies on the presence of an entity on the Attorney General's List of Unregistered or Noncompliant Delivery Sellers, the standard could bar all shipments from such entities, including shipments that do not contain cigarettes or smokeless tobacco. In the commenter's opinion, this exceeds the PACT Act's restrictions and the Postal Service's authority. The Postal Service disagrees. The PACT Act itself, and not merely the Postal Service's proposed rule, defines "reasonable cause" as including the

presence of an entity on the Attorney General's List of Unregistered or Noncompliant Delivery Sellers, regardless of the package's actual contents. 18 U.S.C. 1716E(a)(2)(B). Furthermore, the commenter's attempt to distinguish between "delivery sellers" and sellers of other tobacco is unavailing, as the Attorney General's List of Unregistered or Noncompliant Delivery Sellers pertains to delivery sellers of cigarettes and smokeless tobacco, and not remote sellers of other tobacco products. *See* 15 U.S.C. 375(5)–(6), 376A(e)(1)(A) (as amended).

Explanation of Changes From Proposed Rule

The final rule includes several additional changes and corrections. The first pertains to section 503 and 608 of the DMM, which includes standards for return receipt service. As explained in the proposed rule, the Postal Service's administration of the PACT Act exceptions results in a requirement under certain exceptions that customers use return receipts and make them returnable to the Pricing & Classification Service Center (PCSC). Because return receipts are typically made returnable to the sender, the final rule includes a revision to DMM 503 and 608 that implements this procedure.

Another change pertains to mail destined to APO/FPO/DPO destinations under the "certain individuals" exception. Changes to DMM sections 601.11.3 and 601.11.6.2 clarify that mailings of cigarettes and smokeless tobacco are permitted to these destinations only if not otherwise restricted according to the requirements of the host country. Mailings from or between APO/FPO/DPO destinations are not eligible, however, because Hold for Pickup labels are not offered at these destinations for delivery in the United States.

The final rule is clarified to ensure that proper controls are applied to shipments under certain exceptions. In particular, the final rule is modified to require face-to-face transactions (excluding Carrier Pickup and Pickup on Demand arrangements). The final rule is also clarified to the effect that Carrier Pickup and Pickup on Demand services are not available for permissible shipments of cigarettes and smokeless tobacco. These changes are reflected in DMM sections 601.11.4, 601.11.5.2, 601.11.6.1, and 601.11.7.2.

Nonsubstantive changes were made in the arrangement of the text in DMM section 601.11.2, so that standards related to the reasonable cause standard appear in sequence.

The updating requirements for applicants under the business/regulatory and consumer testing exceptions are clarified to apply to all information furnished on the customer's application for as long as the mailer continues to mail under either exception. This results in a reorganization of some text in DMM section 601.11.5.1 and the addition of text in DMM section 601.11.7.1a.

Language has been added to DMM section 601.11.6 to clarify that the certain individuals exception is only available for noncommercial shipments, and that senders must not receive direct or indirect compensation of any kind in connection with the contents being mailed.

The verbiage for markings used for each exception, as listed in DMM sections 601.11.5.2c, 601.11.6.3b, and 601.11.7.2b3, has been changed from "PERMITTED TOBACCO PRODUCT" to "PERMITTED TOBACCO MAILING." Further, the marking and text of the delivery procedures for shipments under the business/regulatory purposes exception in DMM section 601.11.5 were clarified to exclude delivery to the addressee's agents, as the PACT Act only permits employees of the addressee to retrieve such shipments. 18 U.S.C. 1716E(b)(3)(B)(ii)(VII).

As explained above, the restriction on the number of mailings to a tester from any one manufacturer under the consumer testing exception in DMM section 601.11.7.2d was revised to conform to the PACT Act.

For clarity, the final rule indicates that each authorization letter under the business/regulatory purposes, consumer testing, and public health exceptions will be assigned its own unique eligibility number, as noted in DMM sections 601.11.5.1c and 601.11.7.1e. Further, the final rule is clarified to state that the eligibility number must appear in the return address of the return receipt, and mailings must be returned to sender if the mailer's eligibility number is missing in the address block of the return receipt. Otherwise, the Postal Service cannot fulfill its responsibility to maintain records of the mailing because it cannot tie the return receipt to the eligible mailer's identity. In addition, the final rule refers to the "PACT MAILING OFFICE" in lieu of the "TOBACCO MAILING UNIT" and provides specific addressing in DMM section 608.4.1.

The period for lapse in authorization and the requirement for re-application for eligibility under the business/regulatory purposes, consumer testing, and public health exceptions has been changed from six months to three years. This change is reflected in DMM sections 601.11.5.1h and 601.7.1f.

Finally, the final rule clarifies that the required marking for each exception is to be placed directly above, directly below, or to the left of the postage on the address side of the exterior of the mailpiece. This measure ensures that postal personnel will be able to identify the piece quickly as one falling within the eligible exceptions.

The Postal Service hereby adopts the following changes to the *Mailing Standards for the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

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

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

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

6.0 Return Receipt

* * * * *

6.3 Obtaining Service

* * * * *

[Add two new sentences to the end of the introductory paragraph of item 3.1 as follows:]

3.1 At Time of Mailing

* * * An exception is made for certain restricted mailings of cigarettes and smokeless tobacco. When required by 601.11.5.2, 608.11.7.2, or 608.11.8, a mailer must address the sender's address block to the Pricing and Classification Service Center (PCSC) PACT, Mailing Office (see 608.4.1 for address)

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

[Renumber current 601.11 and 12 as new 601.12 and 601.13, and add new 601.11 as follows:]

11. 0 Cigarettes and Smokeless Tobacco

11.1 Definitions

For this standard, we define terms as follows:

a. *Cigarette:* Any roll of tobacco wrapped in paper or in any substance not containing tobacco and any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette. The term cigarette includes roll-your-own-tobacco and excludes cigars.

b. *Smokeless tobacco:* Any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

c. *Cigar:* Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, unless, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, the product is likely to be offered to, or purchased by, consumers as a cigarette.

d. *Roll-your-own tobacco:* Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof.

e. *Consumer testing:* Testing limited to formal data collection and analysis for the specific purpose of evaluating the product for quality assurance and benchmarking purposes of cigarette brands or sub-brands among existing adult smokers.

f. *State:* Any of the 50 states of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

11.2 Nonmailability

Except as provided in 601.11.3, all cigarettes (including roll-your-own tobacco) and smokeless tobacco are nonmailable and shall not be deposited in or carried through the Postal Service mailstream. Nonmailable cigarettes and smokeless tobacco deposited in the mail are subject to seizure and forfeiture. Any nonmailable cigarettes and smokeless tobacco products seized and forfeited shall be destroyed or retained by the Federal government for the detection or prosecution of crimes or related investigations and then destroyed. Senders of nonmailable cigarettes and smokeless tobacco may be subject to seizure and forfeiture of assets, criminal fines, imprisonment, and civil penalties. The Postal Service will not accept for delivery or transmit any package that it knows, or has reasonable cause to believe, contains nonmailable cigarettes or smokeless tobacco. If the Postal Service reasonably suspects that a mailer is tendering nonmailable cigarettes or smokeless tobacco, then the mailer bears the burden of proof in establishing eligibility to mail. The Postal Service has reasonable cause not to accept for delivery or transmit a package based on:

a. A statement on a publicly available Web site, or an advertisement, by any person that the person will mail matter which is nonmailable under this section in return for payment; or

b. The fact that the mailer or other person on whose behalf a mailing is being made is on the U.S. Attorney General's List of Unregistered or Noncompliant Delivery Sellers.

11.3 Mailability Exceptions

Cigarettes and smokeless tobacco are mailable if one of the conditions in 11.4 through 11.8 is met. These exceptions only apply to domestic mail under 608.2.1, including mail sent from the United States to Army Post Office (APO), Fleet Post Office (FPO), and Diplomatic Post Office (DPO) addresses to which tobacco is not restricted (see 703.2.3.1), with the exception that delivery procedures for overseas military mail under the certain individuals exception in 11.6 may vary as practicable. These exceptions do not apply to the following:

a. Mail treated as domestic under 608.2.2;

b. International mail as defined in 608.2.3; or

c. Mail presented at APO, FPO, or DPO installations and destined to addresses in the United States or other APO, FPO, or DPO addresses.

11.4 Mailing Within Noncontiguous States

Applicable mailings may not be tendered through Pickup on Demand or Carrier Pickup services. Intra-Alaskan and intra-Hawaiian shipments of cigarettes or smokeless tobacco are mailable, provided that such mailings:

a. Are presented in a face-to-face transaction with a postal employee within the State;

b. Destinate in the same state of origin;

c. Bear a valid complete return address that is within the State of origin; and

d. Are marked with the following exterior marking on the address side of the mailpiece: "INTRASTATE SHIPMENT OF CIGARETTES OR SMOKELESS TOBACCO."

11.5 Exception for Business/ Regulatory Purposes

Eligibility to mail and to receive mail under the business/regulatory purposes exception is limited to Federal and State government agencies and legally operating businesses that have all applicable State and Federal government licenses or permits and are engaged in tobacco product manufacturing, distribution, wholesale, export, import, testing, investigation, or research under the conditions in 11.5.1 to 11.5.3.

11.5.1 Application

Each customer seeking to mail cigarettes or smokeless tobacco under the business/regulatory purposes exception must complete an application letter requesting to mail under the business/regulatory purposes exception.

a. The applicant must furnish:

1. Information about its legal status, any applicable licenses, and authority under which it operates;

2. Information about the legal status, any applicable licenses, and operational authority for all entities to which the applicant's mailings under this exception will be addressed; and

3. All locations where mail containing cigarettes and smokeless tobacco will be presented.

b. The applicant must establish its and its recipients' eligibility as legally operating businesses that have all applicable state and Federal government licenses or permits and are engaged in tobacco product manufacturing, distribution, wholesale, export, import, testing, investigation, or research; or, in the case of mailings for regulatory purposes, as a Federal or State agency. Only those shipments containing otherwise nonmailable tobacco addressed to recipients on the customer's list of designated recipients are eligible for the business/regulatory purposes exception.

c. Applications must be mailed to the manager, Pricing & Classification Service Center (PCSC), see 608.8.4.1 for address. The manager, PCSC, issues the initial agency decision of a determination of eligibility to mail under the business/regulatory purposes exception. A number is assigned to each letter of eligibility.

d. The applicant must timely update the information in its application as

necessary prior to conducting any mailing for as long as it continues to mail under the business/regulatory exception.

e. Customers whose applications or amendments to existing applications are denied in whole or in part may appeal to the manager, Mailing Standards (*see* 608.8.0).

f. Eligibility to mail under the business/regulatory purposes exception may be revoked by the manager, PCSC, in the event of failure to comply with any applicable rules and regulations. A customer may appeal an adverse initial decision to the manager, Mailing Standards (*see* 608.8.0). Decisions by the manager, Mailing Standards, to uphold the denial of an application or to revoke a customer's eligibility under the business/regulatory purposes exception may be appealed to the Judicial Officer under 39 CFR Part 953.

g. Upon written request by a state or Federal agency, the Manager, PCSC, may, in his or her discretion, waive certain application requirements for mailings entered by the requesting state or Federal agency for regulatory purposes.

h. Any determination of eligibility to mail under this exception shall lapse if the authorized mailer does not tender any mail under this exception within any three-year period. After that time, the affected mailer must apply for and receive new authorization for any mailings under this exception.

11.5.2 Mailing

Customers eligible to mail under the business/regulatory purposes exception may enter mailings of cigarettes and smokeless tobacco only at the locations specified in the customer's application. Applicable mailings may not be tendered through Pickup on Demand or Carrier Pickup services. Before mailing any shipment under this exception, the mailer must present proof that the PCSC has authorized the mailer to mail such shipments at that location. All mailings under the business/regulatory purposes exception must:

a. Be entered in a face-to-face transaction with a postal employee as Express Mail with Hold for Pickup service (waiver of signature and pickup services not permitted);

b. Be accompanied by a request for PS Form 3811 return receipt, which must bear the sender's PACT eligibility number issued by the PCSC in the return address block as well as the addressee's full name and address, and be made returnable to the PCSC, PACT Mailing Office (*see* 608.4.1 for address);

c. Bear the marking "PERMITTED TOBACCO MAILING—DELIVER ONLY TO ADDRESSED BUSINESS/AGENCY—RECIPIENT MUST FURNISH PROOF OF AGE AND EMPLOYMENT" on the address side of the mailpiece (place the marking directly above, below, or to the left of the postage);

d. Bear the business or government agency name and full mailing addresses of both the sender and recipient, both of which must match exactly those listed on the customer's application on file with the Postal Service.

11.5.3 Delivery

Mailings bearing the marking for business/regulatory purposes can only be delivered to a verified employee of the addressee business or government agency. The recipient must show proof that he or she is an employee of the business or government identified as the addressee on the mailing label under the following conditions:

a. The recipient must be an adult of at least the minimum age for the legal sale or purchase of tobacco products at the place of delivery. The recipient must furnish proof of age via a driver's license, passport, or other government-issued photo identification that lists age or date of birth.

b. Once age and the recipient's identity as an employee of the addressee are established, the recipient must sign PS Form 3849 and PS Form 3811 in the appropriate signature blocks. If mailer's eligibility number is missing in the return address block of the PS Form 3811, the mailing must be returned to sender.

11.6 Exception for Certain Individuals

The exception for certain individuals permits the mailing of small quantities of cigarettes or smokeless tobacco by individual adults to businesses or to other adults. Such shipments may include, but are not limited to, cigarettes and smokeless tobacco exchanged as gifts between individual adults and a damaged or unacceptable tobacco product returned by a consumer to the manufacturer. For purposes of this rule, "gifts" do not include products purchased by one individual for another from a third-party vendor through a mail-order transaction, or the inclusion of cigarettes or smokeless tobacco at no additional charge with other matter pursuant to a commercial transaction. Eligibility to mail under the certain individuals exception may be revoked by the manager, PCSC, in the event of failure to comply with any applicable rules and regulations. A customer may appeal an adverse initial decision to the manager, Mailing Standards (*see* 608.8.0). The mailer bears the burden of proof in establishing eligibility in the event of revocation. Decisions by the manager, Mailing Standards, to revoke a customer's eligibility under this exception may be appealed to the Judicial Officer under 39 CFR Part 953. Mailings under this exception must be made under the conditions in 11.6.1 through 11.6.3.

11.6.1 Entry and Acceptance

Mailings under the certain individuals exception must be entered under the following conditions:

a. Cigarettes or smokeless tobacco may only be mailed via a face-to-face transaction with a postal employee. Applicable mailings may not be tendered through Pickup on Demand or Carrier Pickup services.

b. Cigarettes or smokeless tobacco may only be entered by an adult of at least the minimum age for the legal sale or purchase of tobacco products at the place of entry.

c. The individual presenting the mailing must furnish government-issued photo identification that lists age or date of birth, such as a driver's license or passport, at the time of the mailing. The name on the identification must match the name of the sender appearing in the return address block of the mailpiece.

d. For mailings addressed to an individual, at the time the mailing is presented, the customer must orally confirm that the addressee is an adult of at least the minimum age for the legal sale or purchase of tobacco products at the place of delivery.

11.6.2 Mailing

No customer may send or cause to be sent more than 10 mailings under this exception in any 30-day period. Each mailing under the certain individuals exception must:

a. Be entered as Express Mail; (waiver of signature and pickup services not permitted);

b. Bear the marking "PERMITTED TOBACCO MAILING—DELIVER ONLY TO AGE-VERIFIED ADULT OF LEGAL AGE" on the address side of the exterior of the mailpiece (place the marking directly above, below, or to the left of the postage);

c. Bear the full name and mailing address of the sender and recipient on the Express Mail label;

d. Weigh no more than 10 ounces;

e. Not be sent to APO/FPO/DPO addresses to which the mailing of tobacco is restricted (see 703.2.3.1);

f. With the exception of shipments from civilian locations to APO/FPO/DPO addresses, request delivery through Hold for Pickup service; and

g. Not be entered at an APO/FPO/DPO installation.

11.6.3 Delivery

Delivery under the certain individuals exception is made under the following conditions:

a. The recipient signing for the Express Mail article must be an adult of at least the minimum age for the legal sale or purchase of tobacco products at the place of delivery.

b. The recipient must furnish proof of age via a driver's license, passport, or other government-issued photo identification that lists age or date of birth.

c. Once age is established, the recipient must sign PS Form 3849 in the appropriate signature block.

11.7 Consumer Testing Exception

The exception for consumer testing permits a legally operating cigarette manufacturer or a legally authorized agent of a legally operating cigarette manufacturer to mail cigarettes to verified adult smokers solely for consumer testing purposes. The manufacturer for which mailings are entered under this exception must have a permit, in good standing, issued under 26 U.S.C. 5713. The consumer testing exception applies only to cigarettes and not smokeless tobacco. Items must be mailed under conditions in 11.7.1 through 11.7.3.

11.7.1 Application

Each customer seeking to mail cigarettes under the consumer testing exception must submit an application letter to mail under consumer testing exception. In support of its application, the following must be met:

a. The applicant must furnish information to establish that the customer, or the customer's principal if the customer is a manufacturer's agent, is a cigarette manufacturer in good standing under 26 U.S.C. 5713; if the customer is an agent of a manufacturer, complete details about the agency relationship with the manufacturer; and all locations where mail containing cigarettes for consumer testing will be presented. The applicant must timely update all information in its application as necessary prior to conducting any mailing for as long as it continues to mail under the consumer testing exception.

b. As part of its application, the applicant must certify in writing that it will comply with the following requirements:

1. any recipient of consumer testing samples of cigarettes is an adult established smoker;

2. no recipient has made any payment for the cigarettes;

3. every recipient will sign a statement indicating that the recipient wishes to receive the mailings;

4. the manufacturer or the legally authorized agent of the manufacturer will offer the opportunity for any recipient to withdraw the recipient's written statement at least once in every three-month period;

5. any package mailed under this exception will contain not more than 12 packs of cigarettes (maximum of 240 cigarettes) on which all taxes levied on the cigarettes by the state and locality of delivery have been paid and all related state tax stamps or other tax-payment indicia have been applied; and

6. the manufacturer will maintain records establishing compliance with these obligations for a three-year period from the date of each mailing.

c. The application must be submitted to the manager, Pricing & Classification Service Center (PCSC) (*see* 608.8.4.1 for address).

d. The applicant must provide any requested copies of records establishing compliance to the manager, PCSC, and/or the manager, Mailing Standards (*see* 608.8.0), upon request no later than 10 business days after the date of the request.

e. The manager, PCSC, issues the initial agency decision of a determination of eligibility to mail under the consumer testing exception. A number is assigned to each letter of eligibility. Customers whose applications are denied in whole or in part may appeal to the manager, Mailing Standards. Eligibility to mail under the consumer testing exception may be revoked by the manager, PCSC, in the event of failure to comply with any applicable rules and regulations. Decisions by the manager, Mailing Standards, to uphold the denial of an application or to revoke a customer's eligibility under the consumer testing exception may be appealed to the Judicial Officer under 39 CFR Part 953.

f. Any determination of eligibility to mail under this exception shall lapse if the authorized mailer does not tender any mail under this exception within any three-year period. After that time, the affected mailer must apply for and receive new authorization for any further mailings under this exception.

11.7.2 Mailing

Customers eligible to mail under the consumer testing exception may enter mailings of cigarettes only at the locations specified in the customer's application. Applicable mailings may not be tendered through Pickup on Demand or Carrier Pickup services. Mailings must be tendered under the following conditions:

a. Before tendering any shipment under this exception, the mailer must present proof (PCSC Eligibility letter) that the PCSC has authorized the mailer to tender such shipments at that location.

b. All mailings under the consumer testing exception:

1. must be entered in face-to-face transactions with postal employees as Express Mail with Hold for Pickup service requested (waiver of signature and pickup services not permitted);

2. be accompanied by a request for PS Form 3811 return receipt, which must bear the sender's PACT eligibility number issued by the PCSC in the return address block, as well as the addressee's full name and address, and be made returnable to PCSC, PACT Mailing Office (*see* 608.4.1 for address)

3. must bear the marking "PERMITTED TOBACCO MAILING—DELIVER ONLY TO ADDRESSEE UPON AGE VERIFICATION—AGE 21 OR ABOVE" on the address side of the mailpiece (place the marking directly above, below, or to the left of the postage);

4. must bear the full mailing addresses of both the sender and recipient on the Express Mail label (the name and address of the sender must match exactly those listed on the customer's application on file with the PCSC);

5. are limited in tobacco contents to no more than 12 packs of cigarettes (maximum 240 cigarettes) on which all taxes levied on the cigarettes by the destination State and locality have been paid and all related state tax stamps or other tax-payment indicia have been applied;

6. may not be addressed to an addressee located in a state that prohibits the delivery or shipment of cigarettes to individuals in the destination State;

7. may be sent only to an addressee who has not made any payment for the cigarettes, is being paid a fee for participation in consumer tests, and has agreed to evaluate the cigarettes and furnish feedback to the manufacturer in connection with the consumer test.

c. Customers must maintain records to establish compliance with the requirements in 11.7 for a three year period.

d. Mailing frequency may not exceed more than one package from any one manufacturer to an adult smoker during any 30-day period.

e. Nothing in these rules shall preempt, limit, or otherwise affect any related State laws.

11.7.3 Delivery

Mailings bearing the marking for consumer testing can only be delivered to the named addressee under the following conditions:

a. The recipient signing for the Express Mail Hold for Pickup service article must be an adult of at least 21 years of age.

b. The recipient must furnish proof of age through production of a driver's license, passport, or other government-issued photo identification that lists age or date of birth.

c. The name on the identification must match the name of the addressee on the Express Mail label.

d. Once age is established, the recipient must sign the PS Form 3849 and PS Form 3811 in the appropriate signature blocks. If mailer's eligibility number is missing in the return address block of the PS Form 3811 return receipt, the mailing must be returned to sender.

11.8 Public Health Exception

Federal government agencies involved in the consumer testing of tobacco products solely for public health purposes may mail cigarettes under the mailing standards of 11.7, except as provided herein. The Federal agency shall not be subject to the requirement that the recipient be paid a fee for participation in consumer tests. Upon written request, the manager, PCSC, may, in his or her discretion, waive certain of the application requirements.

* * * * *

608 Postal Information and Resources

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8.0 USPS Contact Information

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8.4. PCSC and District Business Mail Entry Offices Contact Information

[*Add second listing to the PCSC under the current listing as follows:*]

4.1 Pricing and Classification Service Center (PCSC)

For return receipts mailed under the provisions in 601.11.5, 601.11.7, and 601.11.8, use the following address:

PCSC, PACT MAILING OFFICE, USPS ELIGIBILITY NO. XX–00–0000, 90 Church Street Suite 3100, New York, NY 10007–2951

* * * * *

We will publish an amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–12869 Filed 5–25–10; 11:15 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0612–200914(a); FRL–9155–3]

Approval and Promulgation of Air Quality Implementation Plans: Florida; Approval of Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standards for the Jacksonville, Tampa Bay, and Southeast Florida Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Florida State Implementation Plan (SIP) concerning the maintenance plans addressing the 1997 8-hour ozone standards for the Jacksonville, Tampa Bay, and Southeast Florida 1997 8-hour ozone attainment areas in Florida, hereafter referred to as the "Jacksonville Area," "Tampa Bay Area," and "Southeast Florida Area," respectively. The Jacksonville Area is comprised of Duval County; the Tampa Bay Area comprises Hillsborough and Pinellas Counties; and the Southeast Florida Area comprises Broward, Dade, and Palm Beach Counties. These maintenance plans were submitted to EPA on July 2, 2009, by the State of Florida, through the Florida Department of Environmental Protection (FDEP), and ensure the continued attainment of the 1997 8-hour ozone national ambient air quality standards (NAAQS) through the year 2014 in the Jacksonville, Tampa Bay, and Southeast Florida Areas. EPA is approving the SIP revisions pursuant to section 110 of the Clean Air Act (CAA). These maintenance plans meet all the statutory and regulatory requirements, and are consistent with EPA's guidance. On March 12, 2008, EPA issued revised ozone standards. On September 16, 2009, EPA announced it would reconsider the 2008 NAAQS for ozone and proposed a new schedule for designations for the reconsidered standards. EPA published a proposed rulemaking on January 19, 2010, for reconsideration of the 2008 NAAQS, and expects to finalize the reconsidered NAAQS by August 2010. The current action, however, is being taken to address requirements under the 1997 8-hour ozone standards. Requirements for the Jacksonville, Tampa Bay, and Southeast Florida Areas under the 2010 reconsidered ozone standards will be addressed in the future.

DATES: This rule is effective on July 26, 2010 without further notice, unless EPA receives relevant adverse comment by June 28, 2010. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0612, by one of the following methods:

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

2. *E-mail:* benjamin.lynorae@epa.gov.

3. *Fax:* (404) 562–9019.

4. *Mail:* "EPA–R04–OAR–2009–0612," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2009–0612." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9352. Ms. Bradley can also be reached via electronic mail at *bradley.twunjala@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

In accordance with the CAA, the Jacksonville, Tampa Bay and Southeast Florida Areas in Florida were designated nonattainment for the 1-hour ozone NAAQS on November 6, 1991, 56 FR 56694 (effective January 6, 1992, 60 FR 7124).

On June 23, 1993, the State of Florida, through the FDEP, submitted a request to redesignate Duval County in association with the Jacksonville Area to attainment for the 1-hour ozone standards. Likewise, Florida submitted redesignation requests for Broward, Dade, and Palm Beach Counties in association with the Southeast Florida Area on November 8, 1992, and for Hillsborough and Pinellas Counties in association with the Tampa Bay Area on February 7, 1995. Included with these redesignation requests, Florida submitted the required 1-hour ozone monitoring data and maintenance plans ensuring these areas would remain in attainment of the 1-hour ozone standards for at least a period of 10 years (consistent with CAA 175A(a)). The maintenance plans submitted by Florida followed EPA guidance for maintenance areas, subject to section 175A of the CAA.

On January 3, 1995, EPA approved Florida's request to redesignate the Jacksonville Area (60 FR 41) to attainment for the 1-hour ozone NAAQS. Likewise, the Southeast Florida and Tampa Bay Areas were redesignated to attainment on February 24, 1995, and December 7, 1995 (60 FR 10325 and 60 FR 62793), respectively. The maintenance plans for the Jacksonville, Tampa Bay, and Southeast Florida Areas became effective on March 6, 1995, February 5, 1996, and April 1995, respectively. Florida later updated all three maintenance plans, in accordance with section 175(A)(b), to extend the maintenance plans to cover additional years such that the entire maintenance period was for at least 20 years after the initial redesignation of these areas to attainment.

On April 30, 2004, EPA designated and classified areas for the 1997 8-hour ozone NAAQS (69 FR 23858), and published the final Phase 1 Rule for implementation of the 1997 8-hour ozone NAAQS (69 FR 23951) (Phase 1 Rule). The Jacksonville, Tampa Bay, and Southeast Florida Areas were designated as attainment for the 1997 8-hour ozone standards, effective June 15, 2004. These attainment areas consequently were required to submit a 10-year maintenance plan under section 110(a)(1) of the CAA and the Phase 1 Rule. On May 20, 2005, EPA issued guidance providing information on how a state might fulfill the maintenance plan obligation established by the CAA and the Phase 1 Rule (Memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act,* May 20, 2005—hereafter referred to as the "Wegman Memorandum"). On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion that vacated EPA's Phase 1 Rule for the 1997 8-hour Ozone Standard. *South Coast Air Quality Management District.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). The Court vacated those portions of the Phase 1 Rule that provided for regulation of the 1997 8-hour ozone nonattainment areas designated under Subpart 1 in lieu of Subpart 2 (of part D of the CAA), among other portions. The Court's decision does not alter any requirements under the Phase 1 Rule for section 110(a)(l) maintenance plans. EPA is taking action to approve Florida's July 2, 2009, SIP revisions which satisfy CAA section 110(a)(1) CAA requirements for a plan providing for maintenance of the 1997 8-hour ozone NAAQS in the Jacksonville, Tampa Bay and Southeast Florida Areas.

II. Analysis of Florida's Submittals

On July 2, 2009, the State of Florida, through the FDEP, submitted SIP revisions containing the 1997 8-hour ozone maintenance plans for the Jacksonville, Tampa Bay and Southeast Florida Areas as required by section 110(a)(1) of the CAA and the provisions of EPA's Phase 1 Rule *(see* 40 CFR 51.905(a)(4)). The purpose of these plans is to ensure continued attainment and maintenance of the 1997 8-hour ozone NAAQS in these Areas until 2018.

As required, these plans provide for continued attainment and maintenance of the 1997 8-hour ozone NAAQS in the Jacksonville, Tampa Bay and Southeast Florida Areas for at least 10 years from the effective date of these areas' designation as attainment for the 1997 8-hour ozone NAAQS. These plans also include components illustrating how each area will continue attainment of the 1997 8-hour ozone NAAQS, and provide contingency measures. Each of the section 110(a)(1) plan components is discussed below for each area.

(a) *Attainment Inventory.* In order to demonstrate maintenance in the aforementioned areas, Florida developed comprehensive inventories of volatile organic compounds (VOC) and nitrogen oxide (NO_X) emissions from area, stationary, on-road mobile, and non-road mobile sources using 2002 as the base year. The year 2002 is an appropriate year for Florida to base attainment level emissions because states may select any one of the three years on which the 1997 8-hour attainment designation was based (2001, 2002, and 2003). The State's submittal

contains the detailed inventory data and summaries by source category for each area. Using the 2002 inventory (as a base year) reflects one of the years used for calculating the air quality design values on which the 1997 8-hour ozone designation decisions were based.

A further practical reason for selecting 2002 as the base year emission inventory is that Section 110(a)(2)(B) of the CAA and the Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) requires states to submit emissions inventories for all criteria pollutants and their precursors every three years, on a schedule that includes the emissions year 2002. The due date for the 2002 emissions inventory is established in the rule as June 2004. In accordance with these requirements, Florida compiles a statewide emissions inventory for point sources on an annual basis. On-road mobile emissions of VOC and NO_X were estimated using MOBILE6 motor vehicle emissions factor computer model. Non-road mobile emissions data were derived using the U.S. EPA's NONROAD 2002 model.

In projecting data for the maintenance year 2014 emissions inventories, Florida used several methods to project data from the base year 2002 to the years 2009 and 2018; and the interim years 2005, 2008, 2011 and 2014. These projected inventories were developed using EPA-approved technologies and methodologies including the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) methodology. Point source inventories were developed through VISTAS using the Integrated Planning Model (IPM) for electrical generating units (EGU) sources and updated growth and control data for non-EGU sources. EPA's Emissions Growth Analysis System model was used to derive area source emissions data. Non-road mobile projections were derived from the NONROAD model.

The following tables provide VOC and NO_X emissions data for the 2002 base attainment year inventories, as well as projected detailed source category VOC and NO_X emission inventory data for 2009 and 2018. To further support these maintenance demonstrations, interim projections for VOC and NO_X emission inventory data beginning in the year 2005 through the year 2018 are also provided for each area. The requirement for these maintenance plans is an end year of 2014, but Florida has chosen to provide projections through 2018 also in support of these maintenance demonstrations. The Phase 1 Rule provides that the 10-year maintenance period begin as of the effective date of designation for the 1997 8-hour NAAQS for the area. The designations were effective in 2004 so the maintenance period must end no earlier than 2014. Florida has opted to provide additional supporting information through the year 2018.

TABLE 1—2002 VOC AND NO_X BASE YEAR EMISSIONS INVENTORY

[Tons/day]

	Southeast Florida				Tampa Bay			Jacksonville
	Miami-Dade	Broward	Palm Beach	Total	Hillsborough	Pinellas	Total	Duval
VOC								
Point Source	4.68	4.28	1.44	10.40	5.19	2.81	8.00	5.61
Area Source	132.08	96.74	73.77	302.60	72.34	61.20	133.54	59.53
On-Road	131.07	107.43	80.69	319.19	81.76	61.47	143.23	64.13
Non Road	52.79	37.39	55.74	145.92	29.39	22.97	52.36	25.39
Total	320.63	245.54	211.64	778.11	188.67	148.45	337.13	154.65
NO_X								
Point Source	40.23	58.76	25.33	124.32	151.02	25.64	176.66	115.47
Area Source	7.41	5.08	3.53	16.02	4.39	15.63	20.02	6.10
On-Road	144.95	120.19	91.31	356.46	92.88	62.63	155.51	72.68
Non Road	57.42	54.79	39.62	151.82	86.98	18.41	105.39	43.34
Total	250.01	238.82	159.79	648.62	335.26	122.31	457.57	237.60

TABLE 2—2009 PROJECTED VOC AND NO_X EMISSIONS INVENTORY

[Tons/day]

	Southeast Florida				Tampa Bay			Jacksonville
	Miami-Dade	Broward	Palm Beach	Total	Hillsborough	Pinellas	Total	Duval
VOC								
Point Source	3.74	3.95	1.19	8.87	5.12	2.49	7.61	5.62
Area Source	140.57	103.37	77.41	321.35	77.18	65.88	143.06	62.55
On-Road	77.98	66.24	50.31	194.53	50.22	37.64	87.86	39.26
Non Road	41.55	27.40	39.46	108.41	22.47	17.58	40.05	18.23
Total	263.84	200.95	168.36	633.16	154.98	123.59	278.57	125.67
NO_X								
Point Source	24.75	18.39	7.31	50.45	16.62	5.03	21.65	21.43
Area Source	7.36	5.05	3.53	15.95	4.46	12.68	17.13	6.43
On-Road	93.47	79.81	61.32	234.60	61.62	41.79	103.41	47.94

TABLE 2—2009 PROJECTED VOC AND NO_X EMISSIONS INVENTORY—Continued

[Tons/day]

	Southeast Florida				Tampa Bay			Jacksonville
	Miami-Dade	Broward	Palm Beach	Total	Hillsborough	Pinellas	Total	Duval
Non Road	52.07	49.55	34.11	135.72	80.40	15.38	95.78	39.13
Total	177.64	152.80	106.27	436.72	163.10	74.88	237.98	114.93

TABLE 3—2018 PROJECTED VOC AND NO_X EMISSIONS INVENTORY

[Tons/day]

	Southeast Florida				Tampa Bay			Jacksonville
	Miami-Dade	Broward	Palm Beach	Total	Hillsborough	Pinellas	Total	Duval
VOC								
.								
Point Source	4.64	4.95	1.54	11.13	6.39	3.29	9.68	6.63
Area Source	168.91	124.81	90.22	33.94	90.21	79.95	170.16	73.89
On-Road	49.76	43.85	33.54	127.15	33.14	24.81	57.94	25.85
Non Road	41.61	27.56	36.15	105.32	21.17	16.02	37.19	17.08
Total	264.92	201.16	161.45	627.52	150.90	124.07	274.97	123.45
NO_X								
Point Source	28.52	16.93	9.64	55.08	18.25	6.96	25.22	22.20
Area Source	7.84	5.39	3.78	17.0	5.03	13.86	18.90	6.89
On-Road	42.41	37.74	29.17	109.31	28.81	19.84	48.64	22.42
Non Road	40.34	39.56	21.90	101.80	67.67	9.86	77.52	31.13
Total	119.11	99.62	64.48	283.21	119.76	50.52	170.28	82.65

TABLE 4—PROJECTIONS OF ANTHROPOGENIC VOC AND NO_X EMISSIONS

[Tons/day]

Year	Southeast Florida				Tampa Bay			Jacksonville
	Miami-Dade	Broward	Palm Beach	Total	Hillsborough	Pinellas	Total	Duval
VOC								
2002	320.63	245.84	211.64	778.11	188.67	148.45	337.13	154.65
2005	296.29	226.61	193.09	715.99	174.24	137.80	312.03	142.23
2008	271.96	207.37	174.55	653.87	159.80	127.14	286.94	129.81
2009*	263.84	200.95	168.36	633.16	154.98	123.59	278.57	125.67
2011	264.08	201.00	166.83	631.91	154.08	123.70	277.77	125.17
2014	264.44	201.07	164.52	630.04	152.71	123.85	276.57	124.44
2018*	264.92	201.16	161.45	627.52	150.90	124.07	274.97	123.45
NO_X								
2002	250.01	238.82	159.79	648.62	335.26	122.31	457.57	237.60
2005	219.00	201.95	136.85	557.81	261.48	101.98	363.46	185.03
2008	187.98	165.09	113.92	466.99	187.70	81.66	269.35	132.45
2009*	177.64	152.80	106.27	436.72	163.10	74.88	237.98	114.93
2011	164.64	140.98	96.99	402.61	153.47	69.47	222.94	107.75
2014	145.13	123.25	83.06	351.44	139.02	61.35	200.37	97.00
2018*	119.11	99.62	64.48	283.21	119.76	50.52	170.28	82.65

*More detailed information regarding the source category emissions for these projections is provided in Tables 2 and 3 in this rulemaking.

As shown in Table 4 above, the Jacksonville, Tampa Bay, and Southeast Florida Areas projected to decrease total VOC and NO_X emissions from the base year of 2002 to the maintenance year of 2014. This VOC and NO_X emission decrease demonstrates continued attainment/maintenance of the 1997 8-hour ozone standards for ten years from 2004 as required by the CAA and Phase 1 Rule. Furthermore, total VOC and NO_X emissions are projected to steadily decrease from the base year of 2002 through 2018.

As shown in the tables above, Florida has demonstrated that the future year emissions will be less than the 2002 base attainment year's emissions for the

1997 8-hour ozone NAAQS for the Jacksonville, Tampa Bay and Southeast Florida Areas. The attainment inventories submitted by Florida for these areas are consistent with the criteria as discussed in the Wegman Memorandum. EPA finds that the future emission levels for the projected years 2005, 2008, 2009, 2011, 2014 and 2018, are expected to be less than the attainment level emissions in 2002. In the event that a future 8-hour ozone monitoring reading in one of these areas is found to violate the 1997 ozone standards, the contingency plan section of each area's maintenance plan includes measures that will be promptly implemented to ensure that the Area returns to maintenance of the 1997 ozone standards. Please see section (d) Contingency Plan, below, for additional information related to the contingency measures in each of the maintenance plans.

(b) *Maintenance Demonstration.* The primary purpose of a maintenance plan is to demonstrate how an area will continue to remain in attainment with the 1997 8-hour ozone standards for the 10-year period following the effective date of designation as unclassifiable/attainment. The required end projection year for all three maintenance areas is 2014; however, Florida has opted to provide additional supporting information through the year 2018. As discussed in section (a) Attainment Inventory above, Florida identified the level of ozone-forming emissions that were consistent with attainment of the NAAQS for ozone in 2002. Florida projected VOC and NO_X emissions for 2009 and 2018, as well as provided interim projection emissions inventories for VOC and NO_X emissions for the years 2005, 2008, 2011 and 2014 in the Jacksonville, Tampa Bay and Southeast Florida Areas. EPA finds that the future emissions levels in these years are expected to be below the emissions levels in 2002 in the Jacksonville, Tampa Bay, and Southeast Florida Areas.

Florida's SIP revision for the maintenance plans for the Jacksonville, Tampa Bay, and Southeast Florida Areas also relies on a combination of several air quality measures that will provide for additional 8-hour ozone emissions reductions in these areas. These measures include the implementation of the following, among others: (1) Heavy Duty 2007 Engine Standards, (2) Tier 2 Tailpipe Program, (3) Large Spark Ignition and Recreational Vehicle Rule, (4) Nonroad Diesel Rule, (5) Industrial Boiler/Process Heater/RICE maximum available control technology (MACT), (6) Petroleum Refinery Initiative, (7) VOC 2-, 4-, 7-, and 10-year MACT Standards, (8) Combustion Turbine MACT, and (9) consent decrees from Tampa Electric, Virginia Electric and Power Company and Gulf Power Crist. These Florida attainment areas are also benefiting from the following reductions that are occurring in other states in the Southeast: (1) North Carolina Clean Smokestacks Act, (2) Atlanta/Northern Kentucky/Birmingham 1-hour SIPs, (3) NO_X Reasonably Available Control Technology (RACT) in 8-hour nonattainment area SIP, and (4) implementation of NO_X SIP Call Phase 1 in southeastern states. Moreover, despite the legal status of the Clean Air Interstate Rule (CAIR) as remanded, many facilities have already installed or are continuing with plans to install emission controls that may benefit the Jacksonville, Tampa Bay, and Southeast Florida Areas.

There are no sources subject to CAIR or the NO_X SIP Call in the Jacksonville, Tampa Bay, and Southeast Florida Areas. Hence, the recent remand of CAIR does not affect the maintenance inventories or maintenance demonstrations in any way. Moreover, these areas were in attainment prior to implementation of these rules. As a result, any contribution to the reduction in the background ozone levels from these rules would be in addition to the projected decreases within the maintenance planning areas. These rules, even though the submittal takes no credit for emissions reductions from them, would be expected to reduce transported NO_X and ozone from outside the nonattainment area, thereby providing a further, unquantified improvement in these areas' air quality.

(c) *Ambient Air Quality Monitoring.* The table below shows design values [1] for the Jacksonville, Tampa Bay, and Southeast Florida Areas. The ambient ozone monitoring data were collected at sites that were selected with assistance from EPA and are considered representative of the areas of highest concentration. Florida will continue to depend on local air pollution control agencies in the Jacksonville, Tampa Bay, and Southeast Florida Areas to conduct ambient air quality monitoring programs for ozone in their respective areas. All monitoring programs will continue in accordance with applicable EPA monitoring requirements contained in 40 CFR part 58.

Even though 2002 is established as the base year, the actual year each of these areas monitored attainment for the 1997 8-hour NAAQS occurred prior to 2002. The Southeast Florida Area has not had a monitor design value exceed the 1997 8-hour NAAQS since the 1970s. For the Tampa Bay Area, the most recent year of a monitored 8-hour design value exceedance of the 1997 NAAQS was 2000. For the Jacksonville Area, the most recent year of a monitored NAAQS exceedance was 1989.

TABLE 5—MAXIMUM 8-HOUR OZONE DESIGN VALUES

[Ppm]

Year	Jacksonville	Tampa Bay	Southeast Florida
2001–2003	0.070	0.080	0.071
2002–2004	0.070	0.078	0.068
2003–2005	0.073	0.078	0.067
2004–2006	0.076	0.079	0.068
2005–2007	0.077	0.080	0.074
2006–2008	0.075	0.081	0.074
2007–2009	0.070	0.078	0.069

[1] The air quality design value at a monitoring site is defined as that concentration that when reduced to the level of the standard ensures that the site meets the standard. For a concentration-based standard, the air quality design value is simply the standard-related test statistic. Thus, for the primary and secondary 1997 8-hour ozone standards, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration is also the air quality design value for the site. 40 CFR part 50, Appendix I, Section 3.

Based on Table 5 above, the maximum design values identified demonstrate attainment with the 1997 8-hour ozone NAAQS. Further, these design values indicate that these maintenance areas are expected to continue attainment of the 1997 8-hour ozone NAAQS. The attainment level for the 1997 8-hour ozone standards is 0.080 parts per million (ppm), effectively 0.084 ppm with the rounding convention. However, in the event a design value for one of the Jacksonville, Tampa Bay and Southeast Florida Areas' monitors exceeds the 1997 8-hour ozone standards, one or more contingency measures included in Florida's maintenance plans for the Jacksonville, Tampa Bay and Southeast Florida Areas would be promptly implemented in accordance with the contingency plan, as discussed below.

(d) *Contingency Plan.* In accordance with 40 CFR 51.905(a)(4)(ii) and the Wegman Memorandum, the section 110(a)(1) maintenance plans include contingency provisions to promptly correct a violation of the 1997 ozone NAAQS that may occur. The indicators for triggering contingency measures for the Jacksonville, Tampa Bay, and Southeast Florida Areas are based on updates to the emission inventories. The State of Florida has established two triggers to activate contingency measures including: (1) violation of the 1997 8-hour ozone standards at any monitor and (2) a five percent or more increase in ozone precursor emissions for the emissions inventory update (for VOC or NO_X) above the 2002 emissions inventory and the ozone design value for the update year is greater than or equal to 0.081 ppm. In the maintenance plans for the Jacksonville, Tampa Bay and Southeast Florida Areas, if contingency measures are triggered, Florida is committed to implement the measures as expeditiously as practicable, including adopting one or more contingency measures within 18-months of the trigger and implementing the measures within twenty-four months of the triggering event. The contingency measures include: (1) Reinstate nonattainment new source review; (2) mandate less volatile gasoline [2]; (3) provide additional or revise existing VOC or NO_X RACT Rules; (4) expand VOC or NO_X control strategies to other counties affecting the maintenance area; (5) expand control strategies to new control technique guideline categories; (6) implement mobile source transportation control measures; and/or (7) other measures deemed appropriate by the FDEP at the time as a result of efficient and cost-effective emissions reduction.

These contingency measures and schedules for implementation satisfy EPA's long-standing guidance on the requirements of section 110(a)(1) of continued attainment. Continued attainment of the 1997 8-hour ozone NAAQS in the Jacksonville, Tampa Bay and Southeast Florida Areas will depend, in part, on the air quality measures discussed previously (see section II). In addition, Florida along with the assistance of local air pollution control agencies and local metropolitan planning organizations commit to verify the 1997 8-hour ozone status in each maintenance plan through periodic ozone precursor emission inventory updates. Emission inventory updates will be completed by 18 months following the end of the inventory year to verify continued attainment of the 1997 8-hour ozone standards.

III. Final Action

Pursuant to section 110 of the CAA, EPA is approving the maintenance plans addressing the 1997 8-hour ozone standards in the Jacksonville, Tampa Bay, and Southeast Florida Areas in Florida, submitted by FDEP on July 2, 2009. These maintenance plans ensure continued attainment of the 1997 8-hour ozone NAAQS through the maintenance year 2014. Further, Florida has provided additional information to indicate maintenance in these areas through 2018. EPA has evaluated Florida's submittals and has determined that it meets the applicable requirements of the CAA and EPA regulations, and is consistent with EPA policy.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comment be filed. This rule will be effective on July 26, 2010 without further notice unless the Agency receives adverse comment by June 28, 2010. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on July 26, 2010 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

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

[2] States are generally preempted from prescribing low volatility fuel requirements that are different from those prescribed by EPA under CAA section 211(c)(4). Therefore, EPA notes that consideration of the preemption provisions of 211(c)(4)(A) of the CAA would be required and that this contingency could only be implemented after such time that EPA grants a waiver to allow the mandate of a low volatility fuel, under CAA section 211(c)(4)(C). *See* "Guidance on use of opt-in to RFG and low RVP requirements in ozone SIPs" at *http://www.epa.gov/otaq/regs/fuels/rvpguide.pdf* and the "Boutique fuels list under Section 1541(b) of the Energy Policy Act" at *http://www.epa.gov/EPA–AIR/2006/December/Day-28/a22313.htm.*

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 26, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 11, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart K—Florida

■ 2. Section 52.520(e) is amended by adding new entries at the end of the table for the "110(a)(1) Maintenance Plan for the Southeast Florida Area", "110(a)(1) Maintenance Plan for the Tampa Area", and "110(a)(1) Maintenance Plan for the Jacksonville, Florida Area" to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
*	*	*	*	*
110(a)(1) Maintenance Plan for the Southeast Florida Area.	July 2, 2009	July 26, 2010.	[Insert citation of publication].	110(a)(1) maintenance plan for 1997 8-hour ozone NAAQS.
110(a)(1) Maintenance Plan for the Tampa, Florida Area.	July 2, 2009	July 26, 2010,	[Insert citation of publication].	110(a)(1) maintenance plan for 1997 8-hour ozone NAAQS.
110(a)(1) Maintenance Plan for the Jacksonville, Florida Area.	July 2, 2009	July 26, 2010.	[Insert citation of publication].	110(a)(1) maintenance plan for 1997 8-hour ozone NAAQS.

[FR Doc. 2010–12660 Filed 5–26–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 90, and 95

[WP Docket No. 07–100; FCC 10–75]

PLMR Licensing; Frequency Coordination and Eligibility Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In this document, the Commission, on its own motion, clarifies certain rules adopted in a previous decision in this proceeding to further explain our analysis underlying this decision. We also clarify the rule change removing the frequency coordination requirement for applications to modify private land mobile radio licenses by reducing the authorized bandwidth.

FOR FURTHER INFORMATION CONTACT: Scot Stone, Wireless Telecommunications Bureau, at (202) 418–0638, or by e-mail at *Scot.Stone@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communication Commission's *Order on Reconsideration* in WP Docket No. 07–100, FCC 10–75, adopted on May 4, 2010, and released on May 6, 2010. This document is available to the public at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–10–75A1.doc.*

Synopsis of the Order on Reconsideration

1. In this *Order on Reconsideration,* we act on our own motion to clarify the bases for certain rule changes adopted in the above-captioned proceeding. In the *Second Report and Order* published at 75 FR 19277, April 14, 2010, in this proceeding, we amended our rules to provide that Wireless Medical Telemetry Service (WMTS) operations are not permitted in the portions of the 1427–1432 MHz band where non-medical telemetry has primary status. We take this opportunity to further explain our analysis underlying this decision. We also clarify the rule change removing the frequency coordination requirement for applications to modify

private land mobile radio licenses by reducing the authorized bandwidth.

2. WMTS was established to enhance the reliability of medical telemetry equipment, and to ensure that wireless medical telemetry devices can operate free of harmful interference. The band 1427–1432 MHz is shared between medical and non-medical telemetry operations. Generally, WMTS has primary status in the lower half of the band, and non-medical telemetry is primary in the upper half. Our rules do not explicitly authorize WMTS systems to operate on a secondary basis on frequencies where non-medical telemetry is primary. In response to conflicting requests, the *Notice of Proposed Rulemaking* published at 72 FR 32582, June 13, 2007, in this proceeding sought comment on amending the rules to clarify whether such operations are permitted.

3. In the *Second Report and Order,* we concluded that secondary WMTS operations should not currently be authorized. We noted that the Commission created WMTS in order to make available spectrum where medical telemetry services could operate free from harmful interference, and expressed concern that the authorization of secondary WMTS operations could subject such operations to the same interference issues that the WMTS allocation was intended to address. Because the record suggested that WMTS devices can operate safely on a secondary basis under certain conditions, however, we sought comment in the *Second Further Notice of Proposed Rule Making* published at 75 FR 19340, April 14, 2010, on whether secondary WMTS operations should be sanctioned upon the adoption of adequate safeguards.

4. We take this opportunity to further clarify that our decision in the *Second Report and Order* not to permit additional secondary WMTS operations at this time was not based on a conclusion that operation of medical devices on a secondary basis is *per se* contrary to the public interest. Rather, we concluded only that appropriate and effective measures must be taken to detect and avoid harmful interference, and that the existing record did not provide a sufficient basis to determine that such measures could be developed. This decision pertained only to WMTS, taking into account the unique technical characteristics of the service, the current lack of safeguards in our rules to promote safe secondary operations, and the operations with which WMTS shares spectrum. Further, as noted above, the issue of whether to amend the rules to authorize secondary operations under appropriate conditions remains pending in this proceeding.

5. In addition, the *Second Report and Order* amended § 90.175(j) of the Commission's rules to remove the frequency coordination requirement for applications to modify existing licenses by reducing the authorized bandwidth. We found no need for a part 90 frequency coordinator to review such proposals in advance, because a simple reduction in authorized bandwidth cannot adversely impact co-channel or adjacent channel licensees. It may, however, increase the amount of power within a certain bandwidth. Consequently, we take this opportunity to remind licensees that the coordination and consent requirements set forth in § 1.924 of our rules regarding proposed new or modified operations in quiet zones continue to apply to such applications.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. 2010–12773 Filed 5–26–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0910051338–0151–02]

RIN 0648–XW52

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Reductions to Trip Limits for Five Groundfish Stocks

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

ACTION: Temporary rule; inseason adjustment of landing limits.

SUMMARY: This action decreases the landing limit for Gulf of Maine (GOM) haddock, Georges Bank (GB) haddock, GOM winter flounder, GB winter flounder, and GB yellowtail flounder for Northeast (NE) multispecies vessels fishing under common pool regulations for the 2010 fishing year (FY). This action is authorized by the regulations implementing Amendment 16 and Framework Adjustment 44 (FW 44) to the NE Multispecies Fishery Management Plan (FMP) and is intended to decrease the likelihood of harvest exceeding the subcomponent of the annual catch limit (ACL) allocated to the common pool (common pool sub-ACL) for each of these five stocks during FY 2010 (May 1, 2010, through April 30, 2011). This action is being taken to optimize the harvest of NE regulated multispecies under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective 0001 hours May 27, 2010, through April 30, 2011.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fishery Management Specialist, (978) 675–2153, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing possession and landing limits for vessels fishing under common pool regulations are found at 50 CFR 648.86. The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies day-at-sea (DAS), or fishing under a NE multispecies Small Vessel or Handgear A or B category permit, to fish for and retain NE multispecies, under specified conditions. The vessels fishing in the common pool are allocated a sub-ACL equivalent to that portion of the commercial groundfish ACL that is not allocated to the 17 approved NE multispecies sectors for FY 2010. The final rule implementing FW 44 (75 FR 18356, April 9, 2010) established ACLs for FY 2010. For FY 2010, the common pool sub-ACLs for these stocks are: 26 mt (57,320 lb) for GOM haddock; 254 mt (559,974 lb) for GB haddock; 25 mt (55,116 lb) for GOM winter flounder; 29 mt (63,934) lb for GB winter flounder; and 23 mt (50,706 lb) for GB yellowtail flounder. Of these stocks, only two currently have possession limits: 5,000 lb (2,268.0 kg) per trip for GB winter flounder; and 2,500 lb (1,134.0 kg) per trip for GB yellowtail flounder.

The regulations at § 648.86(o) authorize the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) to increase or decrease the trip limits for vessels in the common pool to prevent over-harvesting or under-harvesting the common pool sub-ACL. The relatively small sub-ACLs allocated to the common pool in FY 2010, combined with the initial trip limits, could result in the entire sub-ACL being harvested by very few fishing trips. Exceeding the common pool sub-ACL prior to April 30, 2011, would require drastic trip limit reductions and/or imposition of differential DAS counting for the remainder of FY 2010 to minimize the overage, and would trigger accountability measures (AMs) in FY 2011, including differential DAS counting, to prevent future overages.

Initial Vessel Monitoring System (VMS) and dealer reports indicate that approximately 33.4 percent of the GOM winter flounder, 13.7 percent of the GB haddock, 11.2 percent of the GB winter flounder, and 34.4 percent of the GB yellowtail flounder common pool sub-ACLs has been harvested as of May 18, 2010. Very little GOM haddock has been harvested; however, the sub-ACL for this stock is small enough that it could be harvested by a few large trips, given that there is no current possession limit.

Based on this information, the Regional Administrator is imposing the trip limit changes detailed in the following table, effective May 27, 2010, through April 30, 2011.

Stock	Trip Limit
GOM Haddock	1,000 lb (453.6 kg) per trip
GB Haddock	10,000 (4,535.9 kg) lb per trip
GOM Winter Flounder	250 lb (113.4 kg) per trip
GB Winter Flounder	1,000 lb (453.6 kg) per trip
GB Yellowtail Flounder	1,000 lb (453.6 kg) per trip

Catch will be closely monitored through dealer-reported landings, VMS catch reports, and other available information. Further inseason adjustments to increase or decrease the trip limits, as well as differential DAS measures may be considered, based on updated catch data and projections. Conversely, if the common pool sub-ACL is projected to be under-harvested by the end of FY 2010, in-season adjustments to increase the trip limit will be considered.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment, and a delayed effectiveness, would be impracticable and contrary to the public interest. The regulations under § 648.86(o) grant the Regional Administrator the authority to adjust the NE multispecies trip limits to prevent over-harvesting or under-harvesting the common pool sub-ACLs. This action will implement a more restrictive trip limit for GOM haddock, GB haddock, GOM winter flounder, GB winter flounder, and GB yellowtail flounder in order to ensure that the common pool sub-ACLs are not over-harvested, and the biological and economic objectives of the FMP are met.

It is important to take this action immediately because, based on current data and projections, continuation of the status quo trip limit will result reaching each of the respective common pool sub-ACLs prior to the end of FY 2010. Attainment of any of the common pool sub-ACLs prior to April 30, 2011, would result in lower trip limits and/or differential DAS counting for the remainder of FY 2010 and would trigger end-of-the-year AMs for the common pool in FY 2011. These restrictions could result in the loss of yield of other valuable species caught by vessels in the common pool.

The information that is the basis for this action includes ACLs updated after May 1, 2010, and recent catch data. The time necessary to provide for prior notice and comment, and delayed effectiveness for this action would prevent NMFS from implementing a reduced trip limit in a timely manner. A resulting delay in the curtailment of catch rate of these five stocks may result in less revenue for the fishing industry and be counter to the objective of optimum yield.

The Regional Administrator's authority to decrease trip limits for the common pool to help ensure that the common pool sub-ACL for all NE multispecies are harvested, but not exceeded, was considered and open to public comment during the development of FW 44. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: May 24, 2010.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–12785 Filed 5–24–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 102
Thursday, May 27, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2008-0016]

RIN 0579-AD15

Importation of Mexican Hass Avocados; Additional Shipping Options

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations for the importation of Hass avocados originating in Michoacan, Mexico, into the United States by adding the option to ship avocados to the United States in bulk shipping bins when safeguarding is maintained from the packinghouse to the port of first arrival in the United States and by making it clear that the avocados may be shipped by land, sea, or air. We are also proposing to allow avocados from multiple packinghouses that participate in the avocado export program to be combined into one consignment. We are proposing these actions in response to requests from the Government of Mexico and inquiries from a U.S. maritime port. These actions will allow additional options for shipping Hass avocados from Mexico to the United States and allow Mexican exporters to ship full container or truck loads from multiple packinghouses while continuing to provide an appropriate level of protection against the introduction of plant pests.

DATES: We will consider all comments that we receive on or before July 26, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0016*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2008-0016, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0016.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart–Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-50) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

Under the regulations in § 319.56-30 (referred to below as the regulations), fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be imported into specified areas of the United States after meeting the requirements of a systems approach. The systems approach, which is described in the regulations, includes surveys for pathway pests in municipalities and orchards; municipality, orchard, and packinghouse certification; protection of harvested fruit from infestation; shipment in sealed, refrigerated trucks or containers; and the cutting and inspection of fruit in orchards, in packinghouses, and at ports of entry. The overlap of the phytosanitary measures helps ensure the effectiveness of the systems approach.

This systems approach has been successful mitigating the pest risk of Hass avocados. Between 1997 and 2006, more than 28 million Hass avocados from Mexico were cut open and examined for pests. These included fruit from wild trees, backyards, and packinghouses and fruit selected at the border for inspection. During this time, only twice were pests associated with Mexican avocados detected. In both cases, a small avocado seed weevil, *Contrachelus perseae*, was found on backyard trees in avocados that were not of the Hass variety. Both municipalities where these avocados originated were suspended from the program until eradication actions were completed.

Due largely to the success of the systems approach in mitigating the pest risk associated with Hass avocados, the Mexican Hass avocado import program has expanded from avocados being authorized for entry only during the months of November through February and only in 19 northeastern States and the District of Columbia to its current state, with avocados being allowed entry year-round to all 50 States.

Given the long-term success and stability of the Mexican avocado import program, the national plant protection organization (NPPO) of Mexico has asked us to consider adjustments to the program to two aspects of the program in order to provide greater flexibility to packers and shippers. These requested adjustments, which are explained in detail below, would allow avocados to be shipped in bulk bins and in ship holds rather than only overland in boxes, and would enable shippers to place consignments from more than one packinghouse in a truck or shipping container.

As a result of these requests, the Animal and Plant Health Inspection Service (APHIS) has reviewed the pest risks associated with the importation of Hass avocados originating in Michoacan, Mexico, in bulk shipping bins to maritime ports in the United States, and have prepared a risk management document summarizing

the findings of that review.[1] In that document, we conclude that as long as proper screening or safeguarding of exposed bulk loads and consignments from multiple packinghouses is maintained and the remaining additional safeguards in the regulations are employed, there would be no additional pest risk involved.

We therefore propose to amend the regulations governing the importation of Hass avocados originating in Michoacan, Mexico, into the United States to include an option for the avocados to be exported to the United States in bulk bins, and to allow consignments to be assembled from multiple packinghouses under certain conditions. The fruit would continue to have to meet all the requirements already set forth in the regulations. We would also amend the regulations to make it clear that the avocados may be shipped by land, sea, or air.

Bulk Consignments

The regulations in § 319.56-30(c)(3)(vii) require that the avocados be packed in clean, new boxes or clean plastic reusable crates. The boxes or crates must be clearly marked with the identity of the grower, packinghouse, and exporter. We established these requirements at the inception of the avocado import program because shipping in small, individually marked boxes allows greater capability for traceback in the event of a pest detection. This method of shipping is not efficient, however, and most fruits and vegetables are shipped in bulk shipping bins. The NPPO of Mexico has asked us to allow Hass avocados originating in Michoacan to be imported in bulk consignments packed in large boxes or cardboard bins.

We would amend the regulations to add the option of packing the avocados in bulk shipping bins. The bins would have to be marked in the same way currently required for the boxes or crates.

The regulations also require that boxes of avocados must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through Mexico to the port of first arrival in the United States. This provision protects against the avocados becoming infested with fruit flies while in transit.

However, because the bulk shipping containers are open-topped, we propose to amend the regulations to specify that the boxes, bins, or crates would have to be safeguarded from insects by covering with a lid, insect-proof mesh, or by some other barrier that prevents insects from entering the boxes or bins. Those safeguards would have to be intact at the time the consignment arrives in the United States. This will provide an additional layer of protection against insects of concern.

The regulations also contain an outdated provision requiring that between January 31, 2005, and January 31, 2007, the boxes or crates to be marked with a statement that the avocados are not for distribution in California, Florida, Hawaii, Puerto Rico, or U.S. Territories. We would remove that sentence.

Multiple Packinghouses

The regulations in § 319.56-30(c)(3)(viii) require that the boxes of avocados must be placed in a refrigerated truck or refrigerated shipping container and remain in that truck or container while in transit through Mexico to the port of first arrival in the United States. Before leaving the packinghouse, the truck or container must be secured by the Mexican NPPO with a seal that will be broken when the truck or container is opened. Once sealed, the truck or container must remain sealed until it reaches the port of first arrival in the United States.

Because of this requirement that the truck or container be sealed at the packinghouse and not opened until the truck or container arrives in the United States, shippers are precluded from stopping at a second eligible packinghouse to "top off" trucks or containers that are only partially full at the time they leave the first packinghouse. The NPPO of Mexico has asked us to allow avocados from multiple packinghouses that participate in the avocado export program to be combined into one consignment.

In response to this request, we propose to amend paragraph (c)(3)(viii) of § 319.56-30 to specify that the refrigerated truck or refrigerated container must be secured by the Mexican NPPO with a seal that will be broken by the Mexican NPPO if the truck or container is opened to have more avocados added from another participating packinghouse. The refrigerated truck or refrigerated container would then have to be resealed by the Mexican NPPO at each packinghouse that contributes to the shipment and then remain unopened until it reaches the port of first arrival in the United States or to the port of export for bulk shipments.

Methods of Shipping

The regulations do not specify any particular means of conveyance that must be used for transporting avocados from Mexico to the United States. When the regulations were originally established, they did refer to shipments moved by truck, rail, or air, but those references were in the context of provisions that specified where shipments could enter the United States and the transit corridors within the United States through which they could travel. Those provisions were necessary when the distribution of the avocados was limited to 19 northeastern States and the District of Columbia and have since been removed from the regulations. Officials at the maritime port of San Diego have expressed an interest in receiving consignments of Hass avocados from Mexico through that port. We have reviewed the regulations in light of those inquiries and have determined that, in order to make it clear that shipments may be moved by land, sea, or air, we should add references to the port of export in Mexico in paragraph (c)(3)(viii) of § 319.56-30 of the regulations. That paragraph currently begins "The boxes must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through Mexico to the port of first arrival in the United States." We would amend that sentence to refer to "the port of export for consignments shipped by air or sea or the port of first arrival in the United States for consignments shipped by land." We would make a similar change at the end of the paragraph in the sentence that currently refers to trucks and containers remaining unopened until they reach the port of first arrival in the United States.

Miscellaneous Changes

We are also proposing to remove paragraphs (f) and (g) of § 319.56-30 and to redesignate paragraphs (h) and (i) of that section as paragraphs (f) and (g). Paragraph (f), which specifies that avocados may enter the United States only through ports of entry located in a State where distribution of the fruit is authorized, is out of date. Paragraphs (g) and (h), which provide for inspection of avocados at the port of arrival, are duplicative.

[1] The risk management document, titled "Importation of Fresh Commercial Avocado (*Persea americana* Mill var. Hass) Fruit in Bulk Shipments from Mexico into the United States," can be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or in our reading room. A copy may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This analysis examines impacts for U.S. small entities of a proposed rule that would allow fresh Hass avocado originating in Michoacan, Mexico, to be imported into the United States by palletized bulk consignments in ship holds and in consignments from multiple packinghouses when phytosanitary safeguarding is maintained from the packinghouse to the first maritime ports of entry in the United States.

California produces nearly all Hass avocado grown in the United States.[2] As shown in table 1, California's fresh Hass avocado production has fluctuated in recent years, and was significantly higher in 2006, at about 257,000 metric tons (MT) valued at $1.6 billion. During this same period, both U.S. consumption and imports have trended upward, totaling about 443,000 MT and about 193,000 MT, respectively, in 2006. U.S. per capita consumption of fresh avocado has shown strong growth, from 2.2 pounds in 2002 to nearly 3.3 pounds in 2006.

The United States is a large net importer of Hass avocado. Over the 5-year period 2002-2006, annual imports averaged about 172,000 MT, and exports averaged less than 3,000 MT. During this time, imports provided 44 percent of U.S. consumption. Almost all fresh Hass avocado imports come from Mexico and Chile. As described below, the data for the first 11 months of 2007 show an exceptionally large increase in U.S. imports; they totaled nearly 313,000 MT, an 85 percent increase over 2006 total imports, with over 95 percent shipped from Mexico (64.6 percent) and Chile (30.7 percent).

TABLE 1.—U.S. AVOCADO PRODUCTION, CONSUMPTION, PRICE, EXPORTS AND IMPORTS, 2002-2006, METRIC TONS

Year	Production	Consumption	Price	Exports	Imports
2002	169,523	286,686	$2,062	1,849	119,012
2003	142,271	282,224	$2,494	1,199	141,152
2004	182,604	326,308	$2,016	1,600	145,304
2005	126,622	389,498	$2,072	1,331	264,207
2006	256,858	442,960	$1,283	6,576	192,678
5-year average (2002-2006)	175,576	345,535	$1,985	2,511	172,470

Note: Consumption is calculated by subtracting exports from production and adding imports.

Sources: Production and price data are from California Avocado Growers, Pounds and Dollars by Variety (*http://www.avocado.org/growers/poundsdollars.php*) ; export and import data are from the U.S. Census Bureau, as reported by Global Trade Information Services, Inc., Country Edition, August 2007.

Currently, avocado that meets the requirements of a systems approach described in § 319.56-30, may be imported overland from Michoacan, Mexico, into all 50 States by truck. This proposal would amend the regulations for the importation of Hass avocado from Mexico into the United States by including the option to import avocado by palletized bulk consignments in ship holds and to combine consignments from multiple packinghouses when phytosanitary safeguarding is maintained from the packinghouse to the first maritime port of entry in the United States.

Mexico is the largest producer of Hass avocado in the world (about 34 percent of world production). Recent data show Mexico's production increasing from about 897,000 MT in 2002 to about 1,072,000 MT in 2006, for an average of about 964,500 MT. Mexico is also the world's largest consumer of avocado (about 32 percent), with per capita consumption averaging 15.6 pounds. Mexico's exports increased from about 94,000 MT in 2002 to about 208,000 MT in 2006, for an average of 152,000 MT. Exports to the United States over the same period ranged between about 39,000 MT and about 119,000 MT, and averaged about 80,000 MT.

Not all Hass avocado produced in Mexico is eligible to be exported to the United States. To be eligible, the avocado has to be produced in municipalities that are certified as pest-free by APHIS. Currently, APHIS has certified 40,266 hectares in 5,293 avocado orchards for export to the United States. Based on an average yield of 10.36 MT per hectare, this bearing area would yield a total of 417,160 MT. This total is far above Mexico's largest recorded exports of 229,095 MT in 2005.

Mexico's access to the U.S. Hass avocado market has expanded step-by-step over the past 11 years, based on successive pest risk assessments: From 19 northeastern States, November through February; to 32 Eastern and Midwestern States, mid-October to mid-April; to 47 States year-round (all except California, Florida and Hawaii). In 2007, Mexico's Hass avocado exporters had year-round access to all 50 States for the first time. Mexico's increased access has been matched by expanding consumer demand. Per-capita avocado consumption increased from 1.22 pounds (total consumption of 325 million pounds) in 1996, the year before the first major entry of Mexican avocado, to 3.26 pounds (total consumption of 976 million pounds) in 2006. The strong demand for Hass avocado is reflected in the fact that, other than for 2006, there has been no noticeable decline in price during this time.[3]

As mentioned, total U.S. imports increased by about 85 percent during the first 11 months of 2007, compared to the 2006 total. This sharp increase can be attributed to the beginning in February 2007 of year-round market access to all 50 States for fresh Hass avocado from Mexico, a freeze in Chile, and a decline in domestic production because of wildfires in southern

[2] California Avocado Growers, Pounds and Dollars by Variety. (*http://www.avocado.org/growers/poundsdollars.php*).

[3] California Avocado Growers, Pounds and Dollars by Variety (*http://www.avocado.org/growers/poundsdollars.php*).

California. It is unknown whether Mexican exports will continue at this level when production in Chile and California is restored to pre-freeze and pre-wildfire levels, although Mexico's exporters have the capacity to do so.[4]

Because Mexico's Hass avocado exporters have year-around access to all 50 States and there is no volume restriction, any impact of the proposed rule on U.S. entities will be determined by market forces of supply and demand and the extent to which the maritime consignments are in addition to rather than in place of consignments by truck. We welcome public comment that may help us to better understand possible effects of the rule for U.S. Hass avocado producers.

Effects on Small Entities

The Small Business Administration (SBA) has established guidelines for determining which firms are to be considered small under the Regulatory Flexibility Act. This rule could affect U.S. producers of fresh avocado (North American Industry Classification System [NAICS] 111339) and some importers of fresh avocado. Avocado growers are classified as small if their annual receipts are not more than $750,000.

According to the 2002 Census of Agriculture (most recent data on farm sizes), there were 4,445 farms producing avocado in the United States. Overall, 4,332 farms (97.5 percent) had a total of 35,694 acres in avocado (about 60 percent of the total planted area) and are considered small, with an average of about 8.2 acres and an average annual income of about $48,610 in 2002. The remaining 2.5 percent of producers planted a total of 23,568 acres (40 percent) in avocado. They had an average of 209 acres and average annual income of about $1,230,470. As noted, Hass avocado exports from Michoacan, Mexico, are currently allowed to enter all 50 States throughout the year. Since there is no limit to the volume that may be shipped, market forces of supply and demand and the extent to which the maritime consignments are in addition to rather than in place of consignments by truck will determine the size of any market effects of the rule. APHIS welcomes public comment on the proposed rule's possible impacts.

Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule has no new mandatory reporting, recordkeeping, or other compliance requirements. U.S. entities that may be affected by the rule voluntarily engage in trade transactions. Any reporting or other requirements would be those normally associated with the regular transactions involved in doing business.

Duplication, Overlap, and Conflict with Existing Rules and Regulations

APHIS has not identified any duplication, overlap, or conflict of the proposed rule with other Federal rules.

Alternatives

No significant alternatives were identified that would meet the objectives of the proposed rule.

Executive Order 12988

This proposed rule would allow Hass avocados to be imported into the United States from Mexico in bulk consignments and in consignments from multiple packinghouses when phytosanitary safeguarding is maintained from the packinghouse to the first port of entry in the United States. If this proposed rule is adopted, State and local laws and regulations regarding Hass avocados imported under this rule would be preempted while the fruit is in foreign commerce. Fresh avocados are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319-56.30 is amended as follows:

a. In paragraph (c)(3)(v), by removing the words "shipping boxes" and adding the words "containers in which they will be shipped" in their place.

b. In paragraph (c)(3)(vi), by removing the words "in boxes" and adding the words "for shipping" in their place.

c. By revising paragraphs (c)(3)(vii) and (c)(3)(viii) to read as set forth below.

d. By removing paragraphs (f) and (g) and redesignating paragraphs (h) and (i) as paragraphs (f) and (g), respectively.

e. In newly redesignated paragraph (g), by adding the words ", crates, or bulk shipping bins" after the words "original shipping boxes" and by removing the words "new boxes" and adding the words "new packaging" in their place.

§ 319.56-30 Hass avocados from Michoacan, Mexico.

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(c) * * *

(3) * * *

(vii) The avocados must be packed in clean, new boxes or bulk shipping bins, or in clean plastic reusable crates. The boxes, bins, or crates must be clearly marked with the identity of the grower, packinghouse, and exporter, and with the statement "Not for importation or distribution in Puerto Rico or U.S. Territories." The boxes, bins, or crates must be covered with a lid, insect-proof mesh, or other material to protect the avocados from fruit-fly infestation prior to leaving the packinghouse. Those safeguards must be intact at the time the consignment arrives in the United States.

(viii) The packed avocados must be places in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through Mexico to the port of export for consignments shipped by air or sea or the port of first arrival in the United States for consignments shipped by land. Prior to leaving the packinghouse, the truck or container must be secured by the Mexican NPPO with a seal that will be broken when the truck or container is opened. The seal may be broken and a new seal applied by the Mexican NPPO if the truck or container stops at another approved packinghouse for additional avocados meeting the requirements of this section to be placed in the truck or container. The seal on the refrigerated truck or refrigerated container must be intact at the time the truck or container reaches the port of

[4] United States Department of Agriculture/Foreign Agricultural Service, Mexico Avocado Annual 2007, Global Agricultural Information Network Report Number MX7084.

export in Mexico or the port of first arrival in the United States.

* * * * *

Done in Washington, DC, this 20th day of May 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–12823 Filed 5–26–10: 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–10–0029; FV10–930–2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate for the 2010–2011 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Cherry Industry Administrative Board (Board) for the 2010–2011 fiscal period from $0.0066 to $0.0075 per pound of assessable tart cherries. The Board locally administers the marketing order which regulates the handling of tart cherries grown in Michigan, New York, Oregon, Pennsylvania, Utah, Washington, and Wisconsin. Assessments upon tart cherry handlers are used by the Board to fund reasonable and necessary expenses of the program. The 2010–2011 fiscal period year begins October 1, 2010. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by July 26, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or Internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; E-mail: *Kenneth.Johnson@ams.usda.gov*.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable tart cherries beginning October 1, 2010, and continue until amended, suspended, or terminated.

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

This rule would increase the assessment rate established for the Board for the 2010–2011 and subsequent fiscal periods from $0.0066 to $0.0075 per pound of assessable tart cherries. The 2010–2011 fiscal period begins on October 1, 2010, and ends on September 30, 2011.

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

Authority to fix the rate of assessment to be paid by each handler and for the Board to collect such assessments appears in § 930.41 of the order. That section also provides that each part of an assessment rate intended to cover administrative costs and research and promotional costs be identified. Section 930.48 of the order provides that the Board, with the approval of the USDA, may establish or provide for the establishment of production research, market research and development, and/or promotional activities designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cherries. The expense of such projects is paid from funds collected pursuant to § 930.41 (Assessments), or from such other funds as approved by the USDA.

For the 2006–2007 fiscal year, the Board recommended, and USDA approved, an assessment rate of $0.0066 per pound of tart cherries handled that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on January 26, 2010, and recommended 2010–2011 expenditures of $1,665,000 and an assessment rate of $0.0075 per pound of tart cherries. The Board's recommendation was unanimous. In comparison, last year's budgeted

expenses were $1,558,900. The Board recommended that the assessment rate be increased to cover increases in administrative expenses. The assessment rate has not been increased in four years. The current assessment rate to cover administrative costs is $0.0016. The proposed increase would raise the assessment rate for administrative expenses to $0.0025. In addition, a portion of the assessment rate ($0.005 per pound of cherries) would continue to fund the Board's research and promotion program. The total assessment rate for 2010–2011 and beyond would be $0.0075, an increase of approximately 14 percent over the current rate of $0.0066.

The major expenditures recommended by the Board for the 2010–2011 year include $1,150,000 for promotion, $213,000 for personnel, $109,000 for compliance, $102,000 for office expenses, $86,000 for Board meetings, and $5,000 for industry educational efforts. Budgeted expenses for major items in 2009–2010 were $1,150,000 for promotion, $175,900 for personnel, $92,800 for Board meetings, $44,200 for compliance, $58,400 for office expenses, and $2,500 for industry educational efforts.

In deriving the recommended assessment rate, the Board estimated assessable tart cherry production for the fiscal period at 230 million pounds. Therefore, total assessment income for 2010–2011 is estimated at $1,725,000 (230 million pounds x $0.0075). This would be adequate to cover budgeted expenses. Any excess funds would be placed in the financial reserve, which is estimated to be $267,000, well within the approximately six months' operating expenses as required by § 930.42(a).

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

Although the assessment rate would be effective for an indefinite period, the Board would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2010–2011 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1997/98 through 2008/09, approximately 96 percent of the U.S. tart cherry crop, or 244.4 million pounds, was processed annually. Of the 244.4 million pounds of tart cherries processed, 61 percent was frozen, 27 percent was canned, and 12 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 34,650 acres in 2008/09. This represents a 31 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

This rule would increase the assessment rate established for the Board for the 2010–2011 and subsequent fiscal periods from $0.0066 to $0.0075 per pound of assessable tart cherries. The 2010–2011 fiscal period begins on October 1, 2010, and ends on September 30, 2011.

The Board discussed continuing the existing assessment rate, but concluded that the rate needed to be increased in order to meet recommended expenses. The assessment rate has not been increased for four years.

A review of preliminary information pertaining to the upcoming fiscal period indicates that the grower price for tart cherries for the 2010–2011 season could range between $0.15 and $0.20 per pound. Therefore, the estimated assessment revenue for the 2010–2011 fiscal period as a percentage of total grower revenue could be or range between 3.75 and 5 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the

compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Assessment rate.

On and after October 1, 2010, the assessment rate imposed on handlers shall be $0.0075 per pound of tart cherries grown in the production area and utilized in the production of tart cherry products. Included in this rate is $0.005 per pound of cherries to cover the cost of the research and promotion program and $0.0025 per pound of cherries to cover administrative expenses.

Dated: May 19, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–12466 Filed 5–26–10; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 105; Docket No. TTB–2010–0003]

RIN 1513–AB41

Proposed Establishment of the Pine Mountain-Mayacmas Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 4,600-acre "Pine Mountain-Mayacmas" American viticultural area in portions of Mendocino and Sonoma Counties, California. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before July 26, 2010.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov:* Use the comment form for this notice as posted within Docket No. TTB–2010–0003 on "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments we receive about this proposal within Docket No. TTB–2010–0003 at *http://www.regulations.gov.* A direct link to this docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 105. You also may view copies of this notice, all supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; phone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographic features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United

States Geological Survey (USGS) maps; and

• A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Pine Mountain-Mayacmas Petition

Sara Schorske of Compliance Service of America prepared and submitted a petition on her own behalf and that of local wine industry members to establish the 4,600-acre Pine Mountain-Mayacmas American viticultural area in northern California. Located approximately 90 miles north of San Francisco and 5 miles north-northeast of Cloverdale, the proposed viticultural area surrounds much of Pine Mountain, which rises to the east of U.S. 101 and the Russian River, to the north of the river's Big Sulphur Creek tributary, and to the immediate west of the Mayacmas Mountains. About two-thirds of the proposed viticultural area lies in the extreme southern portion of Mendocino County, with the remaining one-third located in the extreme northern portion of Sonoma County.

According to the petition and the written boundary description, the proposed Pine Mountain-Mayacmas viticultural area is totally within the multicounty North Coast viticultural area (27 CFR 9.30), and it overlaps the northernmost portions of the established Alexander Valley viticultural area (27 CFR 9.53) and the Northern Sonoma viticultural area (27 CFR 9.70). The proposed area currently has 230 acres of commercial vineyards, the petition states, with another 150 acres under development.

The petition states that the distinguishing features of the proposed Pine Mountain-Mayacmas viticultural area include its mountainous soils, steep topography with high elevations, and a growing season climate that contrasts with the climate of the Alexander Valley floor below. Also, the petition notes that Pine Mountain-Mayacmas vineyards generally are small, 5- to 20-acre plots located on flat or gently sloping patches of ground found within the proposed area's steep mountainous terrain, which contrast with the larger vineyards found on the valley floor.

We summarize below the supporting evidence presented in the petition.

Name Evidence

According to the petition, the "Pine Mountain-Mayacmas" name combines the names of the major geographical features found within the proposed viticultural area and serves to locate the proposed area within northern California. As shown on the provided USGS maps, the proposed viticultural area surrounds Pine Mountain, a 3,000-foot peak located on the western flank of the Mayacmas Mountains in northern Sonoma and southern Mendocino Counties.

The northern portion of the 1998 USGS Asti, California, quadrangle map shows Pine Mountain rising to 3,000 feet in southern Mendocino County, near the Sonoma County line. Also, as shown on the Asti map, Pine Mountain Road climbs from the Cloverdale area and marks a portion of the proposed viticultural area's southern boundary.

The October 2000 edition of the California State Automobile Association's Mendocino and Sonoma Coast road map shows the Mayacamas Mountains spanning north-northwest from approximately Mount St. Helena, and continuing through the Pine Mountain region to Lake Mendocino. A 1956 regional map produced by the State of California Division of Forestry, as provided in the petition, shows Pine Mountain northeast of Cloverdale.

The 1982 publication, "Cloverdale Then & Now—Being a History of Cloverdale, California, Its Environs, and Families," refers to the Pine Mountain junction and the Pine Mountain toll road in discussing the early roads of the region (page 3). This publication also includes a 1942 picture of homesteaders Hubert and George Smith on Pine Mountain (page 6). A 1985 article in the Redwood Rancher, "The Early Wineries of the Cloverdale Area," by William Cordtz, discusses the grape growing of Mrs. Emily Preston in the late 1800s. The article states that the Preston Winery "was on Pine Mountain immediately north of the present U.S. 101 bridge north of Cloverdale."

The petition also notes that the Pine Mountain Mineral Water Company bottled water from springs located on Pine Mountain for more than 50 years, until the mid-1900s. A copy of one of the company's bottle labels included in the petition prominently displays the "Pine Mountain" name with a tall mountain in the background and springs in the foreground.

As noted in the petition and as shown on USGS maps, the Mayacmas Mountain range covers portions of Mendocino, Sonoma, Napa, and Lake Counties. The Mayacmas Mountain range divides Lake County from Mendocino, Sonoma, and Napa Counties, and, the petition states, the range defines the northern side of the Alexander Valley. According to the petition, the mountains were named for the Mayacmas Indians. While the name is sometimes spelled "Mayacamas" or "Maacama," "Mayacmas" is the official spelling used on USGS maps.

Noting that the name "Pine Mountain" is commonly used throughout the United States, the petition states that the use of "Mayacmas" in the proposed viticultural area's name acts as a geographic modifier that pinpoints the proposed viticultural area's northern California location. The petitioners believe that "California" is not an appropriate geographical modifier for the viticultural area's name since there are other Pine Mountains in California. The USGS Geographical Names Information System (GNIS), for example, lists 21 additional "Pine Mountains" in California.

The petition also notes that the Mayacmas Mountains "are closely associated with winegrowing" since the range is home to many vineyards and wineries. The Mayacmas range, the petition states, divides the grape growing regions of Ukiah and Clear Lake, and borders the Alexander Valley (27 CFR 9.53), Napa Valley (27 CFR 9.23), and Sonoma Valley (27 CFR 9.29) viticultural areas. The petitioners believe that "Mayacmas is an ideal modifier" to distinguish the proposed viticultural area "from other places with similar names" and will "help consumers easily ascertain its general location."

Boundary Evidence

According to the petition, the proposed 4,600-acre Pine Mountain-Mayacmas viticultural area encompasses those portions of Pine Mountain and its lower slopes that are suitable for viticulture. The petition states that the boundary was drawn in consideration of the mountain's varying steepness, water availability, and solar orientation.

The petition notes that within the proposed Pine Mountain-Mayacmas viticultural area vineyard development is limited to the small, 5- to 20-acre plots of flatter ground found within the proposed area's steep terrain. Limiting factors for these mountain vineyard operations, the petition explains, include the needs for tractor use and economical erosion control. The mountain vineyards' patchwork arrangement, the petition continues, contrasts to the large vineyards, some of 100 acres or more, found on the floor of the nearby Alexander Valley.

The petition states that the south and southwest sides of Pine Mountain, included within the proposed area's boundary, have favorable growing season solar orientation as compared with the less sunny sides of the mountain outside of the proposed

boundary line. Successful viticulture depends partially on a favorable solar orientation to provide adequate growing season sunshine and heat accumulation. The petition summarizes the rationale for the proposed Pine Mountain-Mayacmas viticultural area boundary as shown in the table below:

Sides of Pine Mountain in relationship to the proposed viticultural area	Viticultural considerations
North: Outside boundary line	Inadequate sun and heat.
East: Outside boundary line	Inadequate sun and heat.
South and southwest at higher elevations: Inside boundary line	Some gentle slopes, good sun exposure and heat accumulation, and available water.
South at lower elevations below Pine Mountain Road: Outside boundary line.	Steep terrain and lack of water.
West at higher elevations: Inside boundary line	Some gentle slopes, good sun exposure and heat accumulation, and available water.
West at lower elevations: Outside boundary line	Steep terrain.

The history of grape-growing and winemaking in the Pine Mountain region goes back to the 19th century, according to the petition. The 1877 "Thompson Historical Atlas Map of Sonoma County" lists several grape growers with vineyards on or near Pine Mountain. These included, the petition states, George Allen's 2-acre vineyard on the slopes of Pine Mountain, J.G. Rains' 10-acre vineyard, Clay Worth's 6-acre vineyard at the base of Pine Mountain, and Wellington Appleton, who owned 144 acres on the mountain's western slopes.

About 1910, the petition states, Steve Ratto developed a vineyard and winery at the 1,700-foot elevation of Pine Mountain, and the site is located inside the southwest boundary line of the proposed viticultural area. The winery site is shown on a 1956 State of California Division of Forestry map for the region included with the petition. The petition notes that remnants of the old winery building are still visible and that modern vineyards grow on the site as well.

The petition also describes the large vineyard and winery operation of Hartwell and Emily Preston. The Preston Ranch, dating back to 1869, came to include over 1,500 acres of land, a 10-acre vineyard, an oak cooperage, and a large winery and wine cellar. An October 29, 1874, article in the Russian River Flag newspaper lauded Preston's "Fruit and Wine Ranch," and noted that it stretched from the eastern bank of the Russian River to the slopes of Pine Mountain. Reports from the time state that Preston harvested 40 tons of grapes from his vineyards in 1889. Much of the Preston winery's output was used in the various patent medicines prescribed by Emily Preston, a well-known faith healer of the time. According to the USGS Cloverdale Quadrangle map and a map included in the petition, the former Preston vineyard lies about a mile outside of the western boundary line of the proposed Pine Mountain-Mayacmas viticultural area.

Distinguishing Features

Differences in topography, climate, and soils distinguish the proposed Pine Mountain-Mayacmas viticultural area from the surrounding areas, according to the petition.

Topography

The proposed Pine Mountain-Mayacmas viticultural area is higher in elevation, with steeper terrain, than the lower, flatter Alexander Valley to the proposed viticultural area's southwest. Elevations within the proposed viticultural area begin at 1,600 feet and rise to the 3,000-foot summit of Pine Mountain. The terrain within the proposed viticultural area is generally steep and mountainous. Patches of flatter ground within this steep terrain allow for the development of areas of small, 5- to 20-acre vineyards.

In contrast, to the west and south, the Alexander Valley floor rises from about 260 feet in elevation at the Russian River and continues easterly and upward to the foothills of Pine Mountain and the Mayacmas Mountains. This flatter, lower terrain allows for the development of larger vineyards, some 100 acres or more, with different viticultural characteristics than found in the small mountain vineyards. Areas to the north and east of the proposed viticultural area, while similar in elevation and steepness, lack the flatter patches of ground and water resources needed for vineyard development.

Climate

The distinctive growing season climatic factors of the proposed Pine Mountain-Mayacmas viticultural area include limited marine fog cover, abundant sunshine, mild diurnal temperature changes, significant wind, and heavy winter rainfall, according to the petition. Quoting local growers, the petition states that the cooler spring climate of Pine Mountain delays the start of vine growth by about 2 weeks, as compared to valley vineyards. The sunnier summer growing conditions of the proposed viticultural area ensure that grape harvest starts at the same time as on the foggier valley floor. The petition also notes that the proposed area's growing season climate is cooler during the day, warmer at night, windier, and wetter than the surrounding, lower elevation grape growing areas.

In support of these conclusions, the petitioners gathered climatic data from six regional weather stations within and surrounding the proposed viticultural area. These were: Cloverdale (southwest of Pine Mountain at 333 feet), Hopland East (north-northwest of Pine Mountain at 1,160 feet), Hopland West (northwest of Pine Mountain at 1,200 feet), Sanel Valley (north-northwest of Pine Mountain at 525 feet), Alexander Valley (at the Seghesio Vineyards valley weather station, south-southwest of Pine Mountain at 350 feet), and Pine Mountain (at the Seghesio Vineyards mountain weather station, within the proposed viticultural area's boundary line at 2,600 feet in elevation).

Fog: Despite the later start of the grape growing season at the higher elevations of the proposed viticultural area, the differing elevation-based fog patterns found on Pine Mountain allow grape growth within the proposed viticultural area to catch up with the earlier start of the valley vineyards, according to local growers. The petition states that the heavy fog that frequently blankets the surrounding valley floors fails to rise to the 1,600-foot minimum elevation of the proposed Pine Mountain-Mayacmas viticultural area boundary line. The petition describes the mountain as a sunny island floating above the fog, and the petition included pictorial documentation of this phenomenon.

The petition states that the proposed Pine Mountain-Mayacmas viticultural area averages 3 to 4 hours more sunlight

a day than the Alexander Valley during the growing season. While the valley remains blanketed under a heavy fog layer until late morning and then again later in the afternoon, the higher Pine Mountain elevations routinely bask in sunshine all day without fog. The extra sunlight and resulting longer daily period of warmth found on the higher slopes of Pine Mountain allow grapes to develop quickly and mature at the same time as those grown in valley floor vineyards.

Temperatures: During the growing season, daytime high temperatures within the proposed Pine Mountain-Mayacmas viticultural area are consistently cooler, and overnight temperatures are consistently warmer, than those found on the Alexander Valley floor, according to the petition data. The petition includes temperature data gathered by local grape grower John Copeland, who gathered hourly temperature readings at several sites within the proposed viticultural area prior to planting his vineyards there. The petitioners combined Mr. Copeland's data and that of the valley weather stations noted above in order to document the diurnal temperature differences between the proposed area and the lower valley floor. The average temperature differences between the higher elevations on Pine Mountain and the lower elevations on the Alexander Valley floor are shown in the table below:

Region and elevation	High temperature (° F)	Low temperature (° F)	Diurnal temperature variation (in ° F)
Pine Mountain (2,200 feet)	74	60	14
Valley Floor (225 feet)	84	49	35

The petition states that nights are warmer on the slopes of Pine Mountain mainly because cool night mountain air, being heavier than warm air, drains off the mountain into the valley below. This downward nocturnal air flow leaves the slopes of Pine Mountain slopes relatively warmer as compared to the cooler valley air temperatures. In addition, the petition explains that the marine inversion, a summer coastal phenomenon, results from a layer of cool, heavy, and moist marine air and fog that slips beneath the layer of warmer air. This cool, foggy air blankets the Alexander Valley floor and does not mix with the lighter, warm air above it on the mountain slopes. This phenomenon, the petition continues, inverts the normal mountainous air temperature pattern of cooler temperatures above and warmer temperatures below.

Wind: The proposed Pine Mountain-Mayacmas viticultural area climate includes stronger and more frequent winds than those found in the valley below, the petition explains. The petition states that local growers report that Pine Mountain vineyards are naturally free of mildew, a vineyard malady commonly found in areas with more stagnant air.

Precipitation: The petition notes that the proposed viticultural area receives 30 to 60 percent more rainfall than the valley below. Southern storms often stall over Pine Mountain and the Mayacmas range, dropping more rain than in other areas. Pine Mountain also receives some upper elevation-based snow, something unheard of on the Alexander Valley floor below, the petition explains.

Soils

According to the petition, the mountain soils within the proposed Pine Mountain-Mayacmas viticultural area are significantly different from the alluvial valley soils found at lower elevations outside the proposed area. The petition documents these differences using United States Department of Agriculture online soil maps for Mendocino and Sonoma Counties.

However, as the petition notes, the two county soil maps use different soils names since the two counties' soil surveys were conducted years apart using different name protocols. Specifically, the Sonoma County Soil Survey shows that the portion of the proposed viticultural area within that county falls within the Los Gatos-Hennecke-Maymen association, with the Los Gatos soils series the predominant soil type. The Mendocino County Soil Survey, however, shows that the portion of the proposed viticultural area within that county falls within the Maymen-Estel-Snook association.

To show that the soils within the proposed viticultural area are generally the same in each county, the petition also provides descriptions of the physical characteristics of the proposed viticultural area's soils. The petition describes the parent materials of the proposed Pine Mountain-Mayacmas viticultural area's soils as fractured shale and weathered sandstone. The petition notes that soils within the proposed viticultural area are mountainous types, which are generally steep, shallow to moderately deep, and very well to excessively well-drained. Also, these mountain soils include large amounts of sand and gravel. Pine Mountain soils are generally less than 3 feet in depth, the petition continues, with more than half at depths of 12 inches or less. In contrast, soils found on the Alexander Valley floor and in other lower elevation areas outside of the proposed viticultural area are deeper, less well-drained alluvial soils.

Overlap With Established Viticultural Areas

The Sonoma County portion of the proposed Pine Mountain-Mayacmas viticultural area lies almost entirely within the northern portion of the established Alexander Valley viticultural area, which, in turn, lies within the northern portion of the established Northern Sonoma viticultural area. The Alexander Valley and Northern Sonoma viticultural areas both lie totally within the North Coast viticultural area. While located in whole or in part within these existing viticultural areas, the petitioners believe that the proposed Pine Mountain-Mayacmas viticultural area is distinguishable from those existing areas.

For example, the petition states that the 76,034-acre Alexander Valley viticultural area largely consists of lower elevation valley floor along the Russian River, with vineyards located below 600 feet, while the proposed Pine Mountain-Mayacmas viticultural area largely consists of mountainous terrain located above 1,600 feet. Further, as noted above, the petition includes climatic data documenting the differing valley and mountain growing season temperatures, wind, and fog patterns found in this region.

In addition, the petition notes that the 349,833-acre Northern Sonoma viticultural area extends 40 miles south from the Mendocino-Sonoma County line to the southernmost reaches of the Russian River Valley viticultural area

(27 CFR 9.66) southwest of Sebastopol. The large Northern Sonoma viticultural area includes the Alexander Valley (27 CFR 9.53), Knights Valley (27 CFR 9.76), Chalk Hill (27 CFR 9.52), Russian River Valley (27 CFR 9.66), Green Valley of Russian River Valley (27 CFR 9.57), and Dry Creek Valley (27 CFR 9.64) viticultural areas with their differing microclimates and terrains. According to the petition, the diversity of the Northern Sonoma viticultural area stands in contrast to the uniform climate and terrain found within the proposed Pine Mountain-Mayacmas viticultural area.

The established North Coast viticultural area lies north and northwest of San Francisco, and includes all of Sonoma County and portions of Mendocino, Napa, Lake, Solano, and Marin Counties. This very large viticultural area's distinguishing features include its distinctive coastal climate and topography. While the proposed Pine Mountain-Mayacmas viticultural area has a somewhat similar climate, the petition notes, the proposed area is small, is limited to higher elevations, and is less foggy than the general North Coast area's climate.

TTB Determination

TTB concludes that the petition to establish the 4,600-acre Pine Mountain-Mayacmas American viticultural area merits consideration and public comment, as invited in this notice.

Relationship to Existing Viticultural Areas

Alexander Valley Viticultural Area

The original Treasury Decision, T.D. ATF–187, establishing the more than 60,000-acre Alexander Valley AVA, was published in the **Federal Register** (49 FR 42719) on October 24, 1984. In the discussion of geographical features, T.D. ATF–187 relied on the geographical features of the valley floor and specifically excluded the mountainous area to the east, primarily because these areas were determined to have geographical features different from those in the established viticultural area. T.D. ATF–187 stated that the mountainous area has an average rainfall of 30 to 70 inches, temperatures of 54 to 58 degrees Fahrenheit, and a frost-free season of 230 to 270 days but that the valley floor has an average rainfall of 25 to 50 inches, temperatures of 54 to 60 degrees Fahrenheit, and a frost-free season of 240 to 260 days. Regarding soils, T.D. ATF–187 stated that the mountain area to the east is characterized primarily by the Goulding-Toomes-Guenoc and Henneke-Maymen associations, but the valley floor, by the Yolo-Cortina-Pleasanton association. TTB notes that the temperature and frost-free season data concerning the valley and the mountainous area, though different, are not so different as to be considered significantly different.

The area in the Alexander Valley viticultural area that also overlaps the proposed Pine Mountain-Mayacmas viticulture area was added in Treasury Decision ATF–233, published in the **Federal Register** (51 FR 30353) on August 26, 1986. In discussing the proposal to add approximately 1,536 acres to the existing Alexander Valley viticultural area "at elevations between 1,600 feet and 2,400 feet above sea level on Pine Mountain," T.D. ATF–233 recognized that "the land in the area shares similar geological history, topographical features, soils, and climatic conditions as adjoining land within the previously established boundary of the [Alexander Valley] viticultural area."

However, the petitioner provides more detailed evidence regarding the geographical features that distinguish the entire proposed Pine Mountain-Mayacmas viticultural area (including the overlap area) from the greater portion of the Alexander Valley viticultural area. That evidence details the significant differences between the areas in comparable night and day temperatures, rainfall, and soils. The petitioner also included evidence that the proposed Pine Mountain-Mayacmas viticultural area climate includes stronger and more frequent winds than those found in the valley below.

Northern Sonoma Viticultural Area

The Alexander Valley viticultural area is within the Northern Sonoma viticultural area, and the area of overlap is the same with respect to both the Northern Sonoma and Alexander Valley viticultural areas. In addition, the name recognition for the Northern Sonoma viticultural area does not extend into the portion of the proposed Pine Mountain Mayacmas viticultural area beyond the boundary line for the Alexander Valley viticultural area. Historically, the outer boundaries of four viticultural areas [Alexander Valley, Dry Creek Valley, Russian River Valley, and Knights Valley] have been used in defining the boundary of the Northern Sonoma viticultural area.

T.D. ATF–204, which established the Northern Sonoma viticultural area, states:

> Six approved viticultural areas are located entirely within the Northern Sonoma viticultural area as follows: Chalk Hill, Alexander Valley, Sonoma County Green Valley, Dry Creek Valley, Russian River Valley, and Knights Valley.
>
> The Sonoma County Green Valley and Chalk Hill areas are each entirely within the Russian River Valley area. The boundaries of the Alexander Valley, Dry Creek Valley, Russian River Valley, and Knights Valley areas all fit perfectly together dividing northern Sonoma County into four large areas. The Northern Sonoma area uses all of the outer boundaries of those four areas with the exception of an area southwest of the Dry Creek Valley area and west of the Russian River Valley area.
>
> **Note:** Sonoma County Green Valley was subsequently renamed Green Valley of Russian River Valley.

TTB also notes that the Northern Sonoma viticultural area has been adjusted twice in order to maintain its boundary as being formed by the outer boundaries of the four areas specified in T.D. ATF–204 (*See* T.D. ATF–233 published in the **Federal Register** on August 26, 1986 (51 FR 30352) and T.D. ATF–300 published in the **Federal Register** on August 9, 1990 (55 FR 32400)).

North Coast Viticultural Area

In addition to what was previously discussed in this document concerning the North Coast viticultural area, TTB notes that this viticultural area, established by T.D. ATF–145, 48 FR 42973 (September 21, 1983), encompasses approximately 40 established viticultural areas, as well as the proposed Pine Mountain-Mayacmas viticultural area, in northern California. In the "Geographical Features" section, T.D. ATF–145 states that climate is the major factor in distinguishing the North Coast viticultural area from surrounding areas, and that all the areas within the North Coast viticultural area receive marine air and most receive fog. T.D. ATF–145 also states that "[due] to the enormous size of the North Coast, variations exist in climatic features such as temperatures, rainfall and fog intrusion."

The proposed Pine Mountain-Mayacmas viticultural area shares the basic geographical feature of North Coast, marine air that results in greater amounts of rain in the proposed viticultural area. However, the proposed viticultural area is much more uniform in its geographical features than the North Coast viticultural area. In this regard, T.D. ATF–145 specifically states, "approval of this viticultural area does not preclude approval of additional areas, either wholly contained with the North Coast, or partially overlapping the North Coast * * * the smaller viticultural areas tend to be more

uniform in their geographical and climatic characteristics * * *."

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petition included the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, "Pine Mountain-Mayacmas," will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point.

If this proposed regulatory text is adopted as a final rule, wine bottlers using "Pine Mountain-Mayacmas" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the full name of the viticultural area as an appellation of origin. Additionally, TTB wishes to clarify that if this viticultural area is established as the "Pine Mountain-Mayacmas" viticultural area, this establishment would preclude the use of an alternate spelling, such as "Pine Mountain-Mayacamas," as the name of the viticultural area on a wine label. It would also preclude the use of an alternate spelling, such as "Pine Mountain-Mayacamas," in a brand name, including a trademark, or in another label reference as to the origin of the wine unless the product were eligible to use the established name of the viticultural area as an appellation of origin. For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term specified as having viticultural significance, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name "Pine Mountain-Mayacmas" for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation upon the effective date of the approval of the Pine Mountain-Mayacmas viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed Pine Mountain-Mayacmas viticultural area. We are interested in receiving comments on the sufficiency and accuracy of the name, boundary, climate, soils, and other required information submitted in support of the petition.

In addition, given the proposed Pine Mountain-Mayacmas viticultural area's location within the multicounty North Coast viticultural area and its overlap with the Alexander Valley and Northern Sonoma viticultural areas, we are interested in receiving comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed viticultural area sufficiently differentiates it from those existing viticultural areas, and, in general, whether the evidence submitted warrants the establishment of the proposed viticultural area within the existing North Coast viticultural area and portions of the Alexander Valley and Northern Sonoma viticultural areas.

Further, we note that the petitioner provides detailed evidence regarding the geographical features that distinguish the entire proposed Pine Mountain-Mayacmas viticultural area (including the overlap area) from the greater portion of the Alexander Valley viticultural area. We are interested in receiving comments on whether approval of the proposed viticultural area with the overlap is appropriate. That is, are the geographical features of the proposed viticultural area sufficiently different from those of the Alexander Valley viticultural area so that overlap is inappropriate, or are there geographical features of the proposed viticultural area that are sufficiently similar to those of the Alexander Valley viticultural area so that overlap is appropriate? We are also interested in comments, based on any asserted lack of sufficient similarity between geographical features of the proposed viticultural area and those of the Alexander Valley viticultural area, on whether the potential overlap with the Alexander Valley and Northern Sonoma viticultural areas should be avoided by curtailing both the Alexander Valley and Northern Sonoma viticultural areas so that these existing viticultural areas would merely border on rather than overlap the proposed Pine Mountain-Mayacmas viticultural area, or whether both the Alexander Valley and Northern Sonoma viticultural areas should be extended to completely encompass the new area. Please provide any available specific information in support of your comments.

Because "Mayacmas" and "Mayacamas" are alternate spellings of the same name, we are interested in any comments concerning whether "Pine Mountain-Mayacmas" should be the name of this viticultural area or should the name be "Pine Mountain-Mayacamas". Additionally, because of the potential impact of the establishment of the proposed Pine Mountain-Mayacmas viticultural area on wine labels that include the term "Pine Mountain-Mayacmas" or an alternate spelling, such as "Pine Mountain-Mayacamas" as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between either of these terms and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example, by adopting a modified or different name for the viticultural area.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form linked to this notice in Docket No. TTB–2010–0003 on "Regulations.gov," the Federal e-rulemaking portal, at *http://www.regulations.gov*. A link to the docket is available under Notice No. 105 on the TTB Web site at *http://*

www.ttb.gov/wine/wine-rulemaking.shtml. Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.

• *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

• *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 105 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please include the entity's name in the "Organization" blank of the comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, we will post, and the public may view, copies of this notice, selected supporting materials, and any electronic or mailed comments we receive about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 105. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at *http://www.regulations.gov.*

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You and other members of the public may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Nancy Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Subpart C is amended by adding § 9.__ to read as follows:

§ 9.__ Pine Mountain-Mayacmas.

(a) *Name.* The name of the viticultural area described in this section is "Pine Mountain-Mayacmas". For purposes of part 4 of this chapter, "Pine Mountain-Mayacmas" is a term of viticultural significance.

(b) *Approved maps.* The three United States Geological Survey 1: 24,000 scale topographic maps used to determine the boundary of the Pine Mountain-Mayacmas viticultural area are titled:

(1) Asti Quadrangle—California, 1998;

(2) Cloverdale Quadrangle—California, 1960, photoinspected 1975; and

(3) Highland Springs Quadrangle—California, 1959, photorevised 1978.

(c) *Boundary.* The Pine Mountain-Mayacmas viticultural area is located in Sonoma and Mendocino Counties, California. The boundary of the Pine Mountain-Mayacmas viticultural area is as described below:

(1) The beginning point is on the Asti map at the intersection of Pine Mountain Road and the Sonoma-Mendocino County line, section 35, T12N, R10W. From the beginning point, proceed southwesterly on Pine Mountain Road to its intersection with a light duty road known locally as Green Road, section 33, T12N, R10W; then

(2) Proceed northerly on Green Road approximately 500 feet to its first intersection with the 1,600-foot contour line, section 33, T12N, R10W; then

(3) Proceed northwesterly along the meandering 1,600-foot contour line, crossing onto the Cloverdale map in section 32, T12N, R10W, and continue to the contour line's intersection with the Sonoma-Mendocino County line at the northern boundary of section 31, T12N, R10W; then

(4) Proceed northeasterly along the meandering 1,600-foot contour line to its intersection with the intermittent Ash Creek, section 29, T12N, R10W; then

(5) Proceed northeasterly in a straight line, crossing onto the Asti map, to the unnamed 2,769-foot peak located south of Salty Spring Creek, section 20, T12N, R10W; then

(6) Continue northeasterly in a straight line, crossing onto the Highland Springs map, to the unnamed 2,792-foot peak in the northeast quadrant of section 21, T12N, R10W; then

(7) Proceed east-southeasterly in a straight line, crossing onto the Asti map, to the unnamed 2,198-foot peak in section 23, T12N, R10W; and then

(8) Proceed south-southeasterly in a straight line, returning to the beginning point.

Signed: May 24, 2010.

John J. Manfreda,

Administrator.

[FR Doc. 2010–12868 Filed 5–26–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0803]

RIN 1625–AA09

Drawbridge Operation Regulation; Oakland Inner Harbor Tidal Canal, Oakland/Alameda, CA, Schedule Change

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the drawbridge operation regulation for the Alameda County and the Army Corps of Engineers owned drawbridges across Oakland Inner Harbor Tidal Canal, between Oakland and Alameda, California so that four hours advance notice for openings would be required from the waterway user to the bridge owner, between the hours 4:30 p.m. and 9 a.m. daily. With the exception of Federal Holidays, openings at all other times would be on signal except during interstate rush hours, 8 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday, when the drawbridges need not be opened for vessels. However, the draws would open during the above closed periods for vessels which must, for reasons of safety, move on a tide or slack water, if at least four hours advance notice is given. The proposed rule is requested by Alameda County to reduce the bridge staffing requirements during periods of reduced openings.

DATES: Comments and related material must reach the Coast Guard on or before August 25, 2010.

ADDRESSES: You may submit comments identified by the Coast Guard docket number USCG–2009–0803 using any one of the following methods:

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

(2) Fax: 202–493–2251.

(3) 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.

(4) 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 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 proposed rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Waterways Management Branch, 11th Coast Guard District, telephone 510–437–3516, e-mail address *David.H.Sulouff@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 participate in this rulemaking by submitting comments and related materials. 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 rulemaking (USCG–2009–0803), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone 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 "Proposed Rules" and insert "USCG–2009–0803" 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 and may change the rule based on your comments.

A request for comments has been published in the Coast Guard Local Notice to Mariners. All comments received will be included for the record in the electronic docket "USCG–2009–0803".

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, 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–2009–0803" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit either 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 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request using one of the four methods under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we

will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed rule would change the existing regulation. The existing regulation is found at 33 CFR 117.181 and delineates the following operating scheme: The draws of the Alameda County highway drawbridges at Park Street, mile 5.2; Fruitvale Avenue, mile 5.6; and High Street, mile 6.0; and the U.S. Army Corps of Engineers railroad drawbridge, mile 5.6 at Fruitvale Avenue, shall open on signal; except that, from 8 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels. However, the draws shall open during the above closed periods for vessels which must, for reasons of safety, move on a tide or slack water, if at least two hours notice is given.

The proposed rule is requested by Alameda County to reduce the bridge staffing requirements during periods of reduced openings. The proposed rule is as follows: The draws of the Alameda County highway drawbridges at Park Street, mile 5.2; Fruitvale Avenue, mile 5.6; and High Street, mile 6.0; and the U.S. Army Corps of Engineers railroad drawbridge, mile 5.6 at Fruitvale Avenue, shall open on signal between the hours of 9 a.m. and 4:30 p.m. and upon 4 hours advance notice between the hours 4:30 p.m. and 9 a.m. During Interstate rush hours, 8 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays, the draws need not be opened for the passage of vessels. However, the draws shall open during the above rush hour periods for vessels which must, for reasons of safety, move on a tide or slack water, if at least four hours notice is given to the bridge owner. For the four hour advance notice requirement, waterway users may contact the Fruitvale Avenue drawbridge operator via telephone at (510) 533–7858 or VHF–FM marine radio, or by contacting the bridge operator during daytime bridge operating hours.

In support of their request for the regulation change, Alameda County provided the operating logs from the drawbridges to demonstrate a decrease in drawbridge openings for vessels over at least a 2 year period of time. The material submitted by the bridge owner will be entered in the electronic docket for the record.

The waterway traffic at this location is comprised of commercial, recreational, search and rescue, law enforcement and disaster response vessels, and if necessary dredging, construction and salvage equipment, presently capable of circumnavigating the island of Alameda, CA, contingent upon tidal influences and vessel drafts. The Oakland Inner Harbor Tidal Canal is a lateral extension of San Francisco Bay.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR part 117 by amending § 117.181 for the Oakland Inner Harbor Tidal Canal. In addition to the existing rush hour periods when the drawbridges need not open for vessels, the revised language of the section would require the bridges to open on signal between the hours of 4:30 p.m. and 9 a.m daily, provided four hours advance notice is given from vessel operators to Alameda County for drawbridge operation. For the four hour advance notice requirement, waterway users may contact the Fruitvale Avenue drawbridge operator via telephone at (510) 533–7858 or VHF–FM marine radio, or by contacting the bridge operator during daytime bridge operating hours. This would include vessels which must, for reasons of safety, move on a tide or slack water. At all other times the drawbridges will be required to open on signal for the safe passage of vessels.

The Coast Guard policy regarding the promulgation of drawbridge operation regulations requires that no regulation shall be implemented for the sole purpose of saving the bridge owner the cost to operate a bridge, nor to save wear and tear mechanically on a bridge. It is the bridge owner's statutory and regulatory responsibility to provide the necessary drawbridge tenders for the safe and prompt opening of a bridge and to maintain drawbridges in good operating condition.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This conclusion is based upon the fact that the proposed drawbridge regulation change would only implement the advance notice times for bridge openings between the hours of 4:30 p.m. and 9 a.m. and for vessels which must, for reasons of safety, move on a tide or slack water, and the navigational impacts would be negligible. The Coast Guard determination to approve or deny the bridge owners request will be based upon the ability of the proposed regulation to meet the reasonable needs of navigation and not the cost to the bridge owner. A test of the proposed drawbridge operating regulation may be used by the Coast Guard to evaluate the actual impacts, during the appropriate navigational season timeframe, prior to making a final determination on the proposal.

Small Entities

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

The Coast Guard requests comments to determine if this proposed rule would have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how, and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact David Sulouff, Chief, Bridge Section, Waterways Management Branch, 11th Coast Guard District, at (510) 437–3516. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.181 to read as follows:

§ 117.181 Oakland Inner Harbor Tidal Canal.

The draws of the Alameda County highway drawbridges at Park Street, mile 5.2; Fruitvale Avenue, mile 5.6; and High Street, mile 6.0; and the U.S. Army Corps of Engineers railroad drawbridge, mile 5.6 at Fruitvale Avenue, shall open on signal between the hours of 9 a.m. and 4:30 p.m. and upon 4 hours advance notice between the hours 4:30 p.m. and 9 a.m. During Interstate rush hours, 8 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays, the draws need not be opened for the passage of vessels. However, the draws shall open during the above rush hour periods for vessels which must, for reasons of safety, move on a tide or slack water, if at least four hours notice is given to the bridge owner. For the four hour advance notice requirement; waterway users may contact the Fruitvale Ave drawbridge operator via telephone at (510) 533–7858 or VHF–FM marine radio, or by contacting the bridge operator during daytime bridge operating hours.

Dated: May 12, 2010.

J.R. Castillo,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2010–12737 Filed 5–26–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0316]

RIN 1625–AA87

Security Zones; Sabine Bank Channel, Sabine Pass Channel and Sabine-Neches Waterway, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving security zones for certain vessels for which the Captain of the Port, Port Arthur deems enhanced security measures are necessary. In addition, the Coast Guard proposes a 100-foot security zone around LNG carriers while they are moored at the Golden Pass LNG facility in Sabine, TX and/or the Sabine Pass LNG facility located in Cheniere, LA.

DATES: Comments and related material must be received by the Coast Guard on or before June 28, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0316 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *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 proposed rule, call or e-mail Mr. Scott Whalen, Marine Safety Unit Port Arthur, Coast Guard; telephone 409–719–5086, e-mail *scott.k.whalen@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 participate in this rulemaking by submitting comments and related materials. 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 rulemaking (USCG–2009–0316), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. 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 "Proposed Rule" and insert "USCG–2009–0316" 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 comments 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 may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, 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–2009–0316" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit 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 notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

At this time, we do not plan to hold a public meeting, but you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Heightened awareness of potential terrorist acts requires enhanced security of our ports, harbors, and vessels. To enhance security, the Captain of the Port, Port Arthur proposes to establish security zones around certain vessels. These security zones are needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature.

Due to the potential for terrorist attacks, this proposed rule would allow the Captain of the Port to create fixed security zones around moored LNG carriers and moving security zones around certain vessels as deemed necessary. By limiting access to these areas, the Coast Guard is reducing potential methods of attack on these vessels, and potential use of the vessels to launch attacks on waterfront facilities and adjacent population centers located within the Captain of the Port, Port Arthur zone. Vessels having a need to enter these security zones must obtain permission from the Captain of the Port or his designated representative prior to entry.

Discussion of Proposed Rule

The Coast Guard proposes to establish moving security zones for certain vessels, for which the Captain of the Port deems enhanced security measures are necessary. Mariners will be notified of the activation of a moving security zone by Broadcast Notice to Mariners. Active moving security zones may also be identified by the presence of escort vessels displaying flashing blue law enforcement lights.

The moving security zones would be activated for certain vessels within the

Captain of the Port zone commencing at U.S. territorial waters through Sabine Bank Channel, Sabine Pass Channel and the Sabine-Neches Waterway, extending from the surface to the bottom. These moving security zones would extend channel edge to channel edge on the Sabine Bank and Sabine Pass Channel and shoreline to shoreline on the Sabine-Neches Waterway, 2 miles ahead and 1 mile astern of the designated vessels while in transit. Meeting, crossing or overtaking situations are not permitted within the security zone unless specifically authorized by the Captain of the Port.

In addition, the Coast Guard proposes a 100-foot security zone around LNG carriers while they are moored at the Golden Pass LNG facility in Sabine, TX and/or the Sabine Pass LNG facility located in Cheniere, LA.

These proposed security zones would be part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

All vessels not exempted under paragraph (b) of the proposed section 165.819 would be prohibited from entering or remaining in these security zones unless authorized by the Captain of the Port, Port Arthur or his designated representative. For authorization to enter the proposed security zones, vessels could contact the Captain of the Port's on-scene representative or Vessel Traffic Service Port Arthur on VHF Channel 01A or 65A, by telephone at (409) 719–5070, or by facsimile at (409) 719–5090.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The basis of this finding is that the proposed fixed security zones around moored LNG carriers would be of limited size and duration and the affected area would not hinder or delay regular vessel traffic. The moving security zone wound be limited and would not create undue delay to vessel traffic because vessel traffic may request permission to enter the zone from the Captain of the Port.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through the fixed or moving security zones. The proposed fixed security zones would be of limited size and duration and the affected area would not hinder or delay regular vessel traffic; The proposed rule for moving security zone would not create undue delay to vessel traffic because vessel traffic may request permission to enter the zone. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Scott Whalen, Marine Safety Unit Port Arthur, Coast Guard; telephone (409) 719–5086, e-mail *scott.k.whalen@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or

more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing security zones. Therefore, this rule would be categorically excluded under Figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, which addresses regulations establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add new § 165.819 to read as follows:

§ 165.819 Security Zone; Sabine Bank Channel, Sabine Pass Channel and Sabine-Neches Waterway, TX.

(a) *Location.*

(1) The following areas are designated as fixed security zones: All waters within a 100-feet radius of LNG carriers moored at:

(i) Golden Pass LNG facility located in Sabine, TX, in position 29°45′52″ N 093°55′25″ W; and/or

(ii) Sabine Pass LNG facility located in Cheniere, LA, in position 29°44′31″ N 093°52′18″ W.

(2) The following areas are designated as moving security zones: All waters of the Captain of the Port, Port Arthur Zone commencing at U.S. territorial waters and extending from the surface to the bottom, channel edge to channel edge on the Sabine Bank and Sabine Pass Channels and shoreline to shoreline on the Sabine-Neches Waterway, 2 miles ahead and 1 mile astern of certain designated vessels while in transit within in the Captain of the Port, Port Arthur zone. Mariners would be notified of designated vessels by Broadcast Notice to Mariners and the presence of escort vessels displaying flashing blue law enforcement lights.

(b) *Regulations.*

(1) Entry into or remaining in a fixed security zone described in paragraph (a)(1) of this section is prohibited for all vessels except:

(i) Commercial vessels operating at waterfront facilities within these zones;

(ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;

(iii) Vessels providing direct operational or logistical support to commercial vessels within these zones;

(iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and

(v) Vessels operated by federal, state, county, or municipal law enforcement agencies.

(2) Entry into or remaining in a moving security zone described in paragraph (a)(2) of this section is prohibited for all vessels except:

(i) Moored vessels or vessels anchored in a designated anchorage area. A moored or an anchored vessel in a security zone described in paragraph (a)(2) of this section must remain moored or anchored unless it obtains permission from the Captain of the Port to do otherwise;

(ii) Commercial vessels operating at waterfront facilities located within the zone;

(iii) Vessels providing direct operational support to commercial vessels within a moving security zone;

(iv) Vessels operated by federal, state, county, or municipal law enforcement agencies.

(3) Meeting, crossing or overtaking situations are not permitted within the security zone described in paragraph (a)(2) of this section unless specifically authorized by the Captain of the Port.

(4) Other persons or vessels requiring entry into security zones described in this section must request permission from the Captain of the Port, Port Arthur or designated representative.

(5) To request permission to enter a security zone described in this section, contact Vessel Traffic Service Port Arthur on VHF Channel 01A or 65A; by telephone at (409) 719–5070; by fax at (409) 719–5090; or contact the Captain of the Port's designated on-scene patrol vessel on VHF channel 13 or 16.

(6) All persons and vessels within a security zone described in this section must comply with the instructions of the Captain of the Port, Port Arthur, designated on-scene U.S. Coast Guard patrol personnel or other designated representatives. Designated on-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Designated representatives include federal, state, local and municipal law enforcement agencies.

Dated: April 22, 2010.

J.J. Plunkett,

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

[FR Doc. 2010–12738 Filed 5–26–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0612–200914(b); FRL–9155–4]

Approval and Promulgation of Air Quality Implementation Plans: Florida; Approval of Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for the Jacksonville, Tampa Bay, and Southeast Florida Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Florida State Implementation Plan (SIP) concerning the maintenance plans addressing the 1997 8-hour ozone standards for the Jacksonville, Tampa Bay, and Southeast Florida 1997 8-hour ozone attainment areas in Florida, hereafter referred to as the "Jacksonville Area," "Tampa Bay Area," and "Southeast Florida Area," respectively. The Jacksonville Area is comprised of Duval County; the Tampa Bay Area comprises Hillsborough and Pinellas Counties; and the Southeast Florida Area comprises Broward, Dade, and Palm Beach Counties. These maintenance plans were submitted to EPA on July 2, 2009, by the State of Florida, through the Florida Department of Environmental Protection, and ensure the continued attainment of the 1997 8-hour ozone national ambient air quality standards (NAAQS) through the year 2014 in the Jacksonville, Tampa Bay, and Southeast Florida Areas. EPA is proposing to approve the SIP revisions pursuant to section 110 of the Clean Air Act. These maintenance plans appear to meet all the statutory and regulatory requirements, and are consistent with EPA's guidance. On March 12, 2008, EPA issued revised ozone standards. On September 16, 2009, EPA announced it would reconsider the 2008 NAAQS for ozone and proposed a new schedule for designations for a reconsidered standard. EPA published a proposed rulemaking on January 19, 2010, for reconsideration of the 2008 NAAQS, and expects to finalize the reconsidered NAAQS by August 2010. The current proposed action, however, is being taken to address requirements under the 1997 8-hour ozone standards. Requirements for the Jacksonville, Tampa Bay, and Southeast Florida Areas under the 2010 reconsidered ozone standards will be addressed in the future.

DATES: Written comments must be received on or before June 28, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0612, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* "EPA–R04–OAR–2009–0612," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9352. Ms. Bradley can also be reached via electronic mail at *bradley.twunjala@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 11, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–12659 Filed 5–26–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 84

[Docket Number NIOSH–0137]

RIN 0920–AA33

Total Inward Leakage Requirements for Respirators

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), will hold a second public meeting concerning the proposed rule for Total Inward Leakage Requirements for Respirators that was published in the **Federal Register** on Friday, October 30, 2009 (74 FR 56141). The purpose of the meeting is to allow participants to make presentations to NIOSH, share results of any new research that may be available or in process in the area of filtering facepiece or other half-mask respirator inward leakage measurement, and offer any additional comments on the anticipated economic impact of the proposed rule.

Public Meeting Time and Date: 8:30 a.m.–4 p.m. EDT, or after the last public commenter has spoken, whichever is earlier, July 29, 2010.

Place: The Marriot Inn and Conference Center UMUC, 3501 University Boulevard E., Hyattsville, MD 20783.

FOR FURTHER INFORMATION CONTACT: Jonathan V. Szalajda, NIOSH, National Personal Protective Technology Laboratory (NPPTL), Post Office Box 18070, 626 Cochrans Mill Road, Pittsburgh, Pennsylvania 15236, telephone (412) 386–5200, facsimile (412) 386–4089, e-mail *zfx1@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Health and Human Services published a proposed rule on the Total Inward Leakage Requirements for Respirators on Friday, October 30, 2009 (74 FR 56141).

NIOSH held a public meeting on the proposed rule on December 3, 2009, at which time commenters asked for an extension of the comment period in order to evaluate the feasibility and cost associated with the proposed rule. NIOSH subsequently published an extension of the comment period to March 30, 2010 in the **Federal Register** on December 17, 2009 (74 FR 66935).

During the comment period, several commenters requested a further extension of the comment period in order to conduct tests and prepare responses. On April 20, 2010, NIOSH responded by reopening the docket for comments until September 30, 2010 (75 FR 20546).

II. Public Meeting

NIOSH will hold a second public meeting on the proposed rule, on the date and time listed above to allow commenters to present their findings and ongoing activities.

Requests to make presentations at the public meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226. Requests may also be submitted by telephone (513) 533–8611, facsimile (513) 533–8285, or e-mailed to *niocindocket@cdc.gov.* All requests to present should contain the name, address, telephone number and relevant business affiliations of the presenter, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes.

After reviewing the requests for presentations, NIOSH will notify the presenter that his/her presentation is scheduled. If a participant is not in attendance when his/her presentation is scheduled to begin, the remaining participants will be heard in order. After the last scheduled speaker is heard, participants who missed their assigned times may be allowed to speak, limited by time available. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity after the scheduled speakers are heard, at the discretion of the presiding officer and limited by time available.

This meeting will also be using Audio/LiveMeeting Conferencing, remote access capabilities where interested parties may listen in and review the presentations over the Internet simultaneously. Parties remotely accessing the meeting will have the opportunity to comment during the open comment period. To register to use this capability, please contact the National Personal Protective Technology Laboratory (NPPTL), Policy and Standards Development Branch, Post Office Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone (412) 386–5200, facsimile (412) 386–4089. This option will be available to participants on a first come, first served basis and is limited to the first 50 participants.

Dated: May 20, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–12744 Filed 5–26–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2009–0013]
[92210–1117–000–B4]

RIN 1018–AV45

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed revised designation of critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) under the Endangered Species Act of 1973, as amended. We also announce the availability of a draft economic analysis, a draft environmental assessment, and an amended required determinations section of the proposal. We are reopening the comment period for the proposal to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated draft economic analysis and draft environmental assessment, and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: We will consider public comments received on or before June 28, 2010.

ADDRESSES: You may submit comments by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Search for docket FWS-R6-ES-2009-0013 and then follow the instructions for submitting comments.

• *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS-R6-ES-2009-0013; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Office, P.O. Box 25486, DFC (MS 65412), Denver, CO 80225; by telephone (303-236-4773); or by facsimile (303-236-4005). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed revision of critical habitat for the Preble's Meadow jumping mouse (PMJM) that was published in the **Federal Register** on October 8, 2009 (74 FR 52066), our draft economic analysis (DEA) of the proposed revised designation, our draft environmental assessment, and our amendment of required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh any threats to the species due to designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The amount and distribution of PMJM habitat in Colorado;
- What areas occupied at the time of listing that contain the physical and biological features essential to the conservation of the species we should include in the revised designation and why;
- What areas not occupied at the time of listing are essential to the conservation of the species and why; and
- What special management consideration and protection the physical and biological features may require and why.

(3) Information identifying or clarifying the physical and biological features essential to the conservation of the species.

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on the species and the proposed critical habitat.

(5) How the proposed boundaries of the revised critical habitat could be refined to more accurately identify the riparian and adjacent upland habitats occupied by the PMJM.

(6) Whether our proposed revised designation should be altered in any way to account for the potential effects of climate change and why.

(7) Whether any specific areas being proposed as revised critical habitat should be excluded under section 4(b)(2) of the Act from the final designation, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act. We are specifically seeking comments from the public on the following:

- Lands covered by the Douglas County Habitat Conservation Plan (HCP) (Service 2006a) and the potential modification of outward boundaries of proposed critical habitat to conform to Douglas County's Riparian Conservation Zones (streams, adjacent floodplains, and nearby uplands likely to be used as habitat by the PMJM) as mapped for the Douglas County HCP;
- Lands within the Livermore Area HCP (Service 2006), the Larimer County's Eagle's Nest Open Space HCP (Service 2004), the Denver Water HCP (Service 2003a), the Struther's Ranch HCP (Service 2003b), and other HCPs;
- Lands within El Paso County (because the county is currently developing a countywide HCP);
- Lands within the proposed Seaman Reservoir expansion footprint; and
- Lands within the Rocky Flats National Wildlife Refuge (NWR).

(8) Any foreseeable economic, national security, or other relevant impacts that may result from the proposed revised designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas from the proposed redesignation that exhibit these impacts.

(9) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate.

(10) Whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that will likely occur if we designate revised critical habitat.

(11) Whether the DEA correctly assesses the effect of regional costs associated with land use controls that may result from the revised designation of critical habitat.

(12) Whether the DEA identifies all Federal, State, and local costs and benefits attributable to the proposed revision of critical habitat, and information on any costs that have been inadvertently overlooked.

(13) Whether the draft environmental assessment adequately presents the purpose of and need for the proposed action, the proposed action and alternatives, and the evaluation of the direct, indirect, and cumulative effects of the alternatives.

(14) Whether our approach to designating revised critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning our proposed rule or the associated DEA and draft environmental assessment by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including your personal identifying information— will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, draft economic analysis, and draft environmental assessment, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Colorado Ecological Services Office (see the **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed revision of critical habitat, the DEA, and the draft EA on the Internet at *http://www.regulations.gov* at docket number FWS–R6–ES–2009–0013, or at *http://www.fws.gov/mountain-prairie/species/mammals/preble/*, or by mail from the Colorado Ecological Services Office (see the **FOR FURTHER INFORMATION CONTACT**).

Background

Previous Federal Actions

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for the PMJM. For more information on previous Federal actions concerning the PMJM, refer to the proposed designation of revised critical habitat published in the **Federal Register** on October 8, 2009 (74 FR 52066). We proposed to designate approximately 418 mi (669 km) of rivers and streams and 39,142 ac (15, 840 ha) of lands in 11 units located in Boulder, Broomfield, Douglas, El Paso, Jefferson, Larimer, and Teller Counties in Colorado, as critical habitat. That proposal had a 60–day public comment period, ending December 7, 2009. We will submit for publication in the **Federal Register** a final critical habitat designation for the PMJM on or before September 30, 2010.

For additional information on the biology of this subspecies, see the May 13, 1998, final rule to list the PMJM as threatened (63 FR 26517); the June 23, 2003, final rule designating critical habitat for the PMJM (68 FR 37275); and the July 10, 2008, final rule to amend the listing for the PMJM to specify over what portion of its range the subspecies is threatened (73 FR 39789).

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by the

species at the time it is listed upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions that affect critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We have prepared a DEA of our October 8, 2009 (74 FR 52066), proposed rule to designate revised critical habitat for the Preble's Meadow jumping mouse.

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised critical habitat designation for the PMJM. The DEA quantifies the economic impacts of all potential conservation efforts for the PMJM. Some of these costs will likely be incurred regardless of whether or not we designate revised critical habitat. The economic impact of the proposed revised critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). Therefore, the baseline represents the costs incurred regardless of whether revised critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of revised critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed revised critical habitat designation.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed revised critical habitat designation for the PMJM over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to reasonably forecast activity levels for projects beyond a 20–year timeframe. The DEA identifies potential incremental costs as a result of the proposed revised critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of conservation efforts for the PMJM associated with the following categories of activity: (1) Residential and commercial development; (2) roads/bridges, utilities, and bank stabilization projects; (3) water supply development; (4) U.S. Forest Service land management; (5) Rocky Flats NWR land management; and (6) gravel mining.

The DEA estimates that total potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years will be $21.4 million to $52.9 million (approximately $2.02 million to $4.99 million on an annualized basis), assuming a 7-percent discount rate. Approximately 95 percent of the incremental impacts attributed to the proposed designation of revised critical habitat are expected to be related to section 7 consultations with Federal agencies for residential and commercial development.

Activities in proposed revised critical habitat units 9 and 10, West Plum Creek and Upper South Platte River, are projected to bear the largest incremental impacts attributable to the proposed rule, representing about 38 and 34 percent of total incremental impacts, respectively.

As stated earlier, we are seeking data and comments from the public on the DEA and the draft environmental assessment, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from revised critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of the species.

Draft Environmental Assessment; National Environmental Policy Act

When the range of a species includes States within the Tenth Circuit, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F .3d 1429 (10th Cir. 1996), we will complete an analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), on critical habitat designations. The range of the PMJM includes the State of Colorado, which is within the Tenth Circuit.

The draft environmental assessment presents the purpose of and need for critical habitat designation, the Proposed Action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives under the requirements of NEPA as implemented by the Council on Environmental Quality regulations (43 CFR 61292, *et seq.*) and according to the Department of the Interior's NEPA procedures.

The draft environmental assessment will be used by the Service to decide whether or not critical habitat will be designated as proposed; if the Proposed Action requires refinement, or if another alternative is appropriate; or if further analyses are needed through preparation of an environmental impact statement. If the Proposed Action is selected as described (or is changed minimally) and no further environmental analyses are needed, then a Finding of No Significant Impact (FONSI) would be the appropriate conclusion of this process. A FONSI would then be prepared for the environmental assessment.

Required Determinations—Amended

In our October 8, 2009, proposed rule (74 FR 52066), we indicated that we would defer our determination of compliance with several statutes and Executive Orders (EOs) until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data in making these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (*Regulatory Planning and Review*), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act, E.O. 12866 and E.O. 12988 (Clarity of the Rule), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However,

based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy Supply, Distribution, or Use), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under the rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of revised critical habitat for the PMJM would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

Under the Act, designation of critical habitat only affects activities carried out, funded, or permitted by Federal agencies. If we finalize the proposed revised critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Some kinds of activities are unlikely to have any Federal involvement and so would not result in any additional effects under the Act. However, there are some State laws that limit activities in designated critical habitat even where there is no Federal nexus. If there is a Federal nexus, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or carry out that may affect critical habitat. If we conclude, in a biological opinion, that a proposed action is likely to destroy or adversely modify critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid destroying or adversely modifying critical habitat.

Within the proposed revised critical habitat designation, the types of actions or authorized activities that we have identified as potential concerns and that may be subject to consultation under section 7 if there is a Federal nexus are: Residential and commercial development; roads/bridges, utilities, and bank stabilization projects; water supply development; U.S. Forest Service land management practices; Rocky Flats NWR management practices; and gravel mining. As discussed in Appendix A of the DEA, of the activities addressed in the analysis, only residential and commercial development, and construction and maintenance of roads/bridges, utilities, and bank stabilization projects are expected to experience incremental, administrative consultation costs that may be borne by small businesses.

Any existing and planned projects, land uses, and activities that could affect the proposed revised critical habitat but have no Federal involvement would not require section 7 consultation with the Service, so they are not restricted by the requirements of the Act. Federal agencies may need to reinitiate a previous consultation if discretionary involvement or control over the Federal action has been retained or is authorized by law and the activities may affect critical habitat.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the PMJM. Please refer to our draft economic analysis of the proposed revised critical habitat designation for a more detailed discussion of potential economic impacts; we will summarize key points of the analysis below.

The DEA, and its associated initial regulatory flexibility analysis, estimate that total potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years will be $2.02 million to $4.99 million annually, assuming a 7-percent discount rate. Approximately 95 percent of the incremental impacts attributed to the proposed designation of critical habitat are expected to be related to section 7 consultations with Federal agencies for residential and commercial development. Expected impacts to residential and commercial development include added costs primarily due to administrative consultations and required modifications to development project scope or design, including mitigation (or setting aside conservation lands), habitat restoration and enhancement, and project delays. Small entities represent 97 percent of all entities in the residential and commercial development industry that may be affected. Incremental costs also are expected related to road/bridge, utility, and bank stabilization construction and maintenance activities throughout proposed revised critical habitat. Small entities represent 90 percent of all entities in the road/bridge, utility, and

bank stabilization construction and maintenance industries that may be affected. The Small Business Size Standard for the industry sectors that could potentially be affected by the proposed revised critical habitat designation are as follows:

- New Housing Operative Builders—$33.5 million in annual receipts.
- Land Subdivision—$7 million in annual receipts
- Natural Gas Distribution—500 employees.
- Water Supply and Irrigation Systems—$7 million annual receipts.
- Pipeline Transportation of Natural Gas—$7 million annual receipts.

In addition, government entities in the area may be affected. Of these, 70 percent are small government jurisdictions (i.e., cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000).

Of principal interest is residential and commercial development, and associated land subdivision, since an estimated 95 percent of potential incremental impacts may affect that industry sector. The small businesses in this industry sector may bear a total of $19.6 to $49.9 million (at a 7-percent discount rate) in incremental impacts related to section 7 consultations over the next 20 years (through 2029). However, when expressed as a percentage of a small developer's annual sales revenue, assuming that one small developer is required for each of the development projects, these monetary incremental impacts are likely to be small. The incremental impact due to critical habitat designation is estimated to range from $115,000 to $292,000 per project. An average of nine projects is anticipated to occur in critical habitat per year. For new home builders, estimated annual sales in 2007 per developer in Colorado were $6.51 million. Therefore, in years where a developer has a project in critical habitat, the estimated incremental impact represents 1.8 to 4.5 percent of that developer's annual sales in this industry. However, we expect these costs to be incurred over a period of more than one year, since most developments will take longer than one year to complete (i.e., if a project takes two or more years to complete, the impact as a proportion of revenue in any one year will be substantially less).

For land subdividers, the DEA assumes that annual sales per establishment are limited to the small business threshold of $7 million annually. The estimated annual incremental impact therefore represents 1.6 to 4.2 percent of a subdivider's annual sales. As discussed above, the incremental impact associated with each project is expected to be incurred over a period of more than one year. Thus, this analysis overstates the actual annual impact on a small entity.

There are additional factors that may cause this analysis to overstate the actual impact on small residential and commercial developers, and on land subdividers. First, it is likely that a portion of the impact will be realized by landowners in the form of higher housing prices. The proportion of the total impact borne by landowners is unknown. We believe the analysis gives a high estimate of possible development and that it is likely the actual amount of development will be less. The analysis likely overstates the amount of development activity and, therefore, the total incremental impact, associated with residential and commercial development. Lastly, anecdotal evidence and existing county building restrictions suggest that fewer properties in critical habitat are being developed than are quantified by the DEA. This will likely further reduce the annual incremental impact borne per small entity.

For road/bridge, utility, and bank stabilization construction and maintenance, the DEA estimates that incremental impacts will range from $392,000 to $818,000 over 20 years, or $37,000 to $77,200 annually. Given an estimated average of four projects impacting critical habitat and requiring section 7 consultation each year, and assuming one small entity (municipality, wastewater district, etc.) conducts each activity, the impact to each small government entity involved would be $9,250 to $19,300. We expect this to be a very small percentage of the annual budgets for the small governments that may be affected; however, we invite comments or information specific to these potential economic impacts to the small governments which may be affected by the proposed revised critical habitat designation.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Given the analysis above, the expected annual impacts to small businesses in the affected industries are significantly less than the annual revenues that could be garnered by a single small operator in those industries, and as such, impacts are low relative to potential revenues. However, we are seeking public comments regarding the estimated incremental impacts of this proposed revised critical habitat designation on small entities. Specifically, we are interested in evidence suggesting that the incremental economic impact of section 7(a)(2) consultations in areas proposed as PMJM critical habitat is expected to be larger or smaller than estimated in this analysis.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. The only criterion that may be relevant to this analysis is increases in the cost of energy distribution in excess of one percent. As described in the DEA, constructing and maintaining electrical and natural gas distribution and transmission systems is a type of utility project potentially occurring in the proposed revised critical habitat. The DEA concludes that incremental impacts may be incurred; however, they are unlikely to reach the threshold of one percent. Therefore, designation of revised critical habitat is not expected to lead to any adverse outcomes (such as a reduction in electricity production or an increase in the cost of energy production or distribution), and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," with two exceptions. First, it excludes "a condition of federal assistance." Second, it excludes "a duty arising from participation in a voluntary

Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the DEA of the proposed designation of revised critical habitat for the PMJM, we do not believe that the rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes that incremental impacts may occur due to project modifications that may need to be made for development activities; however, these are not expected to affect small governments to the extent described above. Consequently, we do not believe that the proposed revised critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Colorado Ecological Services Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 18, 2010

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–12775 Filed 5–26–10; 8:45 am]

BILLING CODE S

Notices

Federal Register
Vol. 75, No. 102
Thursday, May 27, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS-2006-0172]

Interstate Movement of Garbage from Hawaii; Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to a request to allow the interstate movement of garbage from Hawaii to a landfill in the State of Washington. The environmental assessment documents our review and analysis of the environmental impacts associated with, and alternatives to, the movement of palletized or containerized baled municipal solid waste to three existing ports on the Columbia River via barge and the transfer and transportation of the waste via truck or rail to the landfill. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

The importation and interstate movement of garbage is regulated by the Animal and Plant Health Inspection Service (APHIS) under 7 CFR 330.400 and 9 CFR 94.5 (referred to below as the regulations) in order to protect against the introduction into and dissemination within the United States of plant and animal pests and diseases.

On January 19, 2010, we published in the **Federal Register** (75 FR 2845-2846, Docket No. APHIS-2006-0172) a notice[1] in which we announced the availability, for public review and comment, of an environmental assessment documenting our review and analysis of the environmental impacts associated with, and alternatives to, the movement of palletized or containerized baled municipal solid waste to three existing ports on the Columbia River via barge and the transfer and transportation of the waste via truck or rail to the landfill.

We solicited comments on the environmental assessment for 30 days ending on February 18, 2010. We received 37 comments by that date. The commenters raised several issues, including the potential for invasive species/pest introductions, impacts on air and water quality, impacts on fish and wildlife habitat, impacts on existing infrastructure (highway, rail, and barge), increased traffic at associated ports, and the adequacy of the environmental assessment's analysis of cumulative effects.

Our analysis of the comments received and our responses to the issues raised in the comments are contained in a response to comments document that may be viewed on the Regulations.gov Web page (see footnote 1) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. The response to comments document, along with copies of the environmental assessment and finding of no significant impact, is also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 20th day of May 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–12828 Filed 5–26–10: 7:27 am]

BILLING CODE 3410–34–S

[1] To view the environmental assessment, the comments we received and our responses to the comments, and the finding of no significant impact, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0172*).

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funding Availability (NOFA) for Energy Audits and Renewable Energy Development Assistance Under the Rural Energy for America Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Energy for America Program, formerly section 9006 under the 2002 Farm Bill, is composed of several types of grants and guaranteed loan programs. These are: Guaranteed loans and grants for the development/construction of renewable energy systems and for energy efficiency improvement projects; grants for conducting energy audits; grants for conducting renewable energy development assistance; and grants for conducting renewable energy feasibility studies.

The Agency is implementing the Rural Energy for America Program (REAP) for Fiscal Year 2010 through the publication of three REAP notices:

- Renewable energy system and energy efficiency improvement grants and guaranteed loans;
- Energy audit and renewable energy development assistance grants; and
- Renewable energy feasibility study grants.

This REAP notice announces the availability of $2.4 million for fiscal year (FY) 2010 to units of State, tribal, or local government; instrumentalities of a State, tribal, or local government; land-grant colleges and universities and other institutions of higher education, including 1994 Land Grant Colleges

(Tribal Colleges), 1890 Land Grant Colleges, and Historically Black Universities; rural electric cooperatives; and public power entities for the provision of energy audits and renewable energy development assistance to agricultural producers and rural small businesses. This funding will be available in the form of grants. Funds that are not awarded will convert to the REAP pool.

Lastly, the Agency intends to publish a proposed rule that will revise the current program, in large part to conform with the requirements set out by the 2008 Farm Bill, at 7 CFR 4280, subpart B to include renewable energy feasibility study grants, and that will add a new subpart C to address energy audit and renewable energy development assistance grants. Together, these two subparts will represent the Rural Energy for America Program as authorized under section 9007 of the Farm Security and Rural Investment Act of 2002 as amended by section 9001 of the Food, Energy, and Conservation Act of 2008. The Agency anticipates publishing final regulations to operate the Rural Energy for America Program in fiscal year 2011.

DATES: Applications for grants must be submitted on paper or electronically no later than 4:30 p.m., local time July 26, 2010. Neither complete nor incomplete applications received after this date and time will be considered for funding in FY 2010, regardless of the postmark on the application.

ADDRESSES: Application materials may be obtained by contacting one of Rural Development's Energy Coordinators or by downloading through *http://www.grants.gov.*

Submit electronic applications at *http://www.grants.gov,* following the instructions found on this Web site. To use Grants.gov, an applicant must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.* Submit completed paper applications to the Rural Development State Office in the State in which the applicant's principal office is located.

Rural Development Energy Coordinators

Note: Telephone numbers listed are not toll-free.

Alabama

Quinton Harris, USDA Rural Development, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3623, *Quinton.Harris@al.usda.gov*

Alaska

Chad Stovall, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7718, *chad.stovall@ak.usda.gov*

American Samoa (See Hawaii)

Arizona

Alan Watt, USDA Rural Development, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8769, *Alan.Watt@az.usda.gov*

Arkansas

Tim Smith, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3280, *Tim.Smith@ar.usda.gov*

California

Philip Brown, USDA Rural Development, 430 G Street, #4169, Davis, CA 95616, (530) 792–5811, *Phil.brown@ca.usda.gov*

Colorado

April Dahlager, USDA Rural Development, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2909, *april.dahlager@co.usda.gov*

Commonwealth of the Northern Marianas Islands—CNMI (See Hawaii)

Connecticut (see Massachusetts)

Delaware/Maryland

Bruce Weaver, USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3626, *Bruce.Weaver@de.usda.gov*

Federated States of Micronesia (See Hawaii)

Florida/Virgin Islands

Joe Mueller, USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3482, *joe.mueller@fl.usda.gov*

Georgia

J. Craig Scroggs, USDA Rural Development, 111 E. Spring St., Suite B, Monroe, GA 30655, Phone 770–267–1413 ext. 113, *craig.scroggs@ga.usda.gov*

Guam (See Hawaii)

Hawaii/Guam/Republic of Palau/Federated States of Micronesia/Republic of the Marshall Islands/American Samoa/Commonwealth of the Northern Marianas Islands—CNMI

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8313, *Tim.Oconnell@hi.usda.gov*

Idaho

Brian Buch, USDA Rural Development, 9173 W. Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5623, *Brian.Buch@id.usda.gov*

Illinois

Molly Hammond, USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6210, *Molly.Hammond@il.usda.gov*

Indiana

Jerry Hay, USDA Rural Development, 2600 Highway 7 North, North Vernon, IN 47265, (812) 346–3411, Ext 126, *Jerry.Hay@in.usda.gov*

Iowa

Teresa Bomhoff, USDA Rural Development, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4447, *teresa.bomhoff@ia.usda.gov*

Kansas

David Kramer, USDA Rural Development, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2730, *david.kramer@ks.usda.gov*

Kentucky

Scott Maas, USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7435, *scott.maas@ky.usda.gov*

Louisiana

Kevin Boone, USDA Rural Development, 905 Jefferson Street, Suite 320, Lafayette, LA 70501, (337) 262–6601, Ext. 133, *Kevin.Boone@la.usda.gov*

Maine

John F. Sheehan, USDA Rural Development, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9168, *john.sheehan@me.usda.gov*

Maryland (see Delaware)

Massachusetts/Rhode Island/Connecticut

Charles W. Dubuc, USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002, (401) 826–0842 x 306, *Charles.Dubuc@ma.usda.gov*

Michigan

Traci J. Smith, USDA Rural Development, 3001 Coolidge Road,

Suite 200, East Lansing, MI 48823, (517) 324–5157, *Traci.Smith@mi.usda.gov*

Minnesota

Lisa L. Noty, USDA Rural Development, 1400 West Main Street, Albert Lea, MN 56007, (507) 373–7960 Ext. 120, *lisa.noty@mn.usda.gov*

Mississippi

G. Gary Jones, USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–5457, *george.jones@ms.usda.gov*

Missouri

Matt Moore, USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9321, *matt.moore@mo.usda.gov*

Montana

John Guthmiller, USDA Rural Development, 900 Technology Blvd., Unit 1, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2540, *John.Guthmiller@mt.usda.gov*

Nebraska

Debra Yocum, USDA Rural Development, 100 Centennial Mall North, Room 152, Federal Building, Lincoln, NE 68508, (402) 437–5554, *Debra.Yocum@ne.usda.gov*

Nevada

Herb Shedd, USDA Rural Development, 1390 South Curry Street, Carson City, NV 89703, (775) 887–1222, *herb.shedd@nv.usda.gov*

New Hampshire (See Vermont)

New Jersey

Victoria Fekete, USDA Rural Development, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7752, *Victoria.Fekete@nj.usda.gov*

New Mexico

Jesse Bopp, USDA Rural Development, 6200 Jefferson Street, NE, Room 255, Albuquerque, NM 87109, (505) 761–4952, *Jesse.bopp@nm.usda.gov*

New York

Scott Collins, USDA Rural Development, 9025 River Road, Marcy, NY 13403, (315) 736–3316 Ext. 4, *scott.collins@ny.usda.gov*

North Carolina

David Thigpen, USDA Rural Development, 4405 Bland Rd. Suite 260, Raleigh, NC 27609, 919–873–2065, *David.Thigpen@nc.usda.gov*

North Dakota

Dennis Rodin, USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2068, *Dennis.Rodin@nd.usda.gov*

Ohio

Randy Monhemius, USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2424, *Randy.Monhemius@oh.usda.gov*

Oklahoma

Jody Harris, USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1036, *Jody.harris@ok.usda.gov*

Oregon

Don Hollis, USDA Rural Development, 200 SE Hailey Ave, Suite 105, Pendleton, OR 97801, (541) 278–8049, Ext. 129, *Don.Hollis@or.usda.gov*

Pennsylvania

Bernard Linn, USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2182, *Bernard.Linn@pa.usda.gov*

Puerto Rico

Luis Garcia, USDA Rural Development, IBM Building, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106, (787) 766–5091, Ext. 251, *Luis.Garcia@pr.usda.gov*

Republic of Palau (See Hawaii)

Republic of the Marshall Islands (See Hawaii)

Rhode Island (see Massachusetts)

South Carolina

Shannon Legree, USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3150, *Shannon.Legree@sc.usda.gov*

South Dakota

Douglas Roehl, USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1145, *doug.roehl@sd.usda.gov*

Tennessee

Will Dodson, USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1350, *will.dodson@tn.usda.gov*

Texas

Daniel Torres, USDA Rural Development, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742–9756, *Daniel.Torres@tx.usda.gov*

Utah

Roger Koon, USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4301, *Roger.Koon@ut.usda.gov*

Vermont/New Hampshire

Cheryl Ducharme, USDA Rural Development, 89 Main Street, 3rd Floor, Montpelier, VT 05602, 802–828–6083, *cheryl.ducharme@vt.usda.gov*

Virginia

Laurette Tucker, USDA Rural Development, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1594, *Laurette.Tucker@va.usda.gov*

Virgin Islands (see Florida)

Washington

Mary Traxler, USDA Rural Development, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7762, *Mary.Traxler@wa.usda.gov*

West Virginia

Richard E. Satterfield, USDA Rural Development, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4874, *Richard.Satterfield@wv.usda.gov*

Wisconsin

Brenda Heinen, USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615, Ext. 139, *Brenda.Heinen@wi.usda.gov*

Wyoming

Jon Crabtree, USDA Rural Development, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 11005, Casper, WY 82602, (307) 233–6719, *Jon.Crabtree@wy.usda.gov*

FOR FURTHER INFORMATION CONTACT: For information about this Notice, please contact the Energy Branch, USDA Rural Development, STOP 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 720–1400.

For assistance on energy audit and renewable energy development assistance grants, please contact the applicable Rural Development Energy Coordinator, as provided in the **ADDRESSES** section of this Notice.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with energy audit and renewable energy development assistance grants, as covered in this REAP notice, has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0059.

The information collection requirements associated with renewable energy system and energy efficiency improvement grants and guaranteed loans and with renewable energy feasibility study grants, which will be addressed in their respective REAP notices, have also been approved by OMB under OMB Control Number 0570–0050 and OMB Control Number 0570–0061, respectively. When the Agency publishes the proposed rule for REAP, it will consolidate the information collection requirements associated with this REAP notice and the other two REAP notices into a single information collection package for OMB approval.

Overview Information

Federal Agency Name. Rural Business-Cooperative Service.

Funding Opportunity Title. Energy Audit and Renewable Energy Development Assistance under the Rural Energy for America Program.

Announcement Type. Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number. These activities under the Rural Energy for America Program are listed in the Catalog of Federal Domestic Assistance under Number 10.868.

Dates. Applications must be completed and received in the appropriate United States Department of Agriculture (USDA) State Rural Development Office no later than 4:30 p.m. local time July 26, 2010, in order to be considered for funding in FY 2010. Applications received after 4:30 p.m. local time July 26, 2010, regardless of the application's postmark, will not be considered for funding in FY 2010.

Availability of Notice. This Notice is available on the USDA Rural Development Web site at *http://www.rurdev.usda.gov/rbs/busp/REAPEA.htm.*

I. Funding Opportunity Description

A. *Purpose.* This Notice is issued pursuant to section 9001 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246), which amends Title IX of the Farm Security and Rural Investment Act of 2002 (FSRIA) and establishes the Rural Energy for America Program under section 9007 thereof. The 2008 Farm Bill requires the Secretary of Agriculture to create a program to make grants to units of State, tribal, or local government; land-grant colleges or universities or other institutions of higher education, including 1994 Land Grant Colleges (Tribal Colleges), 1890 Land Grant Colleges, and Historically Black Universities; rural electric cooperatives or public power entities; and instrumentalities of a State, tribal, or local government, to assist agricultural producers and rural small businesses by conducting energy audits and providing recommendations and information on renewable energy development assistance and improving energy efficiency. These projects (energy audits and renewable energy development assistance) are designed to help agricultural producers and rural small businesses reduce energy costs and consumption and help meet the nation's critical energy needs. The 2008 Farm Bill mandates that the recipient of a grant that conducts an energy audit for an agricultural producer or a rural small business require the agricultural producer or rural small business to pay at least 25 percent of the cost of the energy audit, which shall be retained by the eligible entity for the cost of the audit.

B. *Statutory Authority.* These activities (energy audits and renewable energy development assistance) are found in the Rural Energy for America Program, which is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

C. *Definition of Terms.* The following definitions are applicable to this Notice.

Administrator. The Administrator of Rural Business-Cooperative Service within the Rural Development Mission Area of the U.S. Department of Agriculture.

Agricultural producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

Departmental regulations. The regulations of the Department of Agriculture's Office of the Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

Energy audit. An audit conducted by a certified energy manager or professional engineer that focuses on potential capital-intensive projects and involves detailed gathering of field data and engineering analysis. The audit will provide detailed project costs and savings information with a high level of confidence sufficient for major capital investment decisions.

Hydroelectric energy. Electrical energy created by use of various types of moving water including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water.

Hydropower. Energy created by hydroelectric or ocean energy.

Institution of higher education. As defined in 20 U.S.C. 1002(a).

Instrumentality. An organization recognized, established, and controlled by a State, tribal, or local government, for a public purpose or to carry out special purposes.

Ocean energy. Energy created by use of various types of moving water including, but not limited to, tidal, wave, current, and thermal changes.

Post-application. The period of time after the Agency has received a complete application. A complete application is an application that contains all parts necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation.

Public power entity. Is defined using the definition of "state utility" as defined in section 217(A)(4) of the Federal Power Act (16 U.S.C. 824q(a)(4)). As of this writing, the definition is a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or a corporation that is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing, or distributing power.

Qualified consultant. An independent third-party possessing the knowledge, expertise, and experience to perform in an efficient, effective, and authoritative manner the specific task required.

Rated power. The amount of energy that can be created at any given time.

Renewable biomass.

(i) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(A) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(B) would not otherwise be used for higher-value products; and

(C) are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of subsection (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(ii) any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(A) renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(B) waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Renewable energy. Energy derived from:

(i) a wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric source; or

(ii) hydrogen derived from renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric energy sources.

Renewable Energy Development Assistance. Assistance provided by eligible grantees to agricultural producers and rural small businesses to become more energy efficient and to use renewable energy technologies and resources. The renewable energy development assistance may consist of renewable energy site assessment and/or renewable energy technical assistance.

Renewable energy technical assistance. Assistance provided to agricultural producers and rural small businesses on how to use renewable energy technologies and resources in their operations.

Renewable energy site assessment. A report provided to an agricultural producer or rural small business providing recommendations and information regarding the use of renewable energy technologies in its operations. The report shall be prepared by a qualified consultant and evaluate a specific site or geographic area for potential use of one or more renewable energy technologies. Typically, the report will evaluate a potential renewable energy project with an estimated total cost of construction of less than $200,000. The evaluation shall be based on existing data, which may include data regarding existing and/or proposed structures, commercially available technologies, feed-stocks, and other renewable energy resources. The report will consider factors such as the site and the potential uses of renewable energy technology at the site. The report will not include information about any residential dwelling(s).

Rural. Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town according to the latest decennial census of the United States.

Small business. An entity considered a small business in accordance with the U.S. Small Business Administration's (SBA) small business size standards found in Title 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility, including a Tribal or governmental electric utility, that provides service to rural consumers on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district, provided such utilities meet SBA's definition of small business. These entities must operate independently of direct Government control. With the exception of the entities described above, all other non-profit entities are excluded.

Small hydropower. A hydropower project for which the rated power of the system is 30 megawatts or less.

State. Any of the 50 states of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

II. Funding Information

A. *Available Funds.* The amount of grant funds available for energy audits and renewable energy development assistance in FY 2010 is $2.4 million.

Based on the quality of the applications received under this REAP notice, the Agency reserves the right, at its discretion, to move funds from this Notice to fund applications received under the other two REAP notices. Conversely, the Agency may, at its discretion, move money for the other two REAP notices to fund applications received under this REAP notice if the quality and number of applicants merits it. The Agency's ability to move funds is subject to the limitation contained in section 9007(c)(3)(B) of the Farm Security and Rural Investment Act of 2002, which limits funding for feasibility studies to not exceed more than 10 percent of the funds made available to carry out the total amount made available under the renewable energy system and energy efficiency improvements REAP notice and the feasibility study REAP notice.

B. *Number of Grants.* The number of grants will depend on the number of eligible applicants participating in conducting energy audits and providing renewable energy development assistance.

C. *Range of Amounts of Each Grant.* To ensure applications for energy audits and renewable energy development assistance will allow the maximum number of States to benefit from these projects under the Rural Energy for America Program, grants awarded to a single applicant will be limited to no more than $100,000 under this Notice.

D. *Type of Instrument.* Grant.

III. Eligibility Information

Eligibility requirements for energy audit and renewable energy development assistance grants under the Rural Energy for America Program are:

A. *Applicant eligibility.* To be eligible for an energy audit grant or a renewable energy development assistance grant under the Rural Energy for America Program, the applicant must meet each of the criteria, as applicable, set forth in paragraphs (1) through (4) in this section. The Agency will determine an applicant's eligibility.

(1) *Type of applicant.* The applicant must be one of the following:

(i) A unit of State, tribal, or local government;

(ii) A land-grant college or university or other institution of higher education;

(iii) A rural electric cooperative;

(iv) A public power entity; or

(v) An instrumentality of a State, tribal, or local government.

(2) *Citizenship.* The applicant must meet the requirements in paragraphs (2)(i) or (ii), as applicable, of this section.

(i) If the applicant is an individual, the applicant must be a citizen or national of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the

Marshall Islands, or American Samoa, or must reside in the U.S. after legal admittance for permanent residence.

(ii) If the applicant is an entity other than an individual, the applicant must be at least 51 percent owned by persons who are either citizens or nationals of the U.S., the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or legally admitted permanent residents residing in the U.S. This paragraph is not applicable if the entity is owned solely by members of an immediate family. In such instance, if at least one of the immediate family members is a citizen or national, as defined in paragraph (2)(i) of this section, then the entity is eligible.

(3) *Capacity to perform.* The applicant must have sufficient capacity to perform the energy audit or renewable energy development assistance activities proposed in the application to ensure success. The Agency will make this assessment based on the information provided in the application.

(4) *Legal authority and responsibility.* Each applicant must have, or obtain, the legal authority necessary to carry out the purpose of the grant.

(5) *Ineligible applicants.* Consistent with Departmental regulations, an applicant is ineligible if it is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs. Applicants will also be considered ineligible for a grant if they have an outstanding Federal judgment (other than one obtained in the U.S. Tax Court), are delinquent on the payment of Federal income taxes, or are delinquent on Federal debt.

B. *Project Eligibility.*

To be eligible for an energy audit or a renewable energy development assistance grant, the grant funds for a project must be used by the grant recipient to assist agricultural producers or rural small businesses in one or both of the purposes specified in paragraphs (1) and (2) below and shall also comply with paragraph (3) and, if applicable, paragraph (4).

(1) Grant funds may be used to conduct and promote energy audits that meet the requirements of the energy audit as defined in this Notice. Energy audits must:

(i) Include a narrative description of the facility or process being audited; its energy system(s) and usage; its activity profile; and the price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer over the previous 12 months from the date of the audit. Any energy conversion data should be based on use and source.

(ii) List specific information regarding all potential energy-saving opportunities and the associated cost.

(iii) Discuss the possible interactions of the potential improvements with existing energy systems.

(A) Estimate the annual energy and energy costs savings expected from each possible improvement recommended for the potential project.

(B) Estimate all direct and attendant indirect costs of each improvement.

(C) Rank potential improvement measures by cost-effectiveness.

(iv) Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of nonenergy benefits such as project reliability and durability.

(A) Provide preliminary specifications for critical components.

(B) Provide preliminary drawings of project layout, including any related structural changes.

(C) Document baseline data compared to projected consumption, together with any explanatory notes. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(D) Identify significant changes in future related operations and maintenance costs, including person-hours.

(E) Describe explicitly how outcomes will be measured annually.

(2) Grant funds may be used to conduct and promote renewable energy development assistance by providing to agricultural producers and rural small businesses recommendations and information on how to improve the energy efficiency of their operations and to use renewable energy technologies and resources in their operations.

(3) Energy audit assistance and renewable energy development assistance can be provided only to facilities located in rural areas.

(4) For the purposes of this Notice, only small hydropower projects are eligible for energy audits and renewable energy development assistance. Per consultation with the U.S. Department of Energy, the Agency is defining small hydropower as having a rated power of 30 megawatts or less, which includes hydropower projects commonly referred to as "micro-hydropower" and "mini-hydropower."

IV. Application and Submission Information

A. Address To Request Application

Applicants may obtain applications from the applicable Rural Development Energy Coordinators, as provided in the Addresses section of this Notice. Applicants planning to apply electronically must visit *http://www.grants.gov* and follow the instructions.

B. Content and Form of Submission

Applicants must submit an original and one copy of the application to the Rural Development State Office in the State in which the applicant's principal office is located. Applicants must submit complete applications, consisting of the following elements, in order to be considered:

(1) Form SF–424, Application for Federal Assistance;

(2) Form SF–424A, Budget Information—Non-Construction Programs;

(3) Form SF–424B, Assurances—Non-Construction Programs;

(4) If an entity, copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant;

(5) A proposed scope of work, including a description of the proposed project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from grant approval to beginning of project implementation. A written narrative to be used as the scope of work which includes, at a minimum, the following items:

(i) An Executive Summary;

(ii) The plan and schedule for implementation;

(iii) The anticipated number of agricultural producers and/or rural small businesses to be served;

(iv) An itemized budget—compute total cost per rural small business or agricultural producer served—matching funds should be clearly identified as cash;

(v) The geographic scope of the proposed project;

(vi) Applicant experience as follows:

(A) If applying for a Renewable Energy Development Assistance grant, the applicant's experience in completing similar renewable energy development assistance activities, including the number of similar projects the applicant has performed and the number of years the applicant has been performing a similar service;

(B) If applying for an Energy Audit grant, the number of energy audits and

assessments the applicant has completed and the number of years the applicant has been performing those services; and

(C) For all applicants, the amount of experience in administering energy audit, renewable energy development assistance, or similar activities using State or Federal support;

(vii) Applicant's resources, including personnel, finances, and technology, to complete what is proposed. If submitting in multiple states, resources must be sufficient to complete all projects;

(viii) Leveraging and commitment of other sources of funding being brought to the project (in addition to the required 25 percent contribution from the agricultural producer or rural small business for the cost of an energy audit). Leveraged funds should be clearly identified as cash and by source. Written documentation/confirmation from the party committing a specific amount of leveraged funds is required;

(ix) Outreach activities/marketing efforts specific to conducting energy audit and renewable energy development assistance including:

(A) Project title;

(B) Goals of the project;

(C) Identified need;

(D) Target audience;

(E) Timeline and type of activities/action plan; and

(F) Marketing strategies;

(x) Method and rationale used to select the areas and businesses that will receive the service;

(xi) Brief description of how the work will be performed, including whether organizational staff, consultants, or contractors will be used;

(6) The most recent financial audit (not more than 18 months old) of the entity, or subdivision thereof, that will be performing the proposed work. If such an audit is not available, the latest financial information that shows the financial capacity of the entity, or subdivision thereof, to perform the proposed work. Such information may include, but is not limited to, the most recent year-end balance sheet, income statement, and other appropriate data that identify the entity's resources;

(7) A Dunn and Bradstreet Data Universal Numbering System (DUNS) number; and

(8) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the project under Executive Order 12372.

C. Submission Dates, Times, and Addresses

Complete applications must be received in the appropriate USDA Rural Development State Office no later than 4:30 p.m. local time July 26, 2010 to be considered for funding in FY 2010. Neither incomplete applications nor complete applications received after this date and time will be considered, regardless of the postmark on the application.

Applicants may submit their applications either to the Rural Development Energy Coordinator in the State in which the applicant's principal office is located or via *http://www.grants.gov.* A list of Rural Development Energy Coordinators is provided in the Addresses section of this Notice.

D. Intergovernmental Review

The Rural Energy for America Program is subject to the provisions of the Executive Order 12372, which requires intergovernmental consultation with State and local officials.

E. Funding limitations

Grant funds awarded for energy audit and renewable energy development assistance projects may be used only to pay eligible project costs, as described in paragraph (1) below. Grant funds awarded for energy audits and renewable energy development assistance projects are prohibited from being used to pay costs associated with the items listed in paragraph (2) below.

(1) *Eligible project costs.* Eligible project costs are those post-application expenses directly related to conducting and promoting energy audits and renewable energy development assistance, which include but are not limited to:

(i) Salaries directly or indirectly related to the project;

(ii) Travel expenses directly related to conducting energy audits or renewable energy development assistance;

(iii) Office supplies (e.g., paper, pens, file folders); and

(iv) Administrative expenses, up to a maximum of 5 percent of the grant, which include but are not limited to:

(A) Utilities;

(B) Office space;

(C) Operation expenses of office and other project-related equipment (*e.g.,* computers, cameras, printers, copiers, scanners); and

(D) Expenses for outreach and marketing of the energy audit and renewable energy development assistance activities, including associated travel expenses.

(2) *Ineligible grant purposes.* Grant funds may not be used to:

(i) Pay for any construction-related activities;

(ii) Purchase equipment;

(iii) Pay any costs of preparing the application package for funding under this Notice;

(iv) Pay any costs of the project incurred prior to the application date of the grant made under this Notice;

(v) Fund political or lobbying activities;

(vi) Pay for assistance to any private business enterprise which does not meet the requirements of paragraph III.A(2) of this Notice; and

(vii) Pay any judgment or debt owed to the United States.

(3) *Funding limitations.* The following funding limitations apply.

(i) *Maximum grant amount.* The maximum aggregate amount of grants awarded to any one recipient under this Notice cannot exceed $100,000.

(ii) *Energy audits.* A recipient of a grant under this Notice that conducts an energy audit shall require that, as a condition of the energy audit, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit. Further, the amount paid by the agricultural producer or rural small business will be retained by the recipient as a contribution towards the cost of the energy audit.

V. Grant Provisions

This section identifies the process and procedures the Agency will use to process and select applications, award grants, and administer grants.

A. Processing and Scoring Applications

(1) *Application review.* Upon receipt of an application, the Agency will conduct a review to determine if the applicant and project are eligible. The Agency will notify the applicant in writing of the Agency's findings. If the Agency has determined that either the applicant or project is ineligible, it will include in the notification the reason(s) for its determination(s).

(2) *Incomplete applications.* Incomplete applications will be rejected. Applicants will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(3) *Subsequent ineligibility determinations.* If at any time an application is determined to be ineligible, the Agency will notify the applicant in writing of its determination, and processing of the application will cease.

(4) *Application withdrawal.* During the period between the submission of an application and the execution of documents, the applicant must notify

the Agency, in writing, if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant so notifies the Agency, the selection will be rescinded or the application withdrawn.

(5) *Application deadline.* Each complete and eligible application received by the applicable Rural Development State office by 4:30 p.m. local time July 26, 2010 will be scored. Any application received by the applicable Rural Development State office after 4:30 p.m. local time will not be considered.

(6) *Scoring.* The Agency will score each application using the following criteria, with a maximum score of 100 points possible.

(i) *Project proposal (maximum score of 10 points).* The applicant will be scored based on its in-house ability to conduct audits versus using third party auditing organizations as illustrated in the application.

(A) If the applicant proposes to use at least 51 percent of the awarded funding to employ internal, qualified auditors and/or renewable energy specialists for program implementation, up to 10 points will be awarded as follows:

(*1*) If the percentage is between 51 percent and 75 percent, 5 points will be awarded.

(*2*) If the percentage is more than 75 percent, 10 points will be awarded.

(B) If the applicant proposes to use less than 51 percent of the awarded funding to employ internal, qualified auditors and/or renewable energy specialists for program implementation, zero points will be awarded.

(ii) *Use of Grant Funds for Administrative Expenses (maximum score of 10 points).* Grantees selected to participate may use up to 5 percent of their award for administrative expenses.

(A) If the applicant proposes to use none of the grant funds for Administrative Expenses, 10 points will be awarded.

(B) If the applicant proposes to use a portion (up to 5 percent) of the grant funds for Administrative Expenses, zero points will be awarded.

(iii) *Applicant's organizational experience in completing proposed activity (maximum score of 15 points).* The applicant will be scored on the experience of the organization in meeting the benchmarks below. This means that an organization must have been in business and provided services as noted in the scoring requirements. An organization's experience must be documented with references and resumes. Points will be awarded as follows:

(A) More than 3 years of experience, 15 points will be awarded.

(B) At least 2 years and up to and including 3 years of experience, 10 points will be awarded.

(C) At least 1 year but less than 2 years of experience, 5 points will be awarded.

(D) Less than 1 year of experience, zero points will be awarded.

(iv) *Geographic scope of project in relation to identified need (maximum score of 10 points).*

(A) If the applicant's proposed or existing rural service area is State-wide or includes all or parts of multiple states, and the marketing and outreach plan has identified needs throughout that service area, 10 points will be awarded.

(B) If the applicant's proposed or existing rural service area consists of multiple counties in a single State and the marketing and outreach plan has identified needs throughout that service area, 7.5 points will be awarded.

(C) If the applicant's rural service area consists of a single county or municipality and the marketing and outreach plan has identified needs throughout that service area, 5 points will be awarded.

(v) *Number of agricultural producers/rural small businesses to be served (maximum score of 15 points).*

(A) If the applicant plans to provide audits to ultimate recipients with average audit costs of $1,000 or less, 15 points will be awarded.

(B) If the applicant plans to provide audits to ultimate recipients with average audit costs over $1,000 but less than $1,500, 10 points will be awarded.

(C) If the applicant plans to provide audits to ultimate recipients with average audit costs of at least $1,500 but less than $2,000, 5 points will be awarded.

(vi) *Potential of project to produce energy savings and its attending environmental benefits (maximum score of 25 points).* Applicants can be awarded points under both paragraphs (vi)(A) and (B).

(A) If the applicant has an existing program that can demonstrate the achievement of energy savings with the agricultural producers and/or rural small businesses it has served, 13 points will be awarded.

(B) If the applicant provides evidence that it has received awards in recognition of its renewable energy, energy savings, or energy-based technical assistance, up to 12 points will be awarded based on number of awards and rigorousness of the competition for each award.

(vii) *Marketing and outreach plan (maximum score of 10 points).* If the applicant includes in the application a marketing and outreach plan and provides a satisfactory discussion of each of the following criteria, two points for each of the following will be awarded:

(*A*) The goals of the project;

(*B*) Identified need;

(*C*) Target beneficiaries;

(*D*) Timeline and action plan; and

(*E*) Marketing strategies and supporting data for strategies.

(viii) *Level and commitment of other funds for the project (not including the 25 percent required contribution from ultimate recipients for the cost of an energy audit) (maximum score of 5 points).*

(A) If the applicant proposes to leverage grant funding with 50 percent or more in non-State and non-federal government matching funds for the subject grant, and has a written commitment for those funds, 5 points will be awarded.

(B) If the applicant proposes to leverage grant funding with less than 50 percent but more than 20 percent in non-State and non-federal government matching funds for the subject grant, and has a written commitment for those funds, 2 points will be awarded.

(C) If the applicant proposes less than 20 percent in non-State and non-federal government matching funds, zero points will be awarded.

B. Award Process

Applications will be scored by the State Offices and submitted to the National Office for review.

(1) *Submission to National Office.* To ensure the equitable geographic distribution of funds, the two highest scoring applications from each State, based on the scoring criteria established under paragraph V.A(6), will be submitted to National Office to compete for funding.

(2) *Ranking of applications.* All applications submitted to the National Office will be ranked. All applications that are ranked will be considered for selection for funding.

(3) *Selection of applications for funding.*

(i) Using the ranking created under paragraph B(2) of this section, the Agency will consider the score an application has received compared to the scores of other ranked applications, with higher scoring applications receiving first consideration for funding.

(ii) If after the majority of applications have been funded, insufficient funds remain to fund the next highest scoring application, the Agency may elect to

fund a lower scoring application. Before this occurs, the Administrator, as applicable, will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Administrator must determine the project is financially feasible at the lower amount.

(iii) The Agency will notify, in writing, applicants whose applications have been selected for funding.

(4) *Disposition of ranked applications not funded.* Based on the availability of funding, a ranked application may not be funded in the fiscal year in which it was submitted. Such ranked applications will not be carried forward into the next fiscal year and the Agency will notify the applicant in writing.

(5) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's selection of the application, the Agency will rescind the selection and will provide the applicant with a written notice to that effect. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

C. Actions Prior To Grant Closing

(1) *Changes in project cost or scope.* If there is a significant reduction in project cost or changes in project scope, then the applicant's funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other selection factors; however, other factors, including Agency regulations used at the time of grant approval, will remain the same. Obligated grant funds not needed to complete the project will be de-obligated.

(2) *Evidence of and disbursement of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with Agency funds must have these funds from other such sources prior to grant closing. Agency funds will not be expended in advance of funds committed to the project from other sources without prior Agency approval.

D. Letter of Conditions and Grant Agreement

(1) *Letter of conditions.* The Agency will notify the approved applicant in writing, setting out the conditions under which the grant will be made. The notice will include those matters necessary to ensure that the proposed grant is completed in accordance with the terms of the scope of work and budget, that grant funds are expended for authorized purposes, and that the applicable requirements prescribed in the relevant Departmental regulations are complied with. The Letter of Conditions will be sent to the applicant.

(2) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return Form RD 1942–46, "Letter of Intent to Meet Conditions," to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(3) *Grant agreement, forms, and certifications.* Prior to grant approval, the applicant must complete, sign, and return a grant agreement (published at the end of this Notice). In addition, the following forms, which will be attached to the letter of conditions referenced in paragraph V.D(1) of this Notice, and certifications must be submitted prior to grant approval:

(A) Form RD 1942–46;

(B) Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions";

(C) Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," including certification from any person or entity that the applicant does business with as a result of this government assistance that they are not debarred or suspended from government assistance;

(D) Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals";

(E) Form SF–LLL, "Disclosure Form to Report Lobbying" or Exhibit A–1 of RD Instruction 1940–Q, "Certification for Contracts, Grants, and Loans"; and

(F) Form RD 400–4, "Assurance Agreement."

(4) *Grant approval.* Form RD 1940–1 must be signed by the applicant.

(i) The applicant will be sent a copy of the executed Form RD 1940–1, the approved scope of work, and a grant agreement (published at the end of this Notice). The grant will be considered closed on the obligation date.

(ii) The grantee must abide by all requirements contained in the Grant Agreement, this Notice, and any other applicable Federal statutes or regulations. Failure to follow these requirements may result in termination of the grant and adoption of other available remedies.

E. Fund Disbursement

The Agency will determine, based on the applicable Departmental regulations, whether disbursement of a grant will be by advance or reimbursement. A SF–270, "Request for Advance or Reimbursement," must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds. Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for advance or reimbursement.

F. Use of Remaining Funds

Funds remaining after all costs incident to the basic project have been paid or provided for are to be handled as specified in this section.

(1) Remaining funds are not to include grantee contributions.

(2) Remaining funds may be used based on prior approval by the Agency for eligible grant purposes, provided:

(i) the use will not result in major changes to the project;

(ii) the purpose of the grant remains the same; and

(iii) the project remains within its original scope.

(3) Grant funds not expended within 24 months from date of the grant agreement will be cancelled by the Agency. Prior to the actual cancellation, the Agency will notify the grantee, in writing, of the Agency's intent to cancel the remaining funds.

G. Monitoring and Reporting Project Performance

(1) *Monitoring of projects.* Grantees are responsible for ensuring that all activities are performed within the approved scope of work and that funds are only used for approved purposes. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, financial resources are appropriately expended by contractors (if applicable), and any other performance objectives identified in the scope of work are being achieved. To the extent that resources are available, the Agency will monitor grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency's

monitoring of Grantees neither relieves the Grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only nor provides recourse or a defense to the Grantee should the Grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(2) *Federal financial reports.* A SF–425, "Federal Financial Report," and a project performance report will be required of all grantees on a semiannual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by the Agency.

(3) *Performance reports.* Grantees must submit to the Agency, in writing, semiannual performance reports and a final performance report, once all project activities are completed. Grantees are to submit an original of each report to the Agency.

(i) *Semiannual performance reports.* Project performance reports shall include, but not be limited to, the following:

(A) A comparison of actual accomplishments to the objectives established for that period (e.g., the number of audits performed, number of recipients of renewable energy development assistance);

(B) A list of recipients, each recipient's location, and each recipient's North American Industry Classification System code;

(C) Problems, delays, or adverse conditions, if any, that have in the past or will in the future affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(D) Percentage of financial resources expended on contractors; and

(E) Objectives and timetable established for the next reporting period.

(ii) *Final performance report.* A final performance report will be required with the final Federal Financial Report within 90 days after project completion. In addition to the information required under paragraph (3)(i) above, the final performance report must contain the information specified in paragraphs (3)(ii)(A) and (3)(ii)(B) below, as applicable, of this section.

(A) For energy audit projects, the final performance report must provide complete information regarding:

(*1*) the number of audits conducted,

(*2*) a list of recipients (agricultural producers and rural small businesses) with each recipient's North American Industry Classification System code,

(*3*) the location of each recipient,

(*4*) the cost of each audit,

(*5*) the expected energy saved for each audit conducted if the audit is implemented, and

(*6*) the percentage of financial resources expended on contractors.

(B) For renewable energy development assistance projects, the final performance report must provide complete information regarding:

(*1*) a list of recipients with each recipient's North American Industry Classification System code,

(*2*) the location of each recipient,

(*3*) the expected renewable energy that would be generated if the projects were implemented, and

(*4*) the percentage of financial resources expended on contractors.

(4) *Final status report.* One year after submittal of the final semiannual performance report, the Grantee will provide the Agency a final status report on the number of projects that are proceeding with one or all of the Grantee's recommendations, including the amount of energy saved and the amount of renewable energy generated, as applicable.

(5) *Other reports.* The Agency may request any additional project and/or performance data for the project for which grant funds have been received.

H. Financial Management System and Records

(1) The grantee will provide for Financial Management Systems that will include:

(i) Accurate, current, and complete disclosure of the financial result of each grant.

(ii) Records that identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(iii) Effective control over and accountability for all funds. Grantee shall adequately safeguard all such assets and shall ensure that funds are used solely for authorized purposes.

(2) The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Microfilm copies may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

I. Audit Requirements

Grantees must provide an annual audit in accordance with 7 CFR part 3052.

J. Grant Servicing

Grants will be serviced in accordance with Departmental regulations and 7 CFR part 1951, subparts E and O. Grantees will permit periodic inspection of the project operations by a representative of the Agency.

K. Programmatic Changes

The Grantee shall obtain prior Agency approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

L. Transfer of Obligations

Subject to Agency approval, an obligation of funds established for a grantee may be transferred to a different (substituted) grantee provided:

(1) The substituted grantee

(i) is eligible;

(ii) has a close and genuine relationship with the original grantee; and

(iii) has the authority to receive the assistance approved for the original grantee; and

(2) The need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

M. Grant Close out and Related Activities

In addition to the requirements specified in the Departmental regulations, failure to submit satisfactory reports on time under the provisions of Section V.G., Monitoring and Reporting Project Performance, may result in the suspension or termination of a grant. The provisions of this section apply to grants and sub-grants.

VI. Administration Information

A. Notice of Eligibility

If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant in writing. If an applicant is determined by the Agency to be ineligible, the Agency will notify the applicant, in writing, as to the reason(s) the applicant was rejected. Such applicant will have review and appeal rights as specified in this Section.

B. Administrative and National Policy Requirements

(1) *Review and appeal rights.* A person may seek a review of an Agency decision under this Notice from the appropriate Agency official that oversees the program in question and appeal to the National Appeals Division in accordance with 7 CFR part 11.

(2) *Notification of unfavorable decisions.* If at any time prior to grant approval it is decided that favorable action will not be taken on an application, the State Director will notify the applicant in writing of the decision and of the reasons why the request was not favorably considered. The notification will inform applicant of its rights to an informal review, mediation, and appeal of the decision in accordance with 7 CFR part 11.

C. Exception Authority

Except as specified in paragraphs (1) through (3) below, the Administrator may make exceptions to any requirement or provision of this Notice, if such exception is in the best interests of the Federal Government and is otherwise not in conflict with applicable laws.

(1) *Applicant eligibility.* No exception to applicant eligibility can be made.

(2) *Project eligibility.* No exception to project eligibility can be made.

(3) *Rural area definition.* No exception to the definition of rural area can be made.

D. Member or Delegate Clause

No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

E. Environmental Review

All grants made under this subpart are subject to the requirements of 7 CFR part 1940, subpart G. Applications for financial assistance for planning purposes or management and feasibility studies are categorically excluded from the environmental review process by 7 CFR 1940.310(e)(1).

F. Other USDA Regulations

Energy audit and renewable energy development assistance projects funded under this Notice are subject to the provisions of the Departmental regulations, as applicable, which are incorporated by reference herein.

VII. Agency Contacts

Notice Contact. For information about this Notice, please contact the Energy Branch, USDA Rural Development, STOP 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 720–1400.

For assistance on energy audit and renewable energy development assistance grants, please contact the applicable Rural Development Energy Coordinator, as provided in the Addresses section of this Notice.

VIII. Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). "USDA is an equal opportunity provider and employer."

IX. Civil Rights Compliance Requirements

All grants made under this Notice are subject to title VI of the Civil Rights Act of 1964, 7 CFR part 1901, subpart E, and Section 504 of the Rehabilitation Act of 1973.

Dated: May 19, 2010.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

Energy Audit and Renewable Energy Development Assistance Grant Agreement

This Grant Agreement (Agreement) is a contract for receipt of grant funds of $_____, under the Rural Energy for America program, Title IX, Section 9001 of the Food, Conservation, and Energy Act of 2008 (Pub.L. 110–234), between _____(Grantee) and the United States of America acting through Rural Development, Department of Agriculture (Grantor). All references herein to "Project" refer to an energy audit project and/or renewable energy development assistance project identified in the scope of work submitted with the application. Should actual project costs be lower than projected in the scope of work, the final amount of the grant may be adjusted.

A. Assurance Agreement

Grantee assures Grantor that Grantee is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in the Departmental regulations as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts, which are incorporated into this agreement by reference, any applicable Notices published in the **Federal Register**, and such other statutory provisions as are specifically contained herein.

Grantee and Grantor agree to all of the terms and provisions of any policy or regulations promulgated under Title IX, Section 9001 of the Food, Conservation, and Energy Act of 2008. Any application submitted by Grantee for this grant, including any attachments or amendments, is incorporated and included as part of this Agreement. Any changes to these documents or this Agreement must be approved in writing by Grantor.

Grantor may suspend and/or terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that Grantee has failed to comply with the conditions of this Agreement.

B. Use of Grant Funds

Grantee will use grant funds and leveraged funds only for the purposes and tasks included in the application and budget approved by Grantor. The approved Budget and approved use of funds are further described in the Grantor Letter of Conditions and amendments or supplements thereto. Any uses not provided for in the approved budget must be approved in writing by Grantor.

C. Civil Rights Compliance

Grantee will comply with Executive Order 12898, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This shall include collection and maintenance of data on the race, sex, disability, and national origin of Grantee's membership/ownership and employees. These data must be available to Grantor in its conduct of Civil Rights Compliance Reviews, which will be conducted prior to grant closing and 3 years later, unless the final disbursement of grant funds has occurred prior to that date.

D. Financial Management Systems

1. Grantee will provide a Financial Management System in accordance with Departmental regulations as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts, including but not limited to:

(i) Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

(ii) Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and ensure that they are used solely for authorized purposes;

(iii) Accounting records prepared in accordance with generally accepted accounting principles (GAAP) and supported by source documentation; and

(iv) Grantee tracking of fund usage and records that show matching funds and grant funds are used proportionally. Grantee will provide verifiable documentation regarding matching funds usage, i.e., bank statements or copies of funding obligations from the matching source.

2. Grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities, except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of Grantee which are pertinent to the grant for the purpose of making audits, examinations, excerpts, and transcripts.

E. Procurement

Grantee will comply with the applicable procurement requirements of 7 CFR part 3015 regarding standards of conduct, open and free competition, access to contractor records, and equal employment opportunity requirements.

F. Reporting

1. Grantee will after grant approval through project completion:

(i) Provide periodic reports as required by Grantor. A federal financial report and a project performance report will be required on a semiannual basis (due 30 working days after end of the semiannual period). For the purposes of this grant, semiannual periods end on June 30 and December 31. The federal financial report must show how grant funds and leveraged funds have been used to date and project the funds needed and their purposes for the next quarter. Grantee shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include the following:

(A) *Semiannual performance reports.* Project performance reports shall include, but not be limited to, the following:

(*1*) A comparison of actual accomplishments to the objectives established for that period (e.g., the number of audits performed, number of recipients of renewable energy development assistance);

(*2*) A list of recipients, each recipient's location, and each recipient's North American Industry Classification System code;

(*3*) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(*4*) Percentage of financial resources expended on contractors; and

(*5*) Objectives and timetable established for the next reporting period.

(B) *Final performance report.* A final performance report will be required with the final federal financial Report.

(*1*) For energy audit projects, the final performance report must provide the information required in a semiannual performance report; complete information regarding the number of audits conducted; a list of recipients with each recipient's North American Industry Classification System code; the location of each recipient; the cost of each audit; the expected energy saved for each audit conducted if the audit is implemented; the number of jobs created and saved for an agricultural producer or rural small business, as applicable, as a result of the grant; and the percentage of financial resources expended on contractors.

(*2*) For renewable energy development assistance projects, the final performance report must provide the information required in a semiannual performance report; a list of recipients with each recipient's North American Industry Classification System code; the location of each recipient; the expected renewable energy that would be generated if the projects were implemented; and the percentage of financial resources expended on contractors.

(*ii*) For the year(s) in which grant funds are received, Grantee will provide an annual financial statement to Grantor.

2. Grantee will, after project completion:

(i) Allow Grantor access to the records and performance information obtained under the scope of the project; and

(ii) One year after submittal of the final semiannual performance report, Grantee will provide Grantor a final status report on the number of projects that are proceeding with one or all of Grantee's recommendations, including the amount of energy saved and the amount of renewable energy generated, as applicable.

G. Grant Disbursement

Unless required by funding partners to be provided on a pro rata basis with other funding sources, grant funds will be disbursed after all other funding sources have been expended.

1. Requests for reimbursement may be submitted monthly or more frequently if authorized to do so by Grantor. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

2. Grantee shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

3. Payment shall be made by electronic funds transfer.

4. Standard Form 270, "Request for Advance or Reimbursement," or other format prescribed by Grantor shall be used to request Grant reimbursements.

H. Use of Remaining Grant Funds

Grant funds not expended within 24 months from date of this agreement will be cancelled by Grantor. Prior to the actual cancellation, Grantor will notify Grantee, in writing, of Grantor's intent to cancel the remaining funds.

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its duly authorized officer(s), and Grantor has caused this Agreement to be duly executed in its behalf by

GRANTOR:
[SEAL] _____
Name:
Title:
UNITED STATES OF AMERICA
DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT

_____
Date
GRANTEE:
[SEAL] _____
Name:
Title:

_____
Date

[FR Doc. 2010–12583 Filed 5–26–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northern New Mexico Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northern New Mexico Resource Advisory Committee will meet in Albuquerque, New Mexico. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act (5 U.S.C. Appendix 2 §§ 1–15, October 6, 1972, as amended 1976, 1980 and 1982). The purpose is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held on June 22, 2010, beginning at 10 a.m. A second day of the meeting, on June 23, 2010, will begin at 8 a.m.

ADDRESSES: The meeting will be held at the Drury Inn, 4310 The 25 Way, NE., in the Taos Room, Albuquerque, New Mexico. Written comments should be sent to Ignacio Peralta, Carson National Forest, 208 Cruz Alta Road, Taos, NM 87571. Comments may also be sent via e-mail to *iperalta@fs.fed.us* or via facsimile to 575–758–6213.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Carson National Forest, 208 Cruz Alta Road, Taos, NM. Visitors are encouraged to call ahead to 575–758–6344 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: RAC Coordinator USDA, Carson National Forest: Ignacio Peralta, 575–758–6344, 208 Cruz Alta Rd., Taos, NM 87571. E-mail: *iperalta@fs.fed.us.* RAC Coordinator, USDA, Santa Fe National Forest: Ruben Montes, 505–438–5356, 11 Forest Lane, Santa Fe, NM 87508. E-mail: *rmontes@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members, and Forest Service personnel; (2) Selection of a chairperson by the committee members; (3) Review of Act and RAC Charter; (4) Administrative budget; (5) Receive materials explaining the process for considering and recommending Title II projects; and (6) Public Comment.

Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: May 21, 2010.

Kendall Clark,

Forest Supervisor, Carson National Forest.

[FR Doc. 2010–12751 Filed 5–26–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary, Office of Administrative Services.

Title: DOC National Environmental Policy Act Environmental Questionnaire and Checklist.

OMB Control Number: 0690–0028.

Form Number(s): CD–593.

Type of Request: Regular submission.

Number of Respondents: 200.

Average Hours per Response: 2 hours.

Burden Hours: 400.

Needs and Uses: The Environmental Questionnaire and Checklist is designed to be used by both grants applicants and Federal entities proposing construction or infrastructure projects. The questions address a diverse range of potential environmental issues covered under Federal environmental laws and regulations and are designed to provide a reviewer enough information to determine the level of NEPA documentation necessary to comply with the law.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; individuals and households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–5806, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov.*

Dated: May 21, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–12695 Filed 5–26–10; 8:45 am]

BILLING CODE 3510–NW–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838, A–570–892]

Carbazole Violet Pigment 23 From India and the People's Republic of China: Continuation of Antidumping Duty Orders

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

SUMMARY: As a result of the determinations by the Department of Commerce (Department) and the International Trade Commission (ITC) that revocation of the antidumping duty orders on carbazole violet pigment 23 (CVP–23) from India and the People's Republic of China (PRC) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation for the antidumping duty orders.

DATES: *Effective Date:* May 27, 2010.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 2009, the Department initiated and the ITC instituted sunset reviews of the antidumping duty orders on CVP–23 from India and the PRC [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See *Initiation of Five-Year ("Sunset") Review,* 74 FR 56593 (November 2, 2009); See also *Carbazole Violet Pigment 23 From China and India,* 74 FR 56663 (November 2, 2009).

As a result of these sunset reviews, the Department determined that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the orders be revoked. See *Carbazole Violet Pigment 23 from India and the People's*

[1] On December 29, 2004, the Department published the following antidumping duty orders: *Antidumping Duty Order: Carbazole Violet Pigment 23 From the People's Republic of China,* 69 FR 77987 (December 29, 2004); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 From India,* 69 FR 77988 (December 29, 2004).

Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 75 FR 12497 (March 16, 2010).

On May 10, 2010, pursuant to section 751(c) of the Act, the ITC determined that revocation of the antidumping duty order on CVP–23 from India and the PRC would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Carbazole Violet Pigment 23 from China and India:* Investigation Nos. 701–TA–437 and 731–TA–1060 and 1061, USITC Publication 4151 (April 2010). See also *Carbazole Violet Pigment 23 from China and India; Determinations,* 75 FR 27815 (May 18, 2010).

Scope of the Orders

The merchandise subject to these antidumping duty orders is CVP–23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of diindolo [3,2-b:3′,2′-m] [2] triphenodioxazine, 8,18-dichloro-5, 15-diethyl-5, 15-dihydro-, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$. The subject merchandise includes the crude pigment in any form (*e.g.,* dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.,* pigment dispersed in oleoresins, flammable solvents, water) are not included within the scope of the orders. The merchandise subject to the orders is classifiable under subheading 3204.17.90.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written descriptions of the scope of the orders are dispositive.

Continuation of the Orders

As a result of these determinations by the Department and the ITC that revocation of these antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on CVP–23 from India and the PRC.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year sunset reviews and this notice are in accordance with Section 751(c) of the Act and published pursuant to Section 777(i)(1) of the Act.

Dated: May 21, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–12822 Filed 5–26–10; 8:45 am]

BILLING CODE 3510–DS–P

[2] The bracketed section of the product description, [3,2-b:3′,2′-m], is not business-proprietary information. In this case, the brackets are simply part of the chemical nomenclature.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–839]

Carbazole Violet Pigment 23 From India: Continuation of Countervailing Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the countervailing duty (CVD) order on CVP–23 would likely lead to continuation of countervailable subsidies, and material injury to an industry in the United States, the Department is publishing a notice of continuation of this CVD order.

DATES: *Effective Date:* May 27, 2010.

FOR FURTHER INFORMATION CONTACT: Martha Douthit at (202) 482–5050, or Dana Mermelstein at (202) 482–1391, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The CVD order was published in the **Federal Register** on December 24, 2004. *See Notice of Countervailing Duty Order: Carbazole Violet Pigment 23 From India,* 69 FR 77995 (December 29, 2004).

On November 2, 2009, the Department initiated and the ITC instituted a sunset review of the CVD order on CVP–23 from India pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year (''Sunset'') Reviews,* 74 FR 56593 (November 2, 2009). As a result of its review, the Department found that revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies, and notified the ITC of the magnitude of the net countervailable subsidies likely to prevail were the order to be revoked. *See Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010).

On May 10, 2010, pursuant to section 751(c) of the Act, the ITC determined that revocation of the CVD order on CVP–23 from India, would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonable foreseeable time. *See Carbazole Violet Pigment 23 from China and India; Determinations,* 75 FR 27815 (May 18, 2010).

Scope of the Order

The merchandise covered by this order is CVP–23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of diindolo [3,2-b:3′,2′-m] triphenodioxazine, 8,18-dichloro-5,15-diethy-5,15-dihydro-, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[1] The subject merchandise includes the crude pigment in any form (*e.g.,* dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.,* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the order. The merchandise subject to this order is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies, and material injury, to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the CVD order on CVP–23 from India.

[1] The bracketed section of the product description, [3,2-b:3′,2′-m], is not business proprietary information; the brackets are part of the chemical nomenclature. *See* December 4, 2003 amendment to petition (supplemental petition) at 8.

U.S. Customs and Border Protection will continue to collect CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year (sunset) review of this order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act. This notice is published pursuant to 751(c) and 771(i) of the Act and 19 CFR 351.218(f)(4).

Dated: May 21, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–12820 Filed 5–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* May 27, 2010.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro or Joseph Shuler, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0238 and (202) 482–1293, respectively.

Background

On December 22, 2009, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China ("PRC"), covering the period December 1, 2007 through November 30, 2008. *See Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 68047 (December 22, 2009). The final results for this administrative review were due no later than April 21, 2010.[1] On April 21, 2010, the Department published a notice extending the time limit for completion of the final results by 30 days to May 28, 2010, because it needed additional time to analyze complex surrogate value issues. *See Certain Cased Pencils From the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review,* 75 FR 20815 (April 21, 2010).

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published. The Department now finds it is not practicable to complete the final results of this administrative review within the initial time extension of May 28, 2010, because the Department continues to need additional time to consider the complex issues related to surrogate valuation. Therefore, the Department is further extending the time limit for completion of the final results of this review by an additional 30 days to June 27, 2010, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). However, June 27, 2010, falls on a Sunday, and it is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the final results is now no later than June 28, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 21, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–12804 Filed 5–26–10; 8:45 am]

BILLING CODE 3510–DS–P

[1] As explained in the Memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 11, 2010. As a result, all deadlines in this segment have been extended by seven days and the revised deadline for the final results became April 28, 2010. *See* Memorandum to the Record from Ronald Lorentzen, Deputy Assistant Secretary for Import Administration, "Tolling of Administrative Deadlines As a Result of the Government Closure During Recent Snowstorm," dated February 12, 2010.

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On November 9, 2009, the Department of Commerce (the "Department") published the preliminary results of the administrative review of the antidumping duty order on certain helical spring lock washers from the People's Republic of China ("PRC"), covering the period October 1, 2007, through September 30, 2008. *See Certain Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 57653 (November 9, 2009) ("*Preliminary Results*"). We gave the interested parties an opportunity to comment on the *Preliminary Results.* After reviewing the interested parties' comments, we made changes to our calculations for the final results of the review. The final dumping margin for this review is listed in the "Final Results of the Review" section below.

EFFECTIVE DATE: May 27, 2010.

FOR FURTHER INFORMATION CONTACT: David Layton or Austin Redington, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–0371 or (202) 482–1664, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Results* on November 9, 2009. On November 12, 2009, the Department sent a supplemental

questionnaire to mandatory respondent Hangzhou Spring Washer Co., Ltd. ("HSW") (also known as Zhejiang Wanxin Group Co., Ltd.), and received a response from HSW on November 19, 2009.

HSW and the petitioner, Shakeproof Assembly Components, a Division of Illinois Tool Works, Inc. ("Shakeproof" or "Petitioner"), submitted surrogate value comments on December 28, 2009, in addition to those surrogate value comments submitted before the *Preliminary Results*.

The final results of this administrative review were originally due no later than March 9, 2010. As explained in the memorandum from Ron Lorentzen, Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, 2010, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the final results of this review was consequently extended to March 16, 2010. *See* Memorandum to the Record from Ronald Lorentzen, Deputy Assistant Secretary ("DAS") for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

On March 1, 2010, the Department published in the **Federal Register** an extension of the time limit for the completion of the final results of this review until no later than May 17, 2010, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.213(h)(2). *See Certain Helical Spring Lock Washers from the People's Republic of China: Extension of Time Limit for the Final Results of the 2007–2008 Antidumping Duty Administrative Review*, 75 FR 9159 (March 1, 2010).

Petitioner and HSW submitted case briefs on January 6, 2010, and rebuttal briefs on January 11, 2010. None of the parties requested a hearing.

Scope of the Order

The products covered by the order are helical spring lock washers of carbon steel, of carbon alloy steel, or of stainless steel, heat–treated or non–heat-treated, plated or non–plated, with ends that are off–line. Helical spring lock washers are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

Lock washers subject to the order are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the "Issues and Decision Memorandum for the 2007–2008 Administrative Review of Certain Helical Spring Lock Washers From the People's Republic of China" ("Issues and Decision Memorandum"), which is dated concurrently with and hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document which is on file in the Central Records Unit ("CRU") in room 1117 in the main Department building, and is accessible on the web at http://www.ia.ita.doc.gov/frn. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made the following changes in calculating dumping margins: (1) we revised our calculation of the surrogate financial ratios and are now including two additional Indian companies; (2) we valued HSW's factors for barium carbonate, nitric acid, and zinc chloride using prices from *Chemical Weekly* rather than the World Trade Atlas data used in the *Preliminary Results*; (3) for nitric acid and zinc chloride, we adjusted the average prices reported in *Chemical Weekly* to account for the differences between the concentration levels for the chemicals reported in *Chemical Weekly* and those used by HSW (the barium carbonate concentration level of sales reported in *Chemical Weekly* is identical to that reported by HSW); (4) we valued brokerage and handling costs using the source, the World Bank Group's *Doing Business 2009*, which reports average brokerage and handling costs in India based on a broad survey; and (5) we corrected an error in the calculations identified by HSW. See Comments 1, 5, 6 and 7 of the Issues and Decision Memorandum. For further details, *see* "Analysis for the Final Results of Antidumping Duty Administrative Review of Helical Spring Lock Washers from the People's Republic of China: Hangzhou Spring Washer Co. Ltd., dated May 17, 2010, on file in the CRU.

Final Results of the Review

We determine that the following margin exists for the period October 1, 2007, through September 30, 2008:

Manufacturer/exporter	Margin (percent)
Hangzhou Spring Washer Co. Ltd. (also known as Zhejiang Wanxin Group Co., Ltd.)	6.96

Assessment Rates

The Department has determined, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For HSW, we calculated customer–specific antidumping duty assessment amounts for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales of subject merchandise to the total quantity of subject merchandise sold in these transactions. We calculated these per unit assessment amounts in this fashion, as opposed to calculating import–specific *ad valorem* rates in accordance with 19 CFR 351.212 (b)(1), because the entered values and importers of record for HSW's reported U.S. sales are not on the record. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)–specific *ad valorem* ratios based on the estimated entered value. Where an importer–specific (or customer–specific) rate is *de minimis* (*i.e.*, less than 0.50 percent), the Department will instruct CBP to liquidate that importer's (or customer's) entries of subject merchandise without regard to antidumping duties.

Cash Deposit Requirements

The following cash–deposit requirements will apply to all shipments of lock washers from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed company will be the rate listed above

(except no cash deposit will be required if a company's weighted–average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less–than-fair–value investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) for all other PRC exporters, the cash deposit rate will be the PRC–wide rate established in the final results of this review which is 128.63 percent; and (5) the cash–deposit rate for any non–PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to the administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice of final results is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 17, 2010.

Paul Piquado,

Deputy Assistant Secretary for AD/CVD Policy and Negotiations.

Appendix – Issues in Decision Memorandum

Comment 1: Use of Sterling Tools Ltd.'s Financial Statements
Comment 2: Use of Sundram Fasteners Ltd.'s Financial Statements
Comment 3: Wire Rod Surrogate Value
Comment 4 Weighted Average vs. Simple Average for JPC Prices
Comment 5: Surrogate Values for Certain Chemical Factors of Production: *Chemical Weekly* Pricing Data Versus Indian Import Statistics
Comment 6: Surrogate Values for Brokerage and Handling
Comment 7: Correction of Ministerial Calculation Error

[FR Doc. 2010–12812 Filed 5–26–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 138—Columbus, OH Area; Site Renumbering Notice

Foreign-Trade Zone 138 was approved by the Foreign-Trade Zones Board on March 13, 1987 (Board Order 351), expanded on February 23, 1994 (Board Order 685), on November 9, 1999 (Board Order 1063), on May 29, 2001 (Board Order 1166), and on December 19, 2008 (Board Order 1311), and reorganized/expanded on November 2, 2007 (Board Order 1530).

FTZ 138 currently consists of 12 "sites" totaling 4,491 acres in the Columbus area. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering that separates certain non-contiguous sites for record-keeping purposes. (**Note:** Sites 7 through 11 have expired and those numbers will not be reused.)

Under this revision, the site list for FTZ 138 will be as follows: Site 1 (3,787 acres)—portions of the Rickenbacker Inland Port to include certain acreage within the Rickenbacker International Airport and Air Industrial Park, Alum Creek East Industrial Park, Alum Creek West Industrial Park, and Groveport Commerce Center; Site 2 (136 acres)—Gateway Business Park, McClain Road, Lima; Site 3 (42 acres)—within the 90-acre Gateway Interchange Industrial Park, State Route 104 and U.S. Route 35, Chillicothe; Site 4 (64 acres, 2 parcels)—within the 960-acre Rock Mill Industrial Park, south of Mill Park Drive, Lancaster; Site 5 (133 acres)—within the 149-acre D.O. Hall Business Center, SR 660 and north of Reitler Road, Cambridge; Site 6 (74 acres, 2 parcels)—within the Eagleton Industrial Park, SR 142 and west of Spring Valley Road, London; Site 12 (31 acres)—Marion Industrial Park, 1110 Cheney Avenue, Marion; Site 13 (41 acres)—Capital Park South, 3125–3325 Lewis Centre Way, Grove City; Site 14 (27 acres)—Southpointe Industrial Park, 3901 Gantz Road, Grove City; Site 15 (50 acres, sunset 12/31/2011)—Columbus Industrial District located at 4545 Fisher Road, Columbus; Site 16 (74 acres, expires 9/1/2010)—located at 1809 Wilson Road, Columbus; Site 17 (9 acres, expires 7/31/2011)—Quarry East Commerce Center (Drew Shoe Company), located at 252 Quarry Road, Lancaster; Site 18 (22 acres, expires 9/1/2010)—located at 700 Manor Park, Columbus; and, Site 19 (1 acre, expires 9/1/2010)—located at 330 Oak Street, Columbus.

For further information, contact Claudia Hausler at *Claudia.Hausler@trade.gov* or (202) 482–1379.

Dated: May 18, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–12801 Filed 5–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 36–2010]

Foreign-Trade Zone 18—San Jose, CA; Application for Subzone; Lam Research Corporation (Wafer Fabrication Equipment Manufacturing); Fremont, Newark, and Livermore, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of San Jose, grantee of FTZ 18, requesting special-purpose subzone status for the wafer fabrication equipment manufacturing facilities of Lam Research Corporation (Lam), located in Fremont, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 18, 2010.

The Lam facilities (1,483 employees, 1,020 systems per year capacity) consist of 4 sites on 85 acres: *Site 1* (29 acres) is located at 4650 Cushing Parkway, Fremont; *Site 2* (20 acres) is located at 6120 Stewart Ave., Fremont; *Site 3* (29

acres) is located at 38505 Cherry Street, Newark; and *Site 4* (7 acres) is located at 1 Portola Avenue, Livermore. The facilities are used for the manufacture, assembly, repair, kitting, de-kitting and distribution of wafer fabrication equipment (in particular, single-wafer clean equipment and plasma etch equipment). Components and materials sourced from abroad (representing 9% of the value of the finished product) include: monofilament, tubes, belts, fittings, gaskets, washers, seals, valves, taps, bearings, stainless steel screws, pulleys, shaft couplings, gears, machinery parts, motors, quartz fittings and parts, electrical transformers, electromagnetic couplings, batteries, induction equipment, electrothermic appliances, speakers, amplifiers, magnetic and optical media, monitors, electrical circuitry and components, lamps, wiring, cable, electrical insulators, optical fibers and devices, lenses, lasers, liquid crystal devices, self adhesive and non-adhesive sheets, tempered glass, laboratory glassware, fittings and components of metal (precious, ferrous, and non-ferrous), precious stone articles, base metal tools, pumps, fans, sprayers, electromechanical drills, calculating instruments, measuring devices, time devices, packaging materials, brochures, and printed matter (duty rate ranges from duty-free to 9%).

FTZ procedures could exempt Lam from customs duty payments on the foreign components used in export production. The company anticipates that 96.5 percent of the plant's shipments will be exported. On its domestic sales, Lam would be able to choose the duty rates during customs entry procedures that apply to wafer cleaning stand-alone systems and wafer etch process modules and systems, (duty-free) for the foreign inputs noted above. FTZ designation would further allow Lam to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Maureen Hinman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 26, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 10, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Maureen Hinman at *maureen.hinman@trade.gov* or (202) 482–0627.

Dated: May 18, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–12786 Filed 5–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 38–2010]

Foreign-Trade Zone 29—Louisville, KY; Application for Expansion and Expansion of Manufacturing Authority; Subzone 29F; Hitachi Automotive Products (USA), Inc. (Automotive Components)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of FTZ 29, on behalf of Hitachi Automotive Products (USA), Inc. (HAP), operator of Subzone 29F, HAP plant, Harrodsburg, Kentucky, requesting authority to expand the subzone and to expand the scope of FTZ manufacturing authority to include new manufacturing capacity. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and section 400.28(a)(2) of the Board's regulations (15 CFR part 400). It was formally filed on May 20, 2010.

Subzone 29F was approved by the Board in 1990 with authority granted for the manufacture of automotive components at HAP's manufacturing plant located at 955 Warwick Road (Site 1) (50 acres) in Harrodsburg, Kentucky (Board Order 497, 56 FR 674, 1–8–91). Activity at the facility (624 employees) includes machining, assembly, testing, warehousing, and distribution of various automotive components, including mass air sensors, throttle bodies and chambers, starter motors, motor/generator units, alternators, distributors, other static converters, inverter modules, rotors/stators, ignition coils, electronic sensors and modules, fuel injectors, emissions control equipment, valves, pumps, and electronic control units for engines and transmissions (capacity—up to 8.5 million units annually). Components and materials sourced from abroad (representing 80 percent of the finished automotive components' material value) include: adhesives, plastic fittings, plastic and rubber belts, fasteners, gaskets/seals/o-rings, metal fittings, labels, plastic wedging, springs, brackets, plates, filters, bearings, air pumps/compressors, valves, switches, electric motors, tubes/pipes/profiles, aluminum plugs, transformers, crankshafts, camshafts, gears, pulleys, couplings, clutches, parts of electric motors, pinions, magnets, ignition parts, diodes, transistors, resistors, semiconductors, liquid crystal devices, electrical instruments, navigation apparatuses, capacitors, printed/integrated circuits, fuses, rheostats, connectors, terminals, piezoelectric crystals, regulators, lamps, wires, cables, cylinders, plungers, insulators, brushes, brackets, shafts, and measuring instruments (duty rate range: Free—9.0%).

The applicant is now requesting authority to expand the subzone to include two new warehouse facilities: Site 2—(68,000 sq. ft.) 601 Robinson Road in Harrodsburg, Kentucky; and Site 3—(61,010 sq. ft.) 110 Morgan Soaper Road, Harrodsburg. The company will be expanding its manufacturing plant (Site 1) to increase production area that would add up to 720,000 additional units to the facility's capacity. The applicant also requests that the scope of FTZ manufacturing authority be expanded to include the additional production capacity for the manufacture of high pressure, direct-injection fuel pumps (new combined output would be 9.22 million units per year). The expanded operations will involve a continuation of HAP's utilization of both foreign-sourced and domestic materials and components.

Expanded FTZ procedures could continue to exempt HAP from customs duty payments on the foreign-origin components used in production for export (about 30% of shipments). On its domestic shipments, the company would be able to elect the duty rate that applies to finished automotive components (free—6.7%) for the foreign-origin inputs noted above. Subzone status would further allow

HAP to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. HAP would also be exempt from duty payments on foreign inputs that become scrap during the production process.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. The closing period for receipt of comments is July 26, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 10, 2010.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: May 20, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–12798 Filed 5–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW68

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held June 14–17, 2010.

ADDRESSES: The meetings will be held at the Courtyard Marriott, 1600 E. Beach Blvd, Gulfport, MS 39501.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Bortone, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, June 16, 2010

1:30 p.m. - The Council meeting will begin with a review of the agenda and approval of the minutes.

1:45 p.m. - 2:15 p.m. - There will be a briefing on the Deepwater Horizon Oil Spill.

2:15 p.m. - 6:30 p.m. - The Council will receive public testimony on exempted fishing permits (EFPs), if any; Final Framework Action for Greater Amberjack; Final Regulatory Amendment for Red Grouper Annual Catch Limits; and hold an open public comment period regarding any fishery issue of concern. People wishing to speak before the Council should complete a public comment card prior to the comment period.

Thursday, June 17, 2010

8:30 a.m. - 8:45 a.m. - The Council will receive a presentation titled "Fisheries 101".

8:45 a.m. - 5 p.m. - The Council will review and discuss reports from the committee meetings as follows: Reef Fish; AP Selection; SSC Selection; SEDAR Selection; Coastal Migratory Pelagics (Mackerel); Spiny Lobster/Stone Crab; Administrative Policy; Data Collection; Habitat; and Sustainable Fisheries/Ecosystem.

5 p.m. - 5:30 p.m. - Other Business items will follow.

The Council will conclude its meeting at approximately 5:30 p.m.

Committees

Monday, June 14, 2010

9 a.m. - 9:30 a.m. - **CLOSED SESSION** - Full Council - The AP Selection Committee and full Council will appoint one commercial representative to the Ad Hoc Mackerel Limited Access Privilege Program Advisory Panel, the Ad Hoc Reef Fish Limited Access Privilege Program Advisory Panel, the Stone Crab Advisory Panel, two members and one alternate of SAFMC representatives on the Ad Hoc Mackerel Limited Access Privilege Program Advisory Panel.

9:30 a.m. - 9:45 a.m. - **CLOSED SESSION** - Full Council - The SSC Selection Committee and full council will appoint three participants to the National Scientific and Statistical Committee meeting.

9:45 a.m. - 10 a.m. - **CLOSED SESSION** - Full Council - The SEDAR Selection Committee and full Council will appoint participants to the SEDAR 23 Goliath Grouper Review Workshop and the SEDAR Spiny Lobster Assessment Review Workshop.

10 a.m. - 12 p.m. - The Administrative Policy Committee will discuss modifications to Statement of Organization Practice and Procedures and Handbook Development.

1:30 p.m. - 2:30 p.m. - There will be an update on the Deepwater Horizon Oil Spill in the Gulf.

2:30 p.m. - 5:30 p.m. - The Reef Fish Management Committee will receive a presentation on gag abundance and the effects of fishing on male gag population; a report from the Standing and Special Reef Fish Scientific and Statistical Committee; considerations for a request for an Interim Rule for Gag; draft framework amendment to adjust red grouper total allowable catch; a public hearing draft of Amendment 32 Gag/Red Grouper; final action framework action for greater amberjack; a reef fish permit income requirement and a crew size limit on for-hire vessels when fishing commercially.

-Recess-

Tuesday, June 15, 2010

8:30 a.m. - 12 p.m. & 1:30 p.m. - 4 p.m. - The Reef Fish Management Committee will continue to meet.

4 p.m. - 4:30 p.m. - The Data Collection Committee will receive an update from the SEFSC on the status of the implementation of electronic data reporting and develop a charge for the Vessel Monitoring System Advisory Panel.

4:30 p.m. - 5 p.m. - The Habitat Protection Committee will receive a status report on Essential Fish Habitat update.

-Recess-

Immediately Following Committee Recess - There will be an informal open public question and answer session on Gulf of Mexico Fishery Management Issues.

Wednesday, June 16, 2010

8:30 a.m. - 12 p.m. - The Sustainable Fisheries/Ecosystem Committee will discuss the Options Paper for the Generic Annual Catch Limit/Accountability Measures Amendment.

Although other non-emergency issues not on the agendas may come before the

Council and Committees for discussion, in accordance with the Magnuson-Stevens Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date/time established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: May 24, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–12777 Filed 5–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW67

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold scoping hearings for an amendment (Amendment 14) to the Fishery Management Plan (FMP) for Atlantic Mackerel, Squid, and Butterfish (MSB).

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates of hearings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for hearing addresses.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION:

•June 14, 2010, 7 p.m. - 9 p.m.: Hilton Garden Inn, Providence Airport/ Warwick, One Thuber Street, Warwick, RI 02886, telephone: (401) 734–9600;

•June 15, 2010, 7 p.m. - 9 p.m.: Holiday Inn Express East End, 1707 Old Country Rd., Route 58, Riverhead, NY 11901, telephone: (631) 548–1000;

•June 17, 2010, 7 p.m. - 9 p.m.: Congress Hall, 251 Beach Ave, Cape May, NJ 08204, telephone: (609) 884–6592; and

•June 23, 2010, 7 p.m. - 9 p.m.: Virginia Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607.

There will also be a separate written comment period for Amendment 14 scoping, which will be described in an upcoming **Federal Register** announcement for the "Notice of Intent (NOI)" to develop an EIS that accompanies Amendment 14. That NOI will also contain information regarding these scoping hearings, but to provide the public with sufficient advance notice this notice is being published now since the NOI will likely publish shortly before the scoping hearings.

More details on the topics addressed in this supplementary information section may be found in the Amendment 14 scoping document. The Amendment 14 scoping document is available by contacting Dan Furlong (see above) or online at: *http://www.mafmc.org/fmp/msb.htm.*

The Council initiated Amendment 14 to the MSB FMP for two reasons: (1) There is concern by some stakeholders that there may be too much capacity in the squid (both Loligo and Illex) fisheries and that uncontrolled activation of latent capacity could cause negative economic effects for participants. Implementation of catch shares may address some of these concerns; and (2) There is concern by some stakeholders that more should be done to monitor and/or minimize the incidental catch of river herrings (blueback and alewife) and shads (American and hickory) in the MSB fisheries, especially given the currently low levels of monitoring in the MSB fisheries and the likely poor stock status of shads and river herrings.

Related to the above concerns, this amendment may address one or more of the following issues: (1) The implementation of catch share systems for the squid fisheries to further refine the existing management process; the biological and socio-economic outcomes of a catch share system and how such outcomes depend on specific program design features; the possible need for changes to existing information collection processes if a catch share system is implemented; and (2) The need for additional fishery monitoring in order to determine the significance of river herring and shad incidental catch in the MSB fisheries; and the effectiveness and impacts of possible management measures to minimize bycatch and/or incidental catch of river herrings and shads in the MSB fisheries.

The Council will first gather information during the scoping period. This is the first and best opportunity for members of the public to raise concerns related to the scope of issues that will be considered in Amendment 14. The Council needs your input both to identify management issues and develop effective alternatives. Your comments early in the amendment development process will help us address issues of public concern in a thorough and appropriate manner. Comments can be made during the scoping hearings as described above or in writing - the written comment period will be announced soon. If the Council decides to move forward with Amendment 14, the Council will develop a range of management alternatives to be considered and prepare a draft Environmental Impact Statement (DEIS) to analyze the impacts of the management alternatives being considered as required by the National Environmental Policy Act (NEPA). Following a review of any comments on the DEIS, the Council will then choose preferred management measures for submission with the Final EIS to the Secretary of Commerce for publishing of a proposed and then final rule, both of which have additional comment periods.

Special Accommodations

The hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 24, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–12776 Filed 5–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Partial Rescission of the Sixth Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam"). *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003). On September 22, 2009, the Department initiated the August 1, 2008, through July 31, 2009, antidumping duty administrative review on certain frozen fish fillets from Vietnam. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 74 FR 48224, (September 22, 2009). The Department initiated this review with respect to 22 companies.[1]

On January 7, 2010, QVD withdrew its request for an administrative review. On January 8, 2010, Anvifish JSC withdrew its request for an administrative review. On January 8, 2010, Petitioners[2] partially withdrew their August 31, 2009, request for an administrative review for 13 companies, including Vinh Quang.[3] However, the Department will continue the administrative review with respect to Vinh Quang as this exporter did not withdraw its request and the company was chosen as a mandatory respondent.[4] The preliminary results of this administrative review are currently due no later than August 8, 2010.[5]

EFFECTIVE DATE: May 27, 2010.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe and Javier Barrientos, Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0219 and (202) 482–2243, respectively.

Partial Rescission of Review

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Petitioners withdrew their review request with respect to 13 exporters of subject merchandise within the 90–day deadline, in accordance with 19 CFR 351.213(d)(1). Respondents, QVD and Anvifish, also withdrew their respective requests for review within the 90–day deadline.

Therefore, in accordance with 19 CFR 351.213(d)(1), we are partially rescinding this review with respect to the following companies: Cadovimex II; CL–Fish; Hiep Thanh; NAVICO; NTSF; Panga Mekong; QVD; QVD DT; Thuan Hung; SAMEFICO; Thien Ma; Anvifish Co., Ltd.; and Anvifish JSC.[6]

Assessment Rates

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded and which have a separate rate from a prior segment of this proceeding, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). Accordingly, the Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice for the following companies; QVD; QVD DT; Thuan Hung; Hiep Thanh; Cadovimex II; SAMEFICO; and Anvifish Co., Ltd.

The Department cannot order liquidation for companies which, although they are no longer under review as a separate entity, may still be under review as part of the Vietnam–wide entity. Therefore, the Department cannot, at this time, order liquidation of entries for the following companies: CL–Fish; NAVICO; NTSF; Panga Mekong; Thien Ma; and Anvifish JSC.[7] The Department intends to issue liquidation instructions for the Vietnam–wide entities 15 days after publication of the final results of this review.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance

[1] These companies include: 1) An Giang Fisheries Import and Export Joint Stock Company (aka Agifish or; AnGiang Fisheries Import and Export); 2) Anvifish Co., Ltd.; 3) Anvifish Joint Stock Company ("Anvifish JSC"); 4) Asia Commerce Fisheries Joint Stock Company (aka Acomfish JSC) ("Acomfish"); 5) Binh An Seafood Joint Stock Co. ("Binh An"); 6) Cadovimex II Seafood Import-Export and Processing Joint Stock Company; (aka Cadovimex II) ("Cadovimex II"); 7) CUU Long Fish Joint Stock Company (aka CL-Fish) ("CL-Fish"); 8) East Sea Seafoods Limited Liability Company (formerly known as East Sea Seafoods Joint Venture Co., Ltd.); 9) East Sea Seafoods Joint Venture co., Ltd. (aka East Sea Seafoods LLC); 10) Hiep Thanh Seafood Joint Stock Co. ("Hiep Thanh"); 11) Nam Viet Company Limited (aka NAVICO) ("NAVICO"); 12) NTSF Seafoods Joint Stock Company (aka NTSF) ("NTSF"); 13) Panga Mekong Co., Ltd. ("Panga Mekong"); 14) QVD Food Company, Ltd. ("QVD"); 15) QVD Dong Thap Food Co., Ltd. ("QVD DT"); 16) Saigon-Mekong Fishery Co., Ltd. (aka SAMEFICO) ("SAMEFICO"); 17) Southern Fishery Industries Company, Ltd. (aka South Vina); 18) Thien Ma Seafood Co., Ltd. ("Thien Ma"); 19) Thuan Hung Co., Ltd. (aka THUFICO) ("Thuan Hung"); 20) Vinh Hoan Corporation; 21) Vinh Hoan Company, Ltd. and; 22) Vinh Quang Fisheries Corporation ("Vinh Quang").

[2] Catfish Farmers of America and individual U.S. catfish processors, America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, and Simmons Farm Raised Catfish, Inc.

[3] These companies include: 1) Cadovimex II; 2) CL-Fish; 3) Hiep Thanh; 4) NAVICO; 5) NTSF; 6) Panga Mekong; 7) QVD; 8) SAMEFICO; 9) Thien Ma; 10) Thuan Hung; 11) Vinh Quang; 12) QVD DT, and; 13) Anvifish.

[4] *See* Memorandum to James C. Doyle, Office 9 Director, through Alex Villanueva, Office 9 Program Manager, from Emeka Chukwudebe, Case Analyst, dated January 29, 2010, Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Replacement of Mandatory Respondent ("Replacement of Mandatory Respondent Memo").

[5] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the 6th Antidumping Duty Administrative and 6th New Shipper Reviews*, 75 FR 20983 (April 22, 2010).

[6] On October, 13, 2010, Binh An and Acomfish submitted no shipment certifications. However, we will address these claims and any possible rescission thereof, in the preliminary results.

[7] In its January 8, 2010, withdrawal letter, Anvifish JSC claims that it is also known as Anvifish Co., Ltd. (the company presently assigned a separate rate). However, there is no information on the record establishing that Anvifish JSC was assigned a separate rate in a prior segment of this proceeding.

with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 19, 2010.

John M. Andersen,

Acting Deputy Assistant Secretaryfor Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–12811 Filed 5–26–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1680]

Reorganization of Foreign-Trade Zone 37 Under Alternative Site Framework Orange County, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

Whereas, Orange County, New York, grantee of Foreign-Trade Zone 37, submitted an application to the Board (FTZ Docket 51–2009, filed 11/12/2009) for authority to reorganize under the ASF with a service area of Orange County, New York, adjacent to the New York/Newark Customs and Border Protection port of entry, FTZ 37's existing Sites 3 and 7 would be categorized as magnet sites, and the grantee proposes one initial usage-driven site (Sites 8);

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 60238, 11/12/09) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to reorganize FTZ 37 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Site 7 if not activated by May 31, 2015, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 8 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by May 31, 2013.

Signed at Washington, DC, May 13, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–12806 Filed 5–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Military Leadership Diversity Commission (MLDC)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, (DoD).

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Military Leadership Diversity Commission (MLDC) will meet on June 16 and 17, 2010, in Mc Lean, VA. The meeting is open to the public, but seating is limited.

DATES: The meeting will be held on June 16, 2010 (from 8 a.m. to 5:30 p.m.) and on June 17, 2010 (from 8 a.m. to 6:15 p.m.).

ADDRESSES: The meeting will be held at the Hilton McLean—Tysons Corner, 7920 Jones Branch Dr., McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838, 1851 South Bell Street, Suite 532, Arlington, VA. Email: *steven.Hady@wso.whs.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The purpose of the meeting is for the commissioners of the Military Leadership Diversity Commission to continue their efforts to address congressional concerns as outlined in the commission charter.

Agenda

June 16, 2010

8 a.m.–11:15 p.m.
- DFO opens the meeting
- Commission Chairman opening remarks
- Admiral Gary Roughead, Chief of Naval Operations, addresses the MLDC Commission
- Decision Brief for implementation and accountability

11:15 a.m.
- DFO recesses the meeting

12:15 p.m.–5:30 p.m.
- DFO opens the meeting
- Decision brief on metrics
- Decision brief on retention
- General George Casey, Jr., Chief of Staff of the Army, addresses the MLDC
- Public comments
- Commission Chairman closing remarks
- DFO adjourns the meeting

June 17, 2010

8 a.m.–11 a.m.
- DFO opens the meeting
- Commission Chairman opening remarks
- Dr. Frank Dobbin, Professor of Sociology, Harvard University briefs the MLDC
- Panel of representatives from private sector companies address the MLDC:
- Mr. Steve Bucherati, Chief Diversity Officer, Coca Cola
- Ms. Deborah Elam, Vice President and Chief Diversity Officer, General Electric
- Mr. Frank McCloskey, Chief Diversity Officer, Georgia Power

11 a.m.
- DFO recesses the meeting

12 p.m.–6:15 p.m.
- DFO opens meeting
- Panel of representatives from private sector companies address the MLDC:
- Mr. Hayward Bell, Chief Diversity Officer, Raytheon
- Ms. Geeth Chettiar, Vice President for Diversity and EO Programs,

Lockheed Martin

Sandra Evers-Manly, Vice President for Corporate Social Responsibility, Northrop Grumman

Decision brief for diversity leadership and training

Deliberation of decision paper for outreach and recruiting

Public comments

Commission Chairman closing remarks

DFO adjourns the meeting

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meetings on June 16 and 17, 2010, will be open to the public.

Please note that the availability of seating is on a first-come basis.

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Military Leadership Diversity Commission about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Military Leadership Diversity Commission.

All written statements shall be submitted to the Designated Federal Officer for the Military Leadership Diversity Commission, and this individual will ensure that the written statements are provided to the membership for its consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed under **FOR FURTHER INFORMATION CONTACT** at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the Military Leadership Diversity Commission until its next meeting.

The Designated Federal Officer will review all timely submissions with the Military Leadership Diversity Commission Chairperson and ensure they are provided to all members of the Military Leadership Diversity Commission before the meeting that is the subject of this notice.

Dated: May 21, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–12686 Filed 5–26–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0067]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to delete a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 28, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 21, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

DPAE 02

SYSTEM NAME:

Administrative Files of the Assistant Secretary of Defense, PAE (February 22, 1993; 58 FR 10227).

REASON:

Based on review of DPAE 02, Administrative Files of the Assistant Secretary of Defense, it has been concluded that this system is covered by the following government-wide system notices, OGE/Govt 2, OPM/Govt 3, OPM/Govt 10, A0600–8–104 AHRC, F036 AF PC C, N01070–3, M01070–6. The system will be deleted.

[FR Doc. 2010–12685 Filed 5–26–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2010–0020]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on June 28, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for

comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Brown-Lam (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from Mrs. Miriam Brown-Lam, Head, FOIA/Privacy Act Policy Branch, the Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 9, 2010, to the House Committee on Government Report, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining records About Individual," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: May 21, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM01754–3

SYSTEM NAME:

DON Child and Youth Program (December 6, 2007; 72 FR 68867).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Navy: Navy Child and Youth Program or Family Service Centers located at various Navy activities both in CONUS and overseas. Official mailing addresses are published in the Standard Navy Distribution List.

Marine Corps: Commandant, Headquarters, U.S. Marine Corps, Personal and Family Readiness Division, 3280 Russell Road, MCB Quantico, VA 22134–5009, and all Marine Corps installations. Official Mailing addresses are published in the Standard Navy Distribution List."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Members of the Armed Forces or Department of Defense personnel receiving services under the Navy Child and Youth Program or the Marine Corps Children, Youth, and Teen Program (CYTP)."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name; sponsor's Social Security Number (SSN); case number; home address and telephone number; emergency contact information; Child Development Center and Family Child Care insurance coverage; names of parents and children; payment records; performance rating; complaints; background information, including medical, educational references, and prior work experience; Naval Criminal Investigative Service (NCIS) data; Family Advocacy Program records; base security; Federal, State and local agencies information related to screening, training, and implementation of the Child Development Homes; and reports of fire, safety, housing, and environmental health inspections. Children's records will also include developmental profiles."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; DoD Instruction 6060.2, Child Development Programs; DoD Instruction 6060.3, School Age Care Program; DoD Instruction 6060.4, Youth Programs; OPNAV Instruction 1700.9 series, Child and Youth Programs; Marine Corps Order P1710.30E, Children, Youth, and Teen Program (CYTP); and E.O. 9397 (SSN), as amended."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To local, State and Federal officials involved in Child Care Services, if required, in the performance of their official duties relating to child abuse reporting and investigations.

The DoD "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Paper files and electronic storage media."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are kept for two years after individual is no longer in the Child Development Program and then destroyed by burning, shredding, macerating, pulping, degaussing, erasing, or other appropriate means."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Navy Policy Official: Commander, Navy Installations Command, 716 Sicard Street, SE., Suite 1000, Washington Navy Yard, Washington, DC 20374–5140.

Marine Corps Policy Official: Marine Corps Policy Manager, Commandant, Headquarters, U.S. Marine Corps, Marine Corps Community Services, Personal and Family Readiness Division, 3280 Russell Road, MCB Quantico, VA 22134–5009.

SECONDARY MANAGERS:

Navy: Navy Child Development or Family Service Centers located at various Navy activities both in CONUS and overseas. Official mailing addresses are published in the Standard Navy Distribution List.

Marine Corps: Directors of Marine Corps Community Services (MCCS) offices located at each Marine Corps installation. Official mailing addresses are published in the Standard Navy Distribution List."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published in the Standard Navy Distribution List.

Requests should contain full name of the sponsor, Social Security Number (SSN), and must be signed.

The system manager requires an original signature or a notarized

signature as a means of proving the identity of the individual requesting access to the records."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published in the Standard Navy Distribution List.

Requests should contain full name of the sponsor, Social Security Number (SSN), and must be signed.

The system manager requires an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records."

CONTESTING RECORD PROCEDURES:

Insert the words "Department of the" before the word "Navy's".

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information in this system comes from sponsors seeking program services and/or applying as child care providers or as participants of the child development homes; background checks from Federal, State and local authorities or Naval Criminal Investigative Service; housing officers; information obtained from the Family Advocacy Program records; base security officers; base fire, safety and health officers; local family child care monitors and parents of children enrolled; health care providers, employers, and others providing information identified in the categories of records in the system."

* * * * *

NM01754–3

SYSTEM NAME:

DON Child and Youth Program.

SYSTEM LOCATION:

Navy: Navy Child and Youth Program or Family Service Centers located at various Navy activities both in CONUS and overseas. Official mailing addresses are published in the Standard Navy Distribution List.

Marine Corps: Commandant, Headquarters, U.S. Marine Corps, Personal and Family Readiness Division, 3280 Russell Road, MCB Quantico, VA 22134–5009, and all Marine Corps installations. Official mailing addresses are published in the Standard Navy Distribution List.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Armed Forces or Department of Defense personnel receiving services under the Navy Child and Youth Program or the Marine Corps Children, Youth, and Teen Program (CYTP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; sponsor's Social Security Number (SSN); case number; home address and telephone number; emergency contact information; Child Development Center and Family Child Care insurance coverage; names of parents and children; payment records; performance rating; complaints; background information, including medical, educational references, and prior work experience; Naval Criminal Investigative Service (NCIS) data; Family Advocacy Program records; base security; Federal, State and local agencies information related to screening, training, and implementation of the Child Development Homes; and reports of fire, safety, housing, and environmental health inspections. Children's records will also include developmental profiles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; DoD Instruction 6060.2, Child Development Programs; DoD Instruction 6060.3, School Age Care Program; DoD Instruction 6060.4, Youth Programs; OPNAV Instruction 1700.9 series, Child and Youth Programs; Marine Corps Order P1710.30E, Children, Youth, and Teen Program (CYTP); and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To develop child care programs that meet the needs of children and families; provide child and family program eligibility and background information; and verify health status of children and verify immunizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To local, State and Federal officials involved in Child Care Services, if required, in the performance of their official duties relating to child abuse reporting and investigations.

The DoD "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and electronic storage media.

RETRIEVABILITY:

By the last name of the individual covered by the system and Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in monitored or controlled areas accessible only to authorized personnel. Building or rooms are locked outside regular working hours. Computer files are protected by software programs that are password protected.

RETENTION AND DISPOSAL:

Records are kept for two years after individual is no longer in the Child Development Program and then destroyed by burning, shredding, macerating, pulping, degaussing, erasing, or other appropriate means.

SYSTEM MANAGER(S) AND ADDRESS:

Navy Policy Official: Commander, Navy Installations Command, 716 Sicard Street, SE., Suite 1000, Washington Navy Yard, Washington, DC 20374–5140.

Marine Corps Policy Official: Marine Corps Policy Manager, Commandant, Headquarters, U.S. Marine Corps, Marine Corps Community Services, Personal and Family Readiness Division, 3280 Russell Road, MCB Quantico, VA 22134–5009.

SECONDARY MANAGERS:

Navy: Navy Child Development or Family Service Centers located at various Navy activities both in CONUS and overseas. Official mailing addresses are published in the Standard Navy Distribution List.

Marine Corps: Directors of Marine Corps Community Services (MCCS) offices located at each Marine Corps installation. Official mailing addresses are published in the Standard Navy Distribution List.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves

is contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published in the Standard Navy Distribution List.

Requests should contain full name of the sponsor, Social Security Number (SSN), and must be signed.

The system manager requires an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate Navy or Marine Corps activity concerned. Official mailing addresses are published in the Standard Navy Distribution List.

Requests should contain full name of the sponsor, Social Security Number (SSN), and must be signed.

The system manager requires an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

CONTESTING RECORD PROCEDURES:

The Department of the Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from sponsors seeking program services and/or applying as child care providers or as participants of the child development homes; background checks from Federal, State and local authorities or Naval Criminal Investigative Service; housing officers; information obtained from the Family Advocacy Program records; base security officers; base fire, safety and health officers; local family child care monitors and parents of children enrolled; health care providers, employers, and others providing information identified in the categories of records in the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 2010–12687 Filed 5–26–10; 8:45 am]

BILLING CODE 5001–06–P

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 July 26, 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: May 24, 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: Study of Teacher Residency Programs.

Frequency: On Occasion.

Affected Public: Individuals or households; Not-for-profit institutions; State, Local or tribal Gov't.

Reporting and Recordkeeping Hour Burden:

Responses: 457.

Burden Hours: 524.

Abstract: This package requests clearance to recruit teacher residency programs (TRPs), districts, and schools for a rigorous evaluation of TRPs. This evaluation will provide important implementation information on TRPs funded by the U.S. Department of Education, as well as information on the impact of teachers who participate in TRPs (including some funded by ED) on student achievement. Study findings will be presented in two reports, one scheduled for release in Fall 2013 and the other in Fall 2014.

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 4311. 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. 2010–12796 Filed 5–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 28, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, 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.

Dated: May 24, 2010.

James Hyler,

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

Institute of Education Sciences

Type of Review: Revision.

Title: FRSS 99: District Fast Response Survey of Dropout Prevention.

Frequency: Once.

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

Reporting and Recordkeeping Hour Burden:

Responses: 1,980.

Burden Hours: 435.

Abstract: The National Center for Education Statistics (NCES), U.S. Department of Education (ED), proposes to employ the Fast Response Survey System (FRSS) to conduct a district survey about dropout prevention services and programs. This survey will provide the first nationally representative data on this topic by capturing a current snapshot of dropout prevention services and programs available within the nation's public school districts. In addition, the survey will cover factors and methods used to identify students at risk of dropping out, mentoring and transition supports used by the district, the entities with which districts work in their dropout prevention efforts, information provided to students who appear highly likely to drop out, follow-up efforts when a student drops out, and information used by the district in determining whether to implement additional dropout prevention efforts district-wide.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4312. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–12797 Filed 5–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Career and Technical Education Program—Promoting Rigorous Career and Technical Education Programs of Study

Catalog of Federal Domestic Assistance (CFDA) Number: 84.051C.

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of proposed priorities, requirements, and selection criteria.

SUMMARY: The Assistant Secretary for Vocational and Adult Education proposes priorities, requirements, and selection criteria for a program promoting rigorous career and technical education programs of study (POSs) through the use of ten key components based on the "Program of Study Design Framework" (Framework). We take this action to promote and improve State and local development and implementation of career and technical education (CTE) POSs that link secondary and postsecondary education, combine academic and career and technical education in a structured sequence of courses that progress from broad foundation skills to more occupationally specific courses (*e.g.,* the States' Career Clusters, initially funded and launched by the Department (see *http://www.careerclusters.org/index.php*), and offer students the opportunities to earn postsecondary credits for courses taken in high school that lead to a postsecondary credential, certificate, or degree.

DATES: We must receive your comments on or before June 28, 2010.

ADDRESSES: Submit all comments about this notice to Laura Messenger, U.S. Department of Education, 400 Maryland Avenue, SW., room 11028, Potomac Center Plaza, Washington, DC 20202–7241.

If you prefer to send your comments by e-mail, use the following address: *laura.messenger@ed.gov.* You must include the term "POS Notice" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Laura Messenger. Telephone: 202–245–7840 or by e-mail: *laura.messenger@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, or selection criterion that each comment addresses.

The Assistant Secretary is also particularly interested in receiving comments on the Program of Study (POS) Design Framework set forth in this notice. The Framework is available on the Department's Perkins Collaborative Resource Network (PCRN) Web site at: *http://cte.ed.gov/nationalinitiatives/rposdesignframework.cfm.* The Assistant Secretary also seeks comment on the status of a State's capacity and plan to collect employment data as part of a longitudinal data system linked to a State's educational data system.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 11028, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The Promoting Rigorous Career and Technical Education Programs of Study program is authorized under section 114(c)(1) of the Carl D. Perkins Career and Technical Education Act of 2006 (Act). Under this section, the Secretary is authorized to carry out research, development, dissemination, evaluation and assessment, capacity building, and technical assistance with regard to CTE programs under the Act. Through this program, we intend to promote and improve State and local development and implementation of CTE POSs that link secondary and postsecondary education, combine academic and career and technical education in a structured sequence of courses that progress from broad foundation skills to more occupationally specific courses, offer students the opportunities to earn postsecondary credits for courses taken in high school, and lead to a postsecondary credential, certificate, or degree.

General Background:

To help States and local agencies meet the requirements of section 122(c)(1)(A) of the Act to provide career and technical programs of study, we held the first competition, entitled "Promoting Rigorous Career and Technical Education Programs of Study through Statewide or Multi-State Articulation Agreements" for this program in 2008. The proposals in this notice are informed by our experience with that competition and administering the six grants that were funded through that competition.

Subsequent to the 2008 competition, in early 2009 and in response to requests for assistance in developing and implementing POSs from State and local program administrators and national technical assistance providers, OVAE reviewed extant literature and case study research and developed a draft POS Design Framework. The draft Framework identified 10 components that, taken together, would support the development and implementation of rigorous and effective POSs. On June 11, 2009, the Office of Vocational and Adult Education (OVAE) convened a meeting of leading POS experts to gather feedback and input on the draft Framework. The experts included representatives from organizations such as the Association for Career and Technical Education, the National Association of State Directors of Career and Technical Education Consortium (NASDCTEc), the National Governors Association, the National Research Center for Career and Technical Education (NRCCTE), the Academy for Educational Development (AED), the National Career Pathways Network, the League for Innovation in the Community College, and MPR Associates, Inc.

At the meeting, participants agreed to work collaboratively with OVAE to complete a final version of the Framework and disseminate it for use by their organizations and by others engaged in POS development and implementation. In collaboration with major national associations and organizations, OVAE completed the Framework in January 2010. NASDCTEc, NRCCTE, AED, and MPR Associates, Inc. are currently using it to provide technical assistance to their POS projects with States and localities. Most of the proposed priorities, requirements, and selection criteria in this notice are based on the Framework.

Some of the proposals in this notice are consistent with three of the four areas the Secretary has identified as key for educational reform. The proposed requirement that States and localities adopt rigorous college and career readiness standards that define what students are expected to know and be able to do to enter and advance in college, their careers, or both, is consistent with the Secretary's goals in the area of standards and assessments. The proposed requirement for innovative and creative instructional approaches that enable teachers to integrate academic and technical instruction is consistent with the Secretary's goals for teacher effectiveness, as is the proposed requirement that projects provide sustained, intensive, and focused professional development opportunities so as to ensure that teachers have the necessary content knowledge to align and integrate curriculum and instruction. The proposed requirement that States and localities use well-designed State longitudinal data systems that yield valid and reliable data on a variety of secondary, postsecondary, and employment outcomes for individual students is consistent with the Secretary's goals for improving the capacity of Statewide longitudinal data systems.

The Assistant Secretary plans to make awards under the next POS competition for a 4-year project period.

Program Authority: 20 U.S.C. 2324(c)(1).

Proposed Priorities:

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority

(34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority preference over other applications (34 CFR 75.105(c)(1)).

This notice contains one proposed priority.

Proposed Competitive Preference Priority—Commitment to the Project

Background:

Section 122(c)(1) of the Act requires States to offer CTE POSs, which may be adopted by local educational agencies (LEAs) and postsecondary institutions as an option to students (and their parents, as appropriate), when planning for and completing coursework for career and technical content areas. Under section 134(b)(3)(A) of the Act, each local recipient of funds must offer the appropriate courses of not less than one career and technical program of study described in section 122(c)(1)(A). To align project activities with a State's ongoing POS efforts and to demonstrate a State's commitment of staff and other resources to fully executing the goals of the proposed project, the Assistant Secretary is proposing a priority for applications that propose to contribute funds from other sources of funds to the total cost of the project.

Proposed Competitive Preference Priority:

To meet this priority, the applicant must propose a budget that describes how the State will contribute 30 percent of the total cost of the project. For these purposes, the applicant may use—

(a) State leadership funds awarded under section 111 of the Act and as specified in section 112(a)(1) of the Act;

(b) Non-Federal contributions including in-kind contributions such as use of facilities, equipment, supplies, services, and other resources; or

(c) A combination of State leadership funds and non-Federal contributions.

Proposed Requirements:

Background:

Selected Program of Study. Since the Act was reauthorized in 2006, States and local recipients have worked to meet the POS requirements of section 122(c)(1) of the Act. We believe that the development of the Framework will provide significant support for those efforts. The Framework reflects the collective thinking of the Department and the primary organizations and associations engaged in POS development over the past several years, and identifies 10 components that support the development and implementation of rigorous and effective POSs. To date, POSs have differed widely from State to State. POSs may also differ widely from school district to school district within a State, as well as from school to school within a district. To ensure the rigor of funded POSs and consistency in their design and implementation, we propose to require States receiving grant awards under this program to implement a POS that is built and sustained with the 10 specific components in the Framework.

We note that in the 2008 competition, we provided funding to help States use statewide articulation agreements between secondary education and postsecondary institutions as a primary strategy for implementing POSs. In the proposed Selected Program of Study requirement, we refer to the statewide articulation agreements as "Credit Transfer Agreements" and the use of such agreements is one of the 10 components in the Framework. As proposed, credit transfer agreements would support the proper alignment of standards, curriculum, and instruction across educational levels and promote, to the extent possible, the awarding of postsecondary credit for courses taken during high school.

The 2008 competition also emphasized the creation of partnerships to ensure the rigor and quality of POSs. Through the experience gained from the work of the six projects funded under the 2008 competition, the POS efforts underway in other States, and the experience of leading POS experts, we have gained a better understanding of the level and complexity of the work required for effective POS implementation and of the program components that are necessary for the development and implementation of rigorous POSs. Accordingly, the Framework includes, and we are proposing in this requirement that States create, partnerships with education, business, and other key stakeholders.

Existing Technical Skills Assessments. States currently report on the technical skill attainment of CTE students at the secondary and postsecondary levels. In some cases, States are using third-party industry-recognized assessments to determine technical skill attainment. Where such assessments are not available, particularly at the secondary level, States have sought to develop their own assessments. When the assessments are based on industry standards, they may result in the granting of high school credit. When the assessments are based on industry standards and developed through collaboration between secondary and postsecondary institutions, they may result in the granting of postsecondary credit for high school students.

The Department recognizes that assessment development can be both costly and time-consuming.[1] As a result, given the limited funding available under this program and our intent to evaluate the progress of students enrolled in a POS, we propose to require States receiving grant awards under this program to implement a POS for which valid and reliable technical skills assessments (either industry-recognized assessments or State-developed or State-approved assessments based on industry standards that grant high school or postsecondary credit, or both) have been developed.

Local Implementation. We also propose to require funded States to implement the selected POS in at least three LEAs that contain high schools, in concert with their postsecondary partners, beginning no later than the start of the academic year corresponding to year 2 of the grant. The applicant must include a letter of commitment from each LEA, expressing its interest in participating in the project and its commitment to implement the selected POS as prescribed by the State in years 2 through 4 of the grant. If an LEA contains more than one high school, it would be required to implement the selected POS in at least one of its high schools. To the extent feasible, the LEAs must implement the POS in at least one urban, one suburban, and one rural community. If an LEA currently does not have all 10 components in place, the State applicant must provide an assurance that each participating LEA will have all 10 components in place to support the selected POS when it is implemented in year 2. To achieve this end, we are proposing to require that CTE staff from the funded States provide technical assistance to the participating LEAs during the first year of the project in order to strengthen weak components or incorporate

[1] For example, the Department recently announced, as part of its Race to the Top Assessment program, a High School Course Assessment program that will support consortia of States in the development of new or adapted assessments for high school courses. The competition includes a competitive preference priority for applications that include a high quality plan to develop, with relevant business community participation and support, assessments for high school courses that comprise a rigorous course of study in career and technical education that is designed to prepare high school students for success on technical certification examinations or for postsecondary education or employment.

missing components. We also would require CTE staff from the funded States to continue to work closely with the participating LEAs throughout the project period, and provide technical assistance and support to ensure constancy in the implementation of the selected POS in the participating LEAs.

Evaluation. We propose to require each State receiving a grant award under this program to conduct an annual evaluation of its project by evaluating local implementation of the selected POS and using student outcome data on the performance measures listed elsewhere in this notice to assess the progress of students enrolled in the selected POS. To ensure consistency across the funded States in the use of student outcome data, we propose to require funded States to attend a Project Evaluation Design meeting in Washington, DC, following receipt of their grant awards, to discuss and possibly refine the grantee self-assessment tools related to the 10 Framework components that are developed by the grantees, and to work with OVAE and with each other to develop a plan for the States' use of student outcome data to assess the progress of students enrolled in the selected POS.

Capacity of Statewide Longitudinal Data System. Because we expect that the primary focus of this program will be to evaluate the progress of students enrolled in a POS, we propose to limit eligibility for awards to States whose longitudinal data systems have the capacity to link and share data among systems housing different types of data. The Department recognizes that States are at different stages in developing their capacities to link and share necessary information among systems. Nevertheless, we propose to fund only States that have the capability of collecting longitudinal data on a variety of secondary, postsecondary, and employment outcomes for individual students so that we may assess the long term outcomes of their participation in a POS.

Dissemination. The Act requires all States to offer POSs, which may be adopted by LEAs and postsecondary institutions as an option to students (and their parents, as appropriate) when they plan for and complete coursework in career and technical content areas. Each local recipient of funds under the Act must offer at least one career and technical POS. To assist all States and local recipients in their efforts to develop and implement rigorous POSs, we propose to require States receiving grant awards under this program to conduct specific dissemination activities during the grant period, such as sharing project materials via each State's Web site and participating in OVAE-sponsored POS meetings and presentations.

Cooperative Agreement. We also plan to make awards under the next POS competition under the terms of a cooperative agreement. In order to ensure consistency in POS implementation and evaluation across the funded States, we believe it is necessary for the Department to maintain substantial involvement in the implementation of POS projects funded under the next POS program competition and to provide close Department oversight of POS project activities. We believe that making these awards through cooperative agreements will facilitate that involvement and oversight.

Proposed Requirements:

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Selected Program of Study: Applicants must propose a project to implement a State-developed or State-approved POS that is built and sustained with the following 10 Framework components:

(a) *Legislation, Resources, and Policies:* State and local legislation, resources, or administrative policies that promote POS development and implementation;

(b) *Partnerships:* Ongoing relationships among education, business, and other community stakeholders that support POS design, implementation, and maintenance;

(c) *Professional Development:* Sustained, intensive, and focused professional development opportunities for administrators, teachers, and faculty that foster POS design, implementation, and maintenance;

(d) *Accountability and Evaluation Systems:* Accountability and evaluation systems and strategies that gather quantitative and qualitative data on both POS components and student outcomes in order to inform ongoing efforts to develop and implement POSs and to determine their effectiveness;

(e) *College and Career Readiness Standards:* POS content standards that define what students are expected to know and be able to do to enter and advance in college, their careers, or both, and that include aligned academic and technical content;

(f) *Course Sequences of Secondary and Postsecondary Courses:* Course sequences within a POS that help students transition to postsecondary education without needing to duplicate classes or enroll in remedial courses.

(g) *Credit Transfer Agreements:* Formal credit transfer agreements among secondary schools and postsecondary institutions;

(h) *Comprehensive Guidance Counseling and Academic Advisory Systems:* Systems that provide career counseling and academic advisory services to help students make informed decisions about which POS to pursue;

(i) *Teaching and Learning Strategies:* Innovative and creative instructional approaches that enable teachers to integrate academic and technical instruction and also enable students to apply academic and technical learning in their POS coursework; and

(j) *Technical Skills Assessments:* Existing valid and reliable technical skills assessments that provide ongoing information on the extent to which students are attaining the necessary knowledge and skills for entry into and advancement in postsecondary education and careers in their chosen POS.

Each of these 10 components of the Framework has unique sub-components. The sub-components for each of the 10 components are in the *Proposed Selection Criteria* in this notice, under proposed paragraph (a)(3), *State capacity to implement a rigorous program of study.* Each State and its participating LEAs must use all the sub-components of the 10 Framework components that the State deems relevant to the selected POS and must explain how it plans to support the selected POS utilizing the relevant subcomponents.

Existing Technical Skills Assessments: Applicants must propose a project to implement a State-developed or State-approved POS for which valid and reliable technical skills assessments (either third-party industry-recognized assessments, or State-developed or State-approved technical skills assessments based on industry standards that grant high school or postsecondary credit, or both) have been developed.

Local Implementation: Applicants must propose a project to implement the selected POS in at least three LEAs that contain high schools, in concert with each LEA's postsecondary partners. If a participating LEA contains more than one high school, the LEA must implement the selected POS in at least one of its high schools. To the extent feasible, participating LEAs must implement the POS in at least one urban, one suburban, and one rural community. To be eligible for funding an applicant will be required to

demonstrate that the LEAs chosen for participation in the POS project have the capacity to have all 10 Framework components in place by the beginning of year 2 of the project. The applicant must include a letter of commitment from each LEA, expressing its interest in participating in the project and its commitment to implement the selected POS as prescribed by the State in years 2 through 4 of the grant and to maintain constancy in the implementation of the selected POS. During year 1 of the grant, CTE staff from the funded States must provide technical assistance to their participating LEAs in order to strengthen weak components or incorporate missing components, so that all 10 components are in place to support the POS when it is implemented at the LEA level. The participating LEAs must implement the selected POS during years 2 through 4 of the grant, beginning at the start of the academic year corresponding to year 2 of the grant. The applicant must include a plan that describes how CTE State staff will continue to work closely with the LEAs throughout the project period, and provide technical assistance and support to ensure constancy in the implementation of the selected POS in the participating LEAs.

Evaluation: Applicants must propose to conduct an annual evaluation of the project to assess the constancy of the implementation of the selected POS in the participating LEAs and the effectiveness of each of the 10 components. To ensure consistency of implementation across the selected LEAs, CTE staff from the funded States must use a self-assessment instrument based on the 10 components as part of its project evaluation.

Applicants must also use student outcome data to assess the progress of students enrolled in the selected POS. To ensure consistency across the funded States, State staff must attend a POS Evaluation Design meeting in Washington, DC, following the receipt of the grant award, to discuss and possibly refine the grantee self-assessment tools related to the 10 Framework components that are developed by the grantees, and to work with OVAE and with each other to develop a plan for the States' use of student outcome data to assess the progress of students enrolled in the selected POS. This meeting will address evaluation and data collection issues, such as student definitions, the number and method of selection of students to be followed, strategies for comparing outcomes for students who participate in the POS to other students who do not, the identification of potential comparison groups through the States' longitudinal data systems, and timing of reporting. After the meeting, we will include the agreed-upon plan for the States' use of the student outcome data as an addendum to each grantee's cooperative agreement.

The State must also collect and report data annually on the following performance measures, which are based on the indicators of performance required under section 113(b) (State Performance Measures) and section 203(e) (Tech Prep Indicators of Performance and Accountability) of the Act:

(a) Secondary school completion. The percentage of secondary students participating in the POS supported by the grant award who earn a high school diploma.

(b) Technical skills attainment. The percentage of secondary students participating in the POS supported by the grant award who attain technical skills.

(c) Earned postsecondary credit during high school. The percentage of secondary students participating in the POS supported by the grant award who earn postsecondary credit.

(d) Enrollment in postsecondary education. The percentage of secondary students participating in the POS supported by the grant award who enroll in postsecondary education by the fall following high school graduation.

(e) Enrollment in postsecondary education in a field or major related to the secondary POS. The percentage of secondary students participating in the POS supported by the grant award who enroll in a postsecondary education program in a field or major related to the participant's secondary POS.

(f) Need for developmental course work in postsecondary education. The percentage of secondary students participating in the POS supported by the grant award who enroll in one or more postsecondary education developmental courses.

(g) Postsecondary credential, certificate, or diploma attainment. The percentage of secondary students participating in the POS supported by the grant award who attain an industry-recognized credential, certificate, or associate's degree, within two years following enrollment in postsecondary education.

Capacity of Statewide Longitudinal Data System: Applicants must propose the use of a longitudinal data system that has the capacity to link and share data among systems housing different types of data. The longitudinal data system must contain, at a minimum, the elements listed below. These elements are consistent with section 6401(e)(2)(D) of the America Competes Act (Pub. L. 110–69):

(a) Statewide unique student identifiers;

(b) Student-level enrollment data;

(c) Student-level course completion (transcript) data;

(d) The ability to match student-level secondary and postsecondary data;

(e) The ability to link student-level data to employment outcome data, such as Unemployment Insurance (UI) wage records; and

(f) A State data audit plan to verify that the education data are valid and reliable.

Applicants also must ensure (and include an assurance in their applications) that their use of data will be consistent with the requirements and protections contained in the Family Educational Rights and Privacy Act (FERPA).

Dissemination: Applicants must propose to implement a dissemination plan for the project. The plan must include the development and maintenance of a project Web page for posting project materials, such as: Materials describing the State's process for approving POSs submitted by local recipients of funds; curricula developed for the selected POS; technical assistance materials provided to the participating LEAs and to other local recipients of funds, if applicable; professional development materials; materials describing evaluation results, including performance data on the required performance measures based on the indicators of performance; and other materials containing practical information that would be useful to other States in their efforts to implement and evaluate POSs. Applicants must also participate in POS activities sponsored by the Department, such as annual POS grantee meetings in which grantees describe the progress of their projects and discuss common issues, strategies, and models of best practices; OVAE/POS grantee presentations at the States' Annual National Career Clusters Institutes; OVAE/POS grantee presentations at annual NASDCTEc meetings; and presentations at OVAE-sponsored data quality meetings.

Cooperative Agreement: We plan to make each award to grantees under this program under the terms of a cooperative agreement. We expect to work closely with the funded States to maintain substantial involvement in project implementation, and to provide oversight on project activities by working collaboratively to develop a

plan for the use of student outcome data, reviewing and approving project activities, reviewing and approving one stage of work before the grantee can begin a subsequent stage during the project period, and halting an activity if it is not consistent with the program requirements.

Proposed Selection Criteria:

Background:

The first competition under the POS program was held in 2008. Since then, we have gained a better understanding of the level and complexity of the work required for effective POS implementation and of the program components that are necessary to implement rigorous POSs. The selection criteria proposed in this notice emphasize the implementation of POSs that are built and sustained with the 10 specific Framework components and the collection of valid and reliable longitudinal data, to ensure consistency across funded projects in the implementation and evaluation of POSs.

Proposed Selection Criteria:

The Assistant Secretary proposes the following selection criteria for evaluating an application under a POS competition. We may apply one or more of these criteria in any year in which we hold a competition under this program. In a notice inviting applications, in the application package, or in both, we will announce the maximum possible points assigned to each criterion.

(a) *State capacity to implement a rigorous program of study:* In determining the applicant's capacity to implement a rigorous POS, we review each application to determine the extent to which:

(1) The applicant proposes to build on existing State initiatives and partnerships in implementing the proposed project.

(2) The applicant selects a POS that will provide training leading to high-growth, high-demand, or high-wage occupations as determined through analysis of the national, State, or local labor market.

(3) The applicant provides evidence that it has selected a State-developed or State-approved POS that is built and sustained with the following 10 Framework components; that it has identified which of the sub-components from among those listed under each component are relevant to the selected POS; and that it plans to use those relevant sub-components in its POS and explains how it proposes to do so.

(i) State and local legislation, resources, or administrative policies that promote POS development and implementation, such as—

(A) The allocation of State or local funding (and other non-Federal resources) designed to promote POS development and long-term sustainability;

(B) The use of established, formal procedures for the design, implementation, and continuous improvement of POSs;

(C) Adherence to policies that ensure opportunities for any interested secondary student to participate in a POS; and

(D) The use of individual graduation or career plans for participating students.

(ii) Ongoing relationships among education, business, and other community stakeholders that support POS design, implementation, and maintenance, such as by—

(A) Using written memoranda that specify the roles and responsibilities of partnership members;

(B) Conducting ongoing analyses of economic and workforce trends to identify POSs that should be created, expanded, or, if appropriate, discontinued;

(C) Linking POS development to existing initiatives that promote workforce and economic development; and

(D) Identifying, validating, and updating technical and workforce readiness skills to be taught within POSs.

(iii) Sustained, intensive, and focused professional development opportunities for administrators, teachers, and faculty that foster POS design, implementation, and maintenance, and that—

(A) Support the alignment of academic and technical curriculum within the POS from grade to grade (within grades 9 through 12) and from secondary to postsecondary education;

(B) Support the development of integrated academic and CTE curriculum and instruction within the POS;

(C) Ensure that teachers and faculty have the necessary content knowledge to align and integrate curriculum and instruction within the POS; and

(D) Foster innovative teaching and learning strategies within the POS.

(iv) Accountability and evaluation systems and strategies that gather quantitative and qualitative data on both POS components and student outcomes to inform ongoing efforts to develop and implement POSs and to determine their effectiveness, and that—

(A) Yield valid and reliable data on key student outcomes (indicators of performance) referenced in the Act and other relevant Federal and State legislation; and

(B) Provide timely data to inform ongoing efforts to develop, implement, evaluate, and improve the effectiveness of POSs.

(v) POS content standards that define what students are expected to know and be able to do to enter and advance in college, their careers, or both, and that include aligned academic and technical content, and that—

(A) Are developed and continually validated in collaboration with secondary, postsecondary, and industry partners;

(B) Incorporate essential knowledge and skills that students must master regardless of their chosen career area or POS;

(C) Provide the same rigorous knowledge and skills in English-language arts and mathematics that employers and colleges expect of high school graduates; and

(D) To the extent practicable, are internationally benchmarked so that students are prepared to succeed in a global economy.

(vi) Course sequences within a POS that help ensure students' transition to postsecondary education without needing to duplicate classes or enroll in remedial courses, as evidenced by—

(A) Course sequence plans that map out recommended academic and career and technical courses for the POS;

(B) Course sequence plans that begin with introductory courses at the secondary level by teaching broad foundational knowledge and skills common across all POSs and then progress to more occupationally specific courses at the postsecondary level that provide the knowledge and skills required for entry into and advancement in the selected POS; and

(C) Opportunities for students to earn postsecondary credit for coursework taken during high school.

(vii) Formal credit transfer agreements among secondary schools and postsecondary institutions that—

(A) Provide a systematic, seamless process for students to earn college credit for postsecondary courses taken in high school, transfer high school credit to any two- or four-year institution in the State that offers the POS, and transfer credit earned at a two-year college to any other two- or four-year institution in the State that offers the POS;

(B) Record college credit earned by high school students on their high school transcripts at the time the credit is earned so that they can transfer seamlessly into the college portion of the POS without the need for additional paperwork or petitioning for credit; and

(C) Describe the expectations and requirements for teacher and faculty qualifications, course prerequisites, postsecondary entry requirements, location of courses, tuition reimbursement, and the credit transfer process.

(viii) Comprehensive guidance counseling and academic advisory systems that provide career counseling and academic advisory services to help students make informed decisions about which POS to pursue and that—

(A) Are based on State or local guidance and counseling standards, such as the National Career Development Guidelines;

(B) Ensure that guidance counselors and academic advisors have access to up-to-date information about POS offerings to aid students in their decision-making;

(C) Offer information and tools to help students learn about postsecondary education and career options, including about the prerequisites for particular POSs;

(D) Provide resources for students to identify career interests and aptitudes and to select an appropriate POS;

(E) Provide information and resources for parents, including workshops on college and financial aid applications, on helping their children prepare for college and careers; and

(F) Provide Web-based resources and tools for obtaining student financial assistance.

(ix) Innovative and creative instructional approaches that enable teachers to integrate academic and technical instruction and students to apply academic and technical learning in their POS coursework, as evidenced by—

(A) Interdisciplinary teaching teams of academic and career and technical secondary teachers or postsecondary faculty;

(B) The use of contextualized work-based, project-based, and problem-based learning approaches; and

(C) The use of teaching strategies that foster team-building, critical thinking, problem-solving, and communication skills.

(x) Existing Valid and reliable technical skills assessments that provide ongoing information on the extent to which students are attaining the necessary knowledge and skills for entry into and advancement in postsecondary education and careers in their chosen POS and that—

(A) Are either third-party assessments recognized by industry or are technical skills assessments developed or approved by the State that are based on industry standards;

(B) Measure student attainment of technical skill proficiencies at multiple points during a POS;

(C) Incorporate, to the greatest extent possible, performance-based assessment items through which students must demonstrate the application of their knowledge and skills; and

(D) Result in the awarding of secondary credit, postsecondary credit, or special designation on a student's high school diploma.

(b) *Capacity of the State's longitudinal data system:* In determining the State's capacity to collect longitudinal data on a variety of secondary, postsecondary, and employment outcomes for individual students in order to assess the progress of students enrolled in the selected POS, we review each application to determine the extent to which:

(1) The State's longitudinal data system contains, at a minimum, the following elements—

(i) Statewide unique student identifiers;

(ii) Student-level enrollment data;

(iii) Student-level course completion (transcript) data;

(iv) The ability to match student-level secondary and postsecondary data;

(v) The ability to link student-level data with employment outcome data, such as Unemployment Insurance (UI) wage records; and

(vi) A State data audit plan to verify that the education data are valid and reliable.

(2) The applicant provides evidence that project staff from the funded States will be able to work cooperatively with State data specialists and to access the student outcome data needed to meet annual evaluation and reporting requirements for the POS project.

(c) *Local implementation plan:*

In determining the quality of the plan for local implementation of the selected POS, we review each application to determine the extent to which—

(1) The applicant identifies each of the LEAs it has selected for local implementation of the POS and provides evidence of each LEA's capacity to implement the selected POS and the 10 components, as well as the estimated number of students who would participate in the POS in years 2 through 4 of the grant, by grade level.

(2) The participating LEAs represent urban, suburban, and rural communities; and

(3) The applicant includes a letter of commitment from each LEA, expressing its interest in participating in the project and its commitment to implementing the selected POS as prescribed by the State in years 2 through 4 of the grant and to maintain constancy in the implementation of the selected POS.

(4) In the case of LEAs that do not have all 10 components in place at the start of the project, the applicant outlines the specific actions it will take to ensure that weak or missing components are strengthened or created so that all 10 components are in place and the LEA is ready to implement the POS by the beginning of the academic year corresponding to year 2 of the grant.

(5) The applicant outlines a plan to provide ongoing oversight and technical assistance to the participating LEAs throughout the project period, to ensure constancy in the implementation of the selected POS across the participating LEAs.

(d) *Project management.* In determining the quality of the management plan for the proposed project, we review each application to determine the extent to which—

(1) The management plan incorporates, at a minimum, each of the proposed requirements included in this notice, and identifies specific and measurable objectives and tasks to be undertaken to accomplish each project activity;

(2) The management plan assigns responsibility for the accomplishment of project tasks to specific partners or project personnel and provides timelines that will result in the timely completion of all required project activities within each phase of the project;

(3) The Project Director and other key personnel clearly have the professional qualifications and experience necessary to implement their assigned project tasks; and

(4) The time commitments of the Project Director, key personnel, and partners are appropriate to the tasks assigned.

(e) *Adequacy of resources.* In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support to be provided (i.e., facilities, equipment, supplies, or other resources) by participating agencies and institutions at the State and local levels.

(2) Whether the budget is appropriate and the costs are reasonable in relation to the objectives and design of the proposed project.

(f) *Evaluation:* In determining the quality of the proposed project evaluation, we review each application to determine the extent to which—

(1) The proposed project evaluation is feasible and appropriate for evaluating the constancy of the implementation of

the selected POS by the participating LEAs in years 2 through 4 of the grant.

(2) The proposed evaluation is feasible and appropriate for evaluating the effectiveness of each of the 10 components in each LEA.

(3) The proposed evaluation will be conducted by individuals or entities that possess the necessary background and expertise in project evaluation.

(4) The applicant expresses its commitment to participate in the Department's Evaluation Design Meeting and has included suggestions regarding the use of student outcome data that it could access through the State's longitudinal data system to assess the progress of students enrolled in the POS.

We will announce the final priorities, requirements, and selection criteria in a notice in the **Federal Register.** We will determine the final priorities, requirements, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, and selection criteria, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priorities, requirements, and selection criteria justify the costs. This action would provide additional resources to States to help them implement an existing statutory requirement under the Act, the implementation of programs of study at the State and local levels.

We have determined, also, that this proposed regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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.*

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2010–12802 Filed 5–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Hearing

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of a public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing of the Advisory Committee on Student Financial Assistance (The Advisory Committee). This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Friday, June 25, 2010, beginning at 9 a.m. and ending at approximately 5 p.m.

ADDRESSES: Washington Court Hotel, Grand Ballroom, 525 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Megan McClean, Director of Government Relations, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582, (202) 219–2099.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act, and to make recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Amendments of 1998 to include several important areas: Access, Title IV modernization, distance education, and early information and needs assessment. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this one-day hearing to discuss the Advisory Committee's latest report, *The Rising Price of Inequality: How Inadequate Need-Based Grant Aid Limits College Access and Persistence* and also the Higher Education Regulation Study.

Individuals who will need accommodations for a disability in order to attend the Hearing (*i.e.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, June 11, 2010 by contacting Ms. Tracy Jones at (202) 219–2099 or via e-mail at *tracy.deanna.jones@ed.gov.* We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The hearing

site is accessible to individuals with disabilities.

The Advisory Committee invites the public to submit written comments and recommendations to the following e-mail address: *ACSFA@ed.gov.* Information regarding the Higher Education Regulations Study is also available on the Advisory Committee's Web site, *http://www.ed.gov/ACSFA.* We must receive your comments on or before June 14, 2010.

Space for the hearing is limited and you are encouraged to register early if you plan to attend. You may register on the Advisory Committee's Web site, *http://www.ed.gov/ACSFA* or by sending an email to the following address: *ACSFA@ed.gov* or *Tracy.Deanna.Jones@ed.gov.* Please include your name, title, affiliation, complete address (including internet and e-mail address, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. You may also contact the Advisory Committee staff directly at (202) 219–2099. The registration deadline is Monday, June 14, 2010.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's website, *http://www.ed.gov/ACSFA.*

Electronic Access to This Document: You may view this document, as well as 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/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington DC area at (202) 512–0000.

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: May 20, 2010.

Dr. William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 2010–12732 Filed 5–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Gulf Coast Recovery Grant Initiative; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

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

Dates: Applications Available: May 27, 2010.

Deadline for Notice of Intent to Apply: June 21, 2010.

Deadline for Transmittal of Applications: July 9, 2010.

Deadline for Intergovernmental Review: September 7, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Gulf Coast Recovery Grant Initiative is to assist local educational agencies (LEAs) in improving education in areas affected by Hurricanes Katrina, Ike, or Gustav.

Priority: We are establishing this priority for the FY 2010 grant competition only, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Competitive Preference Priority: This priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Serving Persistently Lowest-Achieving Schools

Five additional points will be awarded to an application that proposes to serve at least one school designated by the State as a "persistently lowest-achieving school" for purposes of using school improvement funds under section 1003(g) of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). A "persistently lowest-achieving school" under section 1003(g) means a school, as defined by each State, that falls into one of the following groups:

(1) Any Title I school in improvement, corrective action, or restructuring that (i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring in the State (or the lowest-achieving five such schools, whichever number of schools is greater) or (ii) is a Title I high school that has had a graduation rate that is less than 60 percent over a number of years.

(2) Any secondary school that is eligible for, but does not receive, Title I funds that (i) is among the lowest-achieving five percent of secondary schools in the State (or the lowest-achieving five secondary schools, whichever number of schools is greater) that are eligible for, but do not receive, Title I funds or (ii) is a high school that has had a graduation rate that is less than 60 percent over a number of years.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, requirements, and selection criteria. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for the Gulf Coast Recovery Grant Initiative and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priority, requirements, and selection criteria under section 437(d)(1) of GEPA. This priority, requirements, and selection criteria will apply to the FY 2010 grant competition only.

Program Authority: Consolidated Appropriations Act, 2010 (Pub. L. 111–117).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 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.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $12,000,000.

Estimated Range of Awards: $150,000–$3,000,000.

Estimated Average Size of Awards: $1,500,000.

Note: An eligible LEA may request up to $500,000 per year for each school it intends to serve through the grant under this competition. To ensure that sufficient funds are available to support awards to LEAs of all sizes, and not only the largest LEAs, an applicant may not include more than three schools in a single application for a grant. We will reject any application that includes more than three schools in its proposal.

The following chart provides the maximum award amounts for applicants that propose to serve one, two, or three schools per grant with a one-year or two-year project period:

MAXIMUM AWARDS

Number of schools served	Project Period	
	1 year	2 years
1	$500,000	$1,000,000
2	1,000,000	2,000,000
3	1,500,000	3,000,000

The actual size of awards will be based on a number of factors, including the scope, quality, and comprehensiveness of the proposed project.

Maximum Award: We will reject any application that proposes a budget exceeding the maximum amounts specified in the *Maximum Awards* chart.

Estimated Number of Awards: 6–10.

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

Project Period: Up to 24 months.

Note: 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 located in counties in Louisiana, Mississippi, and Texas designated by the Federal Emergency Management Agency (FEMA) as counties eligible for individual assistance due to damage caused by Hurricanes Katrina, Ike, or Gustav.

For the convenience of applicants, the Department has posted lists of LEAs that are eligible to apply under this competition (organized by State). These lists are available on the Gulf Coast Recovery Grant Initiative Web site at: *http://www.ed.gov/programs/gulf/eligibility.html.* These lists are based on the most recent information provided by each State and the Bureau of Indian Education to the Department. Although the lists attempt to identify all eligible applicants, it is possible that the lists are not exhaustive. Therefore, if an LEA believes it is eligible, but is not included on the lists, it should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice to determine eligibility.

2. *Cost Sharing or Matching:* This competition 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 at: *http://www.ed.gov/programs/gulf/applicant.html,* or by contacting April Bolton-Smith, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E304, Washington, DC 20202–6200. Telephone: (202) 260–1475 or by e-mail: *gulfcoastrecovery@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

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

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

Notice of Intent to Apply: June 21, 2010.

Page Limit: 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 20 pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, and quotations.
- 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 page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; or the appendices. However, the page limit does apply to all of the application narrative section.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 27, 2010.

Deadline for Notice of Intent to Apply: June 21, 2010.

Deadline for Transmittal of Applications: July 9, 2010.

Applications for grants under this competition 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: September 7, 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 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 Gulf Coast Recovery Grant Initiative—CFDA Number 84.215C 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 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 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: April Bolton-Smith, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E304, Washington, DC 20202–6200. FAX: (202) 260–8969.

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 84.215C), 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 84.215C), 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 maximum score for all of the selection criteria is 100 points. The maximum score for each criterion and factor is indicated in parentheses. The selection criteria for this competition are as follows:

(a) *Need for the project.* (40 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The severity of the impact of the hurricane(s) on each school targeted for services under the project (10 points).

Note: In addressing this factor, applicants should consider including quantitative data, qualitative data, or both, on the status of each targeted school prior to the hurricane, as well as the impact of the hurricane(s) on each targeted school.

(ii) The magnitude of the need for the services to be provided or the activities to be carried out at each targeted school (10 points).

Note: In addressing this factor, applicants should consider including quantitative data, qualitative data, or both, highlighting the specific needs resulting from the impact of the hurricane(s).

(iii) The extent to which other sources of funds (including FEMA reimbursement, private insurance, other funds) are not available to meet the needs of the targeted schools (20 points).

Note: In addressing this factor, applicants should consider describing the financial resources needed for recovery efforts at each targeted school, and the extent to which current or future funding exists to meet these needs.

(b) *Project design and services.* (30 points) The Secretary considers the quality of the design of the proposed project and the proposed services. In determining the quality of the design and services, the Secretary considers the following factors:

(i) The extent to which the proposed project services will successfully address the needs of each targeted school (15 points).

Note: In addressing this factor, applicants should consider proposing services that focus on restoring the learning environment and that respond to the specific recovery needs of the targeted schools.

(ii) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic achievement standards (10 points).

Note: In addressing this factor, applicants should consider including an explanation of how the proposed recovery efforts will result in the increased academic achievement of students.

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners in order to maximize the effectiveness of proposed project services (5 points).

Note: In addressing this factor, applicants should consider identifying how the proposed recovery efforts will be coordinated with other entities to meet the needs of the targeted schools.

(c) *Project management.* (30 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key personnel (10 points).

(ii) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget (8 points).

(iii) The extent to which the management plan articulates clearly defined responsibilities and includes realistic timelines and milestones for accomplishing project tasks (5 points).

(iv) The extent to which the applicant has a sound financial management system, including effective internal controls, to administer the grant funds (7 points).

Note: In addressing this factor, applicants should consider including an overview of their financial management system, including how they maintain effective internal controls and fund-accountability procedures.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are in 34 CFR 75.217. These factors include the applicant's performance and use of funds under a previous award under any Department program.

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 measure:* Under the Government Performance and Results Act of 1993, the Department has developed the following performance measure for measuring the overall effectiveness of the Gulf Coast Recovery Grant Initiative: the percentage of grantees that successfully accomplish their project goals and objectives. The Department will collect data for this measure from grantees' final performance reports.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: April Bolton-Smith, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E304, Washington, DC 20202–6200. Telephone: (202) 260–1475 or by e-mail: *gulfcoastrecovery@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: May 24, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–12800 Filed 5–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, and TEACH Grant Programs

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of revision of the Federal Need Analysis Methodology for the 2011–2012 award year.

SUMMARY: The Secretary announces the annual updates to the tables that will be used in the statutory "Federal Need Analysis Methodology" to determine a student's expected family contribution (EFC) for award year 2011–2012 for the student financial aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). An EFC is the amount a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The Title IV programs include the Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, and the Teach Grant Programs (Title IV, HEA Programs).

FOR FURTHER INFORMATION CONTACT: Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, room 63G2, Union Center Plaza, 830 First Street, NE., Washington, DC 20202–5454. Telephone: (202) 377–3385.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Part F of title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of part F of title IV of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year for general price inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For award year 2011–2012, the Secretary is charged with updating the income protection allowance for parents of dependent students, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 2009 and December 2010. However, because the Secretary must publish these tables before December 2010, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for All Urban Consumers (CPI–U) for 2010. The Secretary must also account for any misestimation of inflation for the prior year. In developing the table values for the 2010–2011 award year, the Secretary assumed a 4.1 percent increase in the CPI–U for the period December 2008 through December 2009. Actual inflation for this time period was 2.7 percent. The Secretary estimates that the increase in the CPI–U for the period December 2009 through December 2010 will be 1.2 percent. Last year's overestimate of inflation for 2009 (4.1 percent minus 2.7 percent) exceeds this year's estimate of inflation for 2010. However, the Secretary lacks statutory authority to reduce the table values in the need analysis formula. Thus, the income protection allowance for parents of dependent students, the adjusted net worth of a business or farm, and the assessment schedules and rates are unchanged from 2010–2011. Additionally, section 601 of the College Cost Reduction and Access Act of 2007 (CCRAA, Pub. L. 110–84) amended sections 475 through 478 of the HEA by updating the procedures for determining the income protection allowance for dependent students as well as the income protection allowance tables for both independent students with dependents other than a spouse and

independent students without dependents other than a spouse. As amended by the CCRAA, the HEA established new 2011–2012 award year values for these income protection allowances. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the education savings and asset protection allowances as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for award year 2011–2012 has been updated in section 3 of this notice. Section 478(h) of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance, adjusted for inflation. This calculation is based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations. The Employment Expense Allowance table for award year 2011–2012 has been updated in section 5 of this notice.

The HEA provides for the following annual updates:

1. *Income Protection Allowance (IPA).* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. It varies by family size. The IPA for the dependent student is $5,250. The IPAs for parents of dependent students for award year 2011–2012 are:

PARENTS OF DEPENDENT STUDENTS

	Number in college				
Family size	1	2	3	4	5
2	$16,230	$13,450	.....	.....	.....
3	20,210	17,450	$14,670	.....	.....
4	24,970	22,190	19,430	$16,650	.....
5	29,460	26,680	23,920	21,140	$18,380
6	34,460	31,680	28,920	26,140	23,380

For each additional family member add $3,890.

For each additional college student subtract $2,760.

The IPAs for independent students with dependents other than a spouse for award year 2011–12 are:

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

	Number in college				
Family size	1	2	3	4	5
2	$21,660	$17,960	.....	.....	.....
3	26,960	23,280	$19,580	.....	.....
4	33,300	29,600	25,920	$22,210	.....
5	39,300	35,590	31,900	28,200	$24,520
6	45,950	42,250	38,580	34,860	31,190

For each additional family member add $5,180.

For each additional college student subtract $3,690.

The IPAs for single independent students and independent students without dependents other than a spouse for award year 2011–12 are:

Marital status	Number in college	IPA
Single	1	$8,550
Married	2	8,550
Married	1	13,710

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net value of a business or farm is excluded from the calculation of an expected contribution because—(1) The income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the net worth of a business or farm is—	Then the adjusted net worth (NW) is—
Less than $1	$0.
$1 to $115,000	$0 + 40% of NW.
$115,001 to $345,000	$46,000 + 50% of NW over $115,000.
$345,001 to $580,000	$161,000 + 60% of NW over $345,000.
$580,001 or more	$302,000 + 100% of NW over $580,000.

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

DEPENDENT STUDENTS

	And they are	
	Married	Single
If the age of the older parent is	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	900
27	5,100	1,800
28	7,600	2,700
29	10,200	3,500
30	12,700	4,400
31	15,300	5,300
32	17,800	6,200
33	20,400	7,100
34	22,900	8,000
35	25,500	8,900
36	28,000	9,800
37	30,600	10,600
38	33,100	11,500
39	35,700	12,400
40	38,200	13,300
41	38,900	13,600
42	39,900	13,900
43	40,900	14,200
44	41,900	14,500
45	42,900	14,900
46	44,000	15,200
47	45,100	15,500
48	46,200	15,900
49	47,400	16,300
50	48,800	16,700
51	50,000	17,100
52	51,200	17,500
53	52,800	18,000
54	54,300	18,400
55	55,600	18,800
56	57,300	19,300
57	58,700	19,800
58	60,400	20,300
59	62,200	20,800
60	64,000	21,400
61	65,800	22,000
62	67,700	22,600
63	70,000	23,200
64	72,000	23,800
65 or older	74,000	24,500

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

	And they are	
	Married	Single
If the age of the student is	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	900
27	5,100	1,800
28	7,600	2,700
29	10,200	3,500
30	12,700	4,400
31	15,300	5,300
32	17,800	6,200
33	20,400	7,100
34	22,900	8,000
35	25,500	8,900
36	28,000	9,800
37	30,600	10,600
38	33,100	11,500
39	35,700	12,400
40	38,200	13,300
41	38,900	13,600
42	39,900	13,900

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE—Continued

	And they are	
	Married	Single
If the age of the student is	Then the education savings and asset protection allowance is—	
43	40,900	14,200
44	41,900	14,500
45	42,900	14,900
46	44,000	15,200
47	45,100	15,500
48	46,200	15,900
49	47,400	16,300
50	48,800	16,700
51	50,000	17,100
52	51,200	17,500
53	52,800	18,000
54	54,300	18,400
55	55,600	18,800
56	57,300	19,300
57	58,700	19,800
58	60,400	20,300
59	62,200	20,800
60	64,000	21,400
61	65,800	22,000
62	67,700	22,600
63	70,000	23,200
64	72,000	23,800
65 or older	74,000	24,500

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

	And they are	
	Married	Single
If the age of the student is	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	900
27	5,100	1,800
28	7,600	2,700
29	10,200	3,500
30	12,700	4,400
31	15,300	5,300
32	17,800	6,200
33	20,400	7,100
34	22,900	8,000
35	25,500	8,900
36	28,000	9,800
37	30,600	10,600
38	33,100	11,500
39	35,700	12,400
40	38,200	13,300
41	38,900	13,600
42	39,900	13,900
43	40,900	14,200
44	41,900	14,500
45	42,900	14,900
46	44,000	15,200
47	45,100	15,500
48	46,200	15,900
49	47,400	16,300
50	48,800	16,700
51	50,000	17,100
52	51,200	17,500
53	52,800	18,000
54	54,300	18,400
55	55,600	18,800
56	57,300	19,300
57	58,700	19,800
58	60,400	20,300
59	62,200	20,800

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

	And they are	
	Married	Single
If the age of the student is	Then the education savings and asset protection allowance is—	
60	64,000	21,400
61	65,800	22,000
62	67,700	22,600
63	70,000	23,200
64	72,000	23,800
65 or older	74,000	24,500

4. *Assessment Schedules and Rates.* Two schedules that are subject to updates, one for parents of dependent students and one for independent students with dependents other than a spouse, are used to determine the EFC toward educational expenses from family financial resources. For dependent students, the EFC is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the EFC is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750.
($3,409) to $14,500	22% of AAI.
$14,501 to $18,200	$3,190 + 25% of AAI over $14,500.
$18,201 to $21,900	$4,115 + 29% of AAI over $18,200.
$21,901 to $25,600	$5,188 + 34% of AAI over $21,900.
$25,601 to $29,300	$6,446 + 40% of AAI over $25,600.
$29,301 or more	$7,926 + 47% of AAI over $29,300.

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750.
($3,409) to $14,500	22% of AAI.
$14,501 to $18,200	$3,190 + 25% of AAI over $14,500.
$18,201 to $21,900	$4,115 + 29% of AAI over $18,200.
$21,901 to $25,600	$5,188 + 34% of AAI over $21,900.
$25,601 to $29,300	$6,446 + 40% of AAI over $25,600.
$29,301 or more	$7,926 + 47% of AAI over $29,300.

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $3,500 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* The allowance for State and other taxes protects a portion of the parents' and students' income from being considered available for postsecondary educational expenses. There are four categories for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse. Section 478(g) of the HEA directs the Secretary to update the tables for State and other taxes after reviewing the Statistics of Income file data maintained by the Internal Revenue Service.

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Under $15,000 (in percent)	$15,000 & Up (in percent)	All (in percent)
Alabama	3	2	2

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Under $15,000 (in percent)	$15,000 & Up (in percent)	All (in percent)
Alaska	2	1	0
Arizona	5	4	3
Arkansas	4	3	3
California	8	7	5
Colorado	5	4	3
Connecticut	7	6	4
Delaware	5	4	3
District of Columbia	7	6	6
Florida	4	3	1
Georgia	6	5	4
Hawaii	4	3	4
Idaho	5	4	4
Illinois	6	5	2
Indiana	4	3	3
Iowa	5	4	3
Kansas	5	4	3
Kentucky	5	4	4
Louisiana	3	2	2
Maine	6	5	4
Maryland	8	7	6
Massachusetts	6	5	4
Michigan	5	4	3
Minnesota	6	5	4
Mississippi	3	2	2
Missouri	5	4	3
Montana	5	4	3
Nebraska	5	4	3
Nevada	4	3	1
New Hampshire	5	4	1
New Jersey	10	9	5
New Mexico	3	2	2
New York	9	8	6
North Carolina	6	5	4
North Dakota	3	2	1
Ohio	6	5	4
Oklahoma	4	3	3
Oregon	8	7	5
Pennsylvania	5	4	3
Rhode Island	7	6	4
South Carolina	5	4	3
South Dakota	2	1	1
Tennessee	2	1	1
Texas	3	2	1
Utah	5	4	4
Vermont	6	5	3
Virginia	6	5	4
Washington	4	3	1
West Virginia	3	2	2
Wisconsin	7	6	4
Wyoming	2	1	1
Other	3	2	2

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(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grant Program; 84.038 Federal Perkins Loan Program; 84.033 Federal Work-Study Programs; 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.268 William D. Ford Federal Direct Loan Program; 84.379 TEACH Grant Program)

Program Authority: 20 U.S.C. 1087rr.

Dated: May 24, 2010.

William J. Taggart,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2010–12799 Filed 5–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 19, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–70–000.

Applicants: Mirant Corporation, RRI Energy, Inc.

Description: Mirant Corporation *et al.* submits joint application for approval under section 203 of the Federal Power Act.

Filed Date: 05/18/2010.

Accession Number: 20100518–0203.

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4084–011.

Applicants: Denver City Energy Associates, L.P.

Description: Denver City Energy Associates, LP submits Rate Schedule FERC No 1 *et al.*

Filed Date: 05/17/2010.

Accession Number: 20100517–0045.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: ER09–1397–002.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits clean copy of the Revised Agreements and redlined copies of the modified sheets of the Revised Agreements as Exhibit II.

Filed Date: 05/18/2010.

Accession Number: 20100519–0201.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010.

Docket Numbers: ER10–762–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits Third Revised Service Agreement No 1517 *et al.*, effective 1/14/10.

Filed Date: 05/18/2010.

Accession Number: 20100518–0217.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010.

Docket Numbers: ER10–1268–000.

Applicants: South Carolina Electric & Gas Company.

Description: South Carolina Electric & Gas Company submits proposed revision to its formula rate for transmission service to change the depreciation rates in that formula, effective June 1, 2010.

Filed Date: 05/17/2010.

Accession Number: 20100518–0206.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: ER10–1269–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revision to its Open Access Transmission Tariff to incorporate a modified transmission planning process etc, effective July 17, 2010.

Filed Date: 05/17/2010.

Accession Number: 20100518–0205.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: ER10–1273–000.

Applicants: Midwest Independent Transmission System, Great River Energy.

Description: Midwest Independent Transmission System Operator, Inc *et al.* submits Joint Pricing Zone Revenue Allocation Agreement, effective 5/19/10.

Filed Date: 05/18/2010.

Accession Number: 20100519–0202.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010.

Docket Numbers: ER10–1274–000.

Applicants: Consumers Energy Company.

Description: Consumers Energy Company submits tariff filing per 35.12: Power Sales Tariff Of Consumers Energy Company to be effective 5/19/2010.

Filed Date: 05/19/2010.

Accession Number: 20100519–5016.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: ER10–1275–000.

Applicants: The Detroit Edison Company.

Description: The Detroit Edison Company submits tariff filing per 35.12: Detroit Edison—Baseline Rate Schedule Filing to be effective 5/21/2010.

Filed Date: 05/19/2010.

Accession Number: 20100519–5017.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: ER10–1276–000.

Applicants: Consumers Energy Company.

Description: Consumers Energy Company submits tariff filing per 35: Wholesale Market-Based Rate Tariff For Sales Of Capacity & Energy to be effective 5/19/2010.

Filed Date: 05/19/2010.

Accession Number: 20100519–5018.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: ER10–1277–000.

Applicants: DTE East China, LLC.

Description: DTE East China, LLC submits tariff filing per 35: DTE East China—Compliance Filing to be effective 5/14/2010.

Filed Date: 05/19/2010.

Accession Number: 20100519–5044.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: ER10–1278–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits letter agreement.

Filed Date: 05/19/2010.

Accession Number: 20100519–0208.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: ER10–1279–000.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits an amendment to the Network Integration Transmission Service Agreement.

Filed Date: 05/19/2010.

Accession Number: 20100519–0207.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Docket Numbers: ER10–1280–000.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits an amendment to the Network Integration Transmission Service Agreement.

Filed Date: 05/19/2010.

Accession Number: 20100519–0206.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 9, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–39–000.

Applicants: PHI Service Company.

Description: Supplemental Information of PHI Service Company on behalf of Delmarva Power & Light Company and Potomac Electric Power Company.

Filed Date: 05/18/2010.

Accession Number: 20100518–5062.

Comment Date: 5 p.m. Eastern Time on Friday, May 28, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that

document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, D.C. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–12704 Filed 5–26–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0543; FRL–9155–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Organic Liquids Distribution (Non-Gasoline) Facilities (Renewal), EPA ICR Number 1963.04, OMB Control Number 2060–0539

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 June 28, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0543, 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: Robert C. Marshall, Jr., Office of Compliance, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7021; fax number: (202) 564–0038; e-mail address: *marshall.robert@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 30, 2009 (74 FR 38005), 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–2009–0543, 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: NESHAP for Organic Liquids Distribution (Renewal).

ICR Numbers: EPA ICR Number 1963.04, OMB Control Number 2060–0539.

ICR Status: This ICR is scheduled to expire on July 30, 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 affected entities are subject to the General Provisions of the NESHAP for Organic Liquids Distribution (Non-Gasoline) Facilities at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart EEEE.

Owners or operators of the affected facilities must submit a one time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. 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. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 114 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: Organic liquids distribution facilities.

Estimated Number of Respondents: 381.

Frequency of Response: Initially, occasionally, semiannually, and annually.

Estimated Total Annual Hour Burden: 85,503.

Estimated Total Annual Cost: $16,646,771 which includes $8,087,607 in labor costs, $1,636,864 in capital/startup costs, and $6,922,300 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent. Therefore, the labor hours in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR. There is, however, an apparent increase of two hours in the total Agency hours for this ICR. The total Agency hours for this ICR is 10,520 rather than 10,518 in the previous ICR, because the previous ICR did not retain decimal places in intermediate calculations.

There is an increase in both respondent and Agency labor burden costs resulting from labor rate increases from 2003 to the most recently available rates. The increase in cost to respondents and the Agency is due to labor rate adjustments to reflect the most recent available estimates.

Dated: May 21, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–12768 Filed 5–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0403; FRL–9155–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Metal Can Manufacturing Surface Coating (Renewal), EPA ICR Number 2079.04, OMB Control Number 2060–0541

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 June 28, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0403, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email 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: Robert C. Marshall, Jr., Office of Compliance, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7021; fax number: (202) 564–0050; e-mail address: *marshall.robert@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 32583), 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–2009–0403, 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: NESHAP for Metal Can Manufacturing Surface Coating (Renewal).

ICR Numbers: EPA ICR Number 2079.04, OMB Control Number 2060–0541.

ICR Status: This ICR is scheduled to expire on July 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 affected entities are subject to the General Provisions of the NESHAP for Metal Can Manufacturing Surface Coating at 40 CFR part 63,

subpart A, and any changes, or additions, to the Provisions specified at 40 CFR part 63, subpart KKKK.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. 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. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 91 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: Metal can manufacturing surface coating.

Estimated Number of Respondents: 71.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 27,517.

Estimated Total Annual Cost: $2,687,973, which includes $2,602,773 in labor costs, no capital/startup costs, and $85,200 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the respondents is very low, negative or non-existent. Therefore, the labor hours in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR.

There is an increase in both respondent and Agency costs due to labor rate increases from 2003 to the most recently available rates.

Dated: May 21, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–12767 Filed 5–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0409; FRL–9155–9; EPA ICR Number 0657.10; OMB Control Number 2060–0105]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for the Graphic Arts Industry (Renewal)

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 June 28, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2009–0409, 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 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 32581), 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–2009–0409, 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 the Graphic Arts Industry (Renewal).

ICR Numbers: EPA ICR Number 0657.10, OMB Control Number 2060–0105.

ICR Status: This ICR is scheduled to expire on July 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 the Graphic Arts Industry (40 CFR part 60, subpart QQ) were proposed on October 28, 1980, and promulgated on November 8, 1982. The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart QQ.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 37 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: Graphic arts facilities.

Estimated Number of Respondents: 19.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,718.

Estimated Total Annual Cost: $163,005, which includes $163,005 in labor costs exclusively. There are no annualized capital/startup costs or O&M costs associated with this ICR.

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

Dated: May 21, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–12769 Filed 5–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0446; FRL–8827–3]

Claims of Confidentiality of Certain Chemical Identities Contained in Health and Safety Studies and Data from Health and Safety Studies Submitted Under the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will begin a general practice of reviewing confidentiality claims for chemical identities in health and safety studies, and in data from health and safety studies, submitted under the Toxic Substances Control Act (TSCA) in accordance with Agency regulations at 40 CFR part 2, subpart B. Section 14(b) of TSCA does not extend confidential treatment to health and safety studies, or data from health and safety studies, which, if made public, would not disclose processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the release of data disclosing the portion of the mixture comprised by any of the chemical substances in the mixture. Where a chemical identity does not explicitly contain process information or reveal portions of a mixture, EPA expects to find that the information would clearly not be entitled to confidential treatment. This builds on similar efforts regarding confidentiality of chemical identities listed on the public version of the TSCA Chemical Substances Inventory (TSCA Inventory) and submitted in notifications pursuant to TSCA section 8(e), discussed in the **Federal Register** of January 21, 2010.

DATES: EPA expects to begin reviews of confidentiality claims — both newly submitted and existing claims — in accordance with this guidance on August 25, 2010. Though EPA is not required to solicit comment for this action, comments received before this date will inform these reviews.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0446, by one of the following methods:

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2010–0446. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–0446. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

http://www.regulations.gov, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact*: Scott M. Sherlock, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; e-mail address: *sherlock.scott@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This document is directed to the public in general, though it does not directly impose any binding requirements on parties outside the Agency. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process chemical substances and mixtures subject to TSCA (15 U.S.C. 2601 *et seq.*). You may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this document is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

The Agency expects to respond to certain confidentiality claims regarding chemical identities in health and safety studies and in data from health and safety studies with a determination letter under 40 CFR 2.306(d), 40 CFR 2.204(d)(2), and 40 CFR 2.205(f) that such information is clearly not entitled to confidential treatment. This **Federal Register** document only serves to announce an impending general Agency practice, and this document does not constitute a final Agency action; rather, any determination letter issued by EPA will constitute the Agency's final determination that the chemical identity at issue is not entitled to confidential treatment under TSCA section 14 (15 U.S.C. 2613), and the recipient of such a determination letter may seek judicial review under 5 U.S.C. 701 *et seq*.

At this time, EPA expects to issue these determination letters when the chemical identity claimed as confidential:

1. Was submitted as part of a health and safety study, or of data from a health and safety study, submitted under TSCA that is subject to TSCA section 14(b)(1).

2. Does not explicitly contain process information.

3. Does not reveal data disclosing the portion of the mixture comprised by any of the chemical substances in the mixture.

Each determination letter will provide a contact person within the Agency whom the recipient of the letter can contact with any questions or concerns about the determination related to the submission.

The TSCA Inventory is a list of chemical substances subject to TSCA that are in commerce in the United States, and the fact that a chemical substance is on the TSCA Inventory may be claimed as confidential. Release of a chemical identity under TSCA section 14(b) may correspondingly affect the validity of a confidentiality claim for presence on the TSCA Inventory. EPA expects to examine TSCA Inventory confidentiality claims for chemical identity at the time it makes determinations under TSCA section 14(b). EPA will issue determinations on confidential inventory status when appropriate.

This action is part of a broader effort to increase transparency and provide more valuable information to the public by identifying data collections where information may have been claimed and treated as confidential in the past but is not in fact entitled to confidentiality under TSCA. For such information, EPA is considering what actions might be appropriate in accordance with its confidentiality regulations at 40 CFR part 2, subpart B. EPA believes these actions will make more health and safety information available to the public and support an important mission of the Agency to promote public understanding of the potential risks posed by chemical substances in commerce.

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

Under TSCA section 3(6) (15 U.S.C. 2602(6)):

> The term "health and safety study" means any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this chapter.

Health and safety studies may be submitted under various sections of TSCA, such as TSCA section 8(d) rules explicitly requiring submission of health and safety studies, notices of substantial risk under TSCA section 8(e), and TSCA section 4 rules requiring persons to perform testing. (15 U.S.C. 2603, 2607(d), and 2607(e)) Premanufacture notices submitted under TSCA section 5 must include test data in the possession or control of the person submitting the notice. (15 U.S.C. 2605(d)(1)(B)) Chemical identity is part of a health and safety study. See, e.g., 40 CFR 716.3 and 40 CFR 720.3(k).

Section 14(b)(1) of TSCA provides that health and safety studies and data from health and safety studies are not entitled to confidential treatment unless such information, if made public, would disclose processes used in the manufacturing or processing of a chemical substance or mixture or in the case of a mixture, the portion of the mixture comprised by any of the chemical substances in the mixture. (15 U.S.C. 2613(b)(1)) This document discusses the disclosure of process information element only, and does not deal with the portion of a mixture information element, which pertains to the concentrations of the components of a mixture.

Section 14(b)(1) of TSCA is limited to health and safety studies and data submitted with respect to chemical substances or mixtures that have been offered for commercial distribution and those for which testing is required under TSCA section 4 or for which notification is required under TSCA section 5.

Until recently, EPA has not announced the Agency's views regarding when disclosure of chemical identities may in turn disclose process information. In the **Federal Register** issue of January 21, 2010 (75 FR 3462) (FRL–8807–9), EPA announced that "[w]here a health and safety study submitted under section 8(e) of TSCA involves a chemical identity that is already listed on the public portion of the TSCA Chemical Substances Inventory, EPA expects to find that the chemical identity clearly is not entitled to confidential treatment."

In that January 21, 2010 **Federal Register** document the Agency stated that:

> "Where the identity of a chemical substance is already contained on the public portion of the TSCA Chemical Substances Inventory, which is publicly available from the National Technical Information Service and other sources, EPA believes that the identity itself, even assuming it might otherwise be CBI, as well as any information that might be derived from it about processes or portions, has already been disclosed."

Id.

The January 21, 2010 **Federal Register** document did not, however, address chemical substances not on the public TSCA Inventory. With respect to such chemical substances, EPA is aware that some companies believe their competitors are sufficiently knowledgeable that if EPA were to disclose the chemical identity, the competitors would be capable of ascertaining on their own how the chemical substance might be manufactured or processed, and therefore this would in effect disclose process information.

EPA, however, questions the assertion that when disclosing a chemical identity of a chemical substance inspires a competitor to ascertain a process for manufacturing the chemical substance, such disclosure is equivalent to disclosing the process itself. Disclosing the end product of a process (i.e., a chemical identity) is not the same thing as disclosing the process to make that end product. The process information would come from the competitor's expertise, research, or publicly available sources, not from EPA. Although some companies might find such use of a chemical identity undesirable, EPA does not believe that TSCA section 14(b) was intended to limit the uses of information from a health and safety study.

Interpreting TSCA section 14(b)(1) otherwise might for all intents and purposes exclude chemical identities in health and safety studies from the disclosure provisions of TSCA section 14(b). Carried to its logical conclusion, the argument that the manufacturing process for chemical substances can be figured out by someone knowledgeable in the area and for that reason disclosure of chemical identities is considered equivalent to disclosing process information, would yield the perverse result that chemical identities would rarely, if ever be subject to TSCA section 14(b) disclosure.

Chemical identify has been claimed as confidential in a significant number of health and safety submissions. The result, in the context of substantial risk notices under TSCA section 8(e) for example, has been that the public is able to see that some unidentified chemical substance might present a substantial risk of injury to health or the environment. EPA believes that Congress generally intended for the public to be able to know the identities of chemical substances for which health and safety studies have been submitted. Congress did not specifically exempt chemical identities from TSCA section 14(b), and EPA believes that interpreting TSCA section 14(b) in such a manner would be inconsistent with the intent of Congress in enacting the provision.

It is EPA's view that as a general matter disclosure of a chemical identity does not disclose process information except where the identity explicitly contains process information. For example, a name such as "formaldehyde" (Chemical Abstracts Service (CAS) No. 50–00–0) reveals nothing about the process to make the chemical substance, even if any chemist could figure out independently that formaldehyde can be generated by oxidizing methanol.

In contrast, the names of some chemical substances — especially polymers and chemical substances of unknown or variable composition, complex reaction products and biological materials (known as UVCB substances) — do explicitly contain process information. An illustrative UVCB example is CAS No. 64742–28–5, specific chemical substance's name "Distillates (petroleum), chemically neutralized light paraffinic." A polymer example is CAS No. 68474–52–2, safflower oil, polymer with adipic acid, glycerol and phthalic anhydride. The monomers adipic acid, glycerol and phthalic anhydride are reactants, information pertaining to manufacture of the polymer. EPA expects that such names would not be subject to TSCA section 14(b) disclosure in those instances where the chemical substances' name were claimed as confidential in a study.

EPA intends to begin review of confidentiality claims for identities of chemical substances in health and safety studies, and data from health and safety studies, as described in this guidance, on August 18, 2010. The Agency solicits comments prior to that date regarding classes of chemical substances and attributes of chemical identities that do or do not disclose process information. Such comments will inform the Agency's reviews. Where process information in the chemical identity is unnecessary to

characterize the chemical substance or mixture, EPA may release a version of the chemical identity with the process information removed.

EPA premanufacture notification regulations at 40 CFR 720.90(c) state that EPA will deny a confidentiality claim for chemical identity in a health and safety study submitted as part of a premanufacture notice unless:

1. The information in turn discloses process information,

2. The information discloses portions of a mixture, or

3. "[t]he specific chemical identity is not necessary to interpret a health and safety study" (see also 40 CFR 725.92(c) regarding microbial commercial activity notices). Consistent with the intent of TSCA section 14(b) to allow broad public availability of health and safety data, with limited exceptions, EPA intends to interpret paragraph 3. narrowly.

IV. Why is EPA Taking this Action?

Part of the Agency's mission is to promote public understanding of potential risks by providing understandable, accessible, and complete information on potential chemical risks to the broadest audience possible. In support of this mission, EPA posts useful information about chemical substances regulated under TSCA for the public on its website (*http://www.epa.gov/oppt/index.htm*). One important source of this information is health and safety studies submitted to the Agency. The TSCA section 14(b) exclusion from confidential protection for information from health and safety studies indicates the importance attributed by Congress to making such information available to the public. Chemical identities in particular constitute basic information that helps the public to place risk information in context. Making public chemical identities in health and safety studies whose confidentiality is precluded by TSCA will support the Agency's mission.

List of Subjects

Environmental protection, Chemicals, Confidential Business Information, Health and safety, Reporting and recordkeeping.

Dated: May 20, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–12646 Filed 5–26–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9155–2]

New York State Prohibition of Discharges of Vessel Sewage; Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determination.

SUMMARY: Notice is hereby given that the Regional Administrator of the Environmental Protection Agency—Region 2, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the New York State (NYS) Canal System, including the 524 linear miles of navigable waterways within the Erie, Oswego, Champlain, and Cayuga-Seneca canal segments, and including Onondaga, Oneida, and Cross Lakes.

SUPPLEMENTARY INFORMATION: On April 30, 2009, the State of New York petitioned the Regional Administrator, EPA—Region 2, pursuant to Section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the NYS Canal System.

The NYS Department of Environmental Conservation (NYSDEC), in collaboration with the New York State Canal Corporation, the New York Department of State, and the New York State Environmental Facilities Corporation, prepared and submitted the petition, and NYSDEC certified the need for greater protection of the water quality in the NYS Canal System.

The waters of the proposed No Discharge Zone fall within the jurisdictions of the NYS Thruway Authority and NYS Canal Recreationway Commission, and include four distinct segments of the NYS Canal System. Adequate pumpout facilities are defined as one pumpout station for every 300 to 600 boats, pursuant to the Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines (59 FR 11290–02).

Findings: Potential vessel population in the NYS Canal System was determined using three sources of information: slips (6,896), boater registrations (21,201), and lockings (23,278). Based on the numbers determined through these sources and the number of pumpouts available (87), the following ratios were determined: using number of slips: 1:80, using NYS Boater Registrations 1:243, and using number of lockings: 1:267, respectively. Thus adequate pumpouts are available for all boaters using the NYS Canal System. For all vessel waste disposal from pumpouts, there are 87 NYS Clean Vessel Assistance Program (CVAP) completed projects, 4 dispose of wastes to an on-site septic system, 21 dispose to a holding tank and 62 dispose to a municipal wastewater treatment plant. Thus all vessel sewage will be either discharge into State approved and regulated septic tanks or holding tanks for transport to a sewage treatment plant. Online maps are provided at *http://www.nysefc.org/maps* and include Google maps of pumpout locations and marina sheets that provide boaters with detailed availability information. Based on the above, EPA Region 2, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the New York State (NYS) Canal System. The following is a summary of EPA's findings regarding the adequacy of pumpout facilities for the four Canal System segments at issue:

Champlain Canal

The Champlain Canal encompasses an area from the Federal lock in Troy, NY, to Whitehall, NY. The Champlain Canal leads north to Lake Champlain. Lake Champlain is a large waterbody that is already designated as a No Discharge Zone (NDZ) for vessel sewage, and the direct disposal of greywater into the lake is also prohibited. The total travel distance of the canal area is 60 miles, and to travel the entire length takes approximately 7 hours. There are 276 slips available and 7 operating pumpouts on the Champlain Canal. The 1:300 ratio would only require one pumpout, if the calculation were based solely on the number of slips. The availability of seven pumpouts for this canal meets the criteria for sufficient pumpout access, even accounting for some additional demand from transient traffic. The NYS side of Lake Champlain has an additional 1,014 slips available and 8 additional pumpouts.

Erie Canal

The Erie Canal stretches from Waterford (at the confluence of the Mohawk and Hudson Rivers) to the Tonawandas (at the Niagara River), traveling through Oneida Lake and Cross Lake, and connecting to Onondaga Lake along the way. This portion of the Canal is 338 miles long and has 44 pumpouts available for 2,555 slips. Achieving a 1:300 ratio would require a minimum of nine pumpouts for the

current number of slips. Therefore, there is more than a sufficient number of pumpouts for this canal segment as a whole.

Oswego Canal

The Oswego Canal is a 24-mile-long stretch from the main Erie Canal up to the Port of Oswego and Lake Ontario. This section of the canal has 407 slips and three pumpouts, all located at the City of Oswego terminus. The travel time for the length of this segment is approximately two hours and 20 minutes. Along the way, the Minetto River View Park in Minetto and the Canal Park Marina in Fulton have restrooms available for boaters.

Cayuga-Seneca Canal

The Cayuga-Seneca Canal is a small, 12-mile-long section of the larger canal that veers from the main Erie Canal and intersects with two Finger Lakes—Cayuga and Seneca Lakes. It contains 582 slips and seven pumpouts. In addition, although the two lakes are not included in this NYS Canal NDZ application, there are 7 pumpouts available in Cayuga and 5 pumpouts available in Seneca.

Public Comments: EPA published a notice of petition and tentative affirmative determination on March 15, 2010 in the **Federal Register** (75 FR 12233–01). Public comments were solicited for 30 days, and the comment period ended on April 14, 2010. EPA Region 2 received a total of forty-eight (48) comments. All the comments received are in favor of the NDZ designation with some suggestions and questions.

EPA received letters from the following individuals:

1. George E. Wegman, Rochester, NY
2. Meredith J. Sorenoen, Fairport, NY
3. Eugene Spanganberg, Farmington, NY
4. Roberta Przybylowicz, Webster, NY
5. Barbara S. Rivette, Chair, Onondaga County Council on Environmental Health, Syracuse, New York

EPA received e-mails from the following individuals:

1. Richard Steinheider, Pittsford, NY
2. Paul Miller, Churchville, NY
3. Gary & Carmela Gilbert
4. Doug Hitchcock, Fairport, NY
5. Richard Carello, Canastota, NY
6. Craig Farnsworth
7. Patrick Micari, Fairport, NY
8. Diane Worske, Johnstown, NY
9. Sara Jackson, West Melbourne, FL
10. Captain Hugh Warfle
11. Emily Castner, Pittsford, NY
12. Sean Patrick Mulvery, Pittsford, NY
13. Rob Peterson, Penfield, NY
14. Marci Wilcove, Pittsford, NY
15. Bill Campbell
16. Brian S. Smith, Ontario, NY
17. Sandy Leary, Webster, NY
18. Wade Hughes
19. Bernard McCullen, Pittsford, NY
20. Bill Pullis, Pittsford, NY
21. Stephanie Post, Waterloo, NY
22. Charles Gibson
23. J. Potter
24. Roger Schurkamp
25. James Whitney
26. Janet Blaser
27. William Wood, NY
28. Charlotte Witte, Conesus, NY
29. Marty La Nay
30. Melody Burdekin, Pittsford, NY
31. Tina McKean, Scottsville, NY
32. Margaret Y. Myers
33. Beth Tarduno
34. Maria Tarduno
35. Gene Dichiara, Rochester, NY
36. Pete Deloe
37. James Walsh, Pittsford, NY
38. Constance M. Glover, Fairport, NY
39. G. Terry Thomas
40. Peter Collinge, Henrietta, NY
41. Edmund Brescia, Staten Island, NY
42. Cindy Halpern, Pittsford, NY
43. Russell Nemecek, Syracuse, NY

Summary of Comments and EPA's Responses: All forty-eight (48) commenters expressed strong support for the establishment of a NDZ for the NYS Canal System and commented that this Final Determination was an important step in protecting the water quality and the resources of the canal system. They raised the following issues or suggestions regarding the NDZ designation.

Issue 1: One commenter stated that chlorine is introduced in large amounts through the disinfection of the final effluent from the on-line sewer plants on all tributaries flowing into Oneida Lake, and suggested that the potential adverse impact of the residual chlorine on biota and drinking water might be avoided by employing other means to disinfect the final effluent from the treatment plants, such as ultraviolet light or ozone.

EPA Response: This comment is on a topic that is beyond the scope of this action, as this action does not involve treatment standards for sewage treatment plants.

Issue 2: One commenter stated that, in addition to the boaters, there are many homes along the waterways that are dumping directly into the canal system.

EPA Response: This comment is on a topic that is beyond the scope of this action, as this action only addresses the discharge of sewage from vessels. If the commenter has specific information regarding unpermitted discharges from homes into the canal system, the commenter should report that information to the NYSDEC.

Issue 3: Many commenters expressed concerns about the adequacy of existing pumpout facilities in the NYS Canal System, including the total number of facilities and the conditions and availability of the pumpouts.

EPA Response: The criterion established by the Clean Vessel Act regarding the adequate number of pumpouts per vessel population is one pumpout per 300 to 600 vessels. As described above, NYSDEC has submitted pumpout information (including location, phone numbers, lat./long., VHF channel, dates and hours of operation, fees, and capacity) demonstrating that all areas of the NYS Canal System meet or exceed this criterion. Therefore, EPA has determined that there are adequate pumpout facilities.

Issue 4: One commenter stated that the newly proposed NDZ for the NYS Canal System leads to the wrong impression that boaters have been, and continue to be, polluting the canal with human wastes. The commenter thought that the current Coast Guard Regulations prohibit discharge of waste within three miles of shore and, therefore, that there were no sewage discharges allowed by boaters into the canal.

EPA Response: Federal law prohibits the discharge of untreated sewage from vessels into any waters of the U.S., which include territorial seas within three miles of shore. However, boats with Type I and Type II Marine Sanitation Devices may discharge treated effluent in coastal waters UNLESS they are in a No Discharge Zone. A Type III marine sanitation device (holding tank) is the only type that can be used legally in a NDZ. Once a NDZ is established, vessels cannot discharge treated or untreated sewage into the waterbody (40 CFR 140.4).

Issue 5: One commenter stated that states should designate all of their surface waters as NDZ. Several commenters stated that the proposed NDZ for the NYS Canal System should have been established much sooner to protect the water quality throughout the Canal System.

EPA Response: Under the Clean Water Act, states may petition, by a written application, for a NDZ designation from the EPA Regional Administrator under Sections 312(f)(3), 312(f)(4)(A), or 312(f)(4)(B) of the Clean Water Act. To initiate the NDZ process, an interested party, group, or local government can discuss their concerns with the State agency or agencies responsible for addressing vessel sewage discharges. If the State determines a waterbody to be

appropriate for designation as a NDZ, the State can submit to the EPA Regional Administrator an application to have the waterbody (or waterbodies) of concern designated. The application and designation process varies depending upon the type of NDZ that the State is seeking.

Issue 6: Several commenters suggest that stricter enforcement regulations for sewage discharge in the NYS Canal System are needed.

EPA Response: New York State's enforcement authority of NDZs is addressed in the New York State Navigation Law. Under Article 3, Section 33(e), paragraph 4 "any vessel being operated upon waters of the State that have been designated as a vessel waste NDZ may be boarded and inspected by the department or health department or any lawfully designated agents or inspectors thereof * * *" All certified peace officers are agents of the State, which means that any bona-fide law enforcement officer (State, County, Village police, including bay constables, Harbor Masters, etc.) has the authority to enforce the NDZ. Therefore, EPA believes that New York State's ability to enforcement the NDZs is sufficient.

While information on each pumpout was published in the March 15, 2010, some information was missing at that time. Therefore, the following listings complete those pumpout facility descriptions that were incomplete.

Name: Brockport Lift Bridge.
Phone Number: (585) 637–5300.
Lat./Long.: 43.216898/–77.938367.
VHF Channel: None.
Dates of Operation: May 1–October 15, Mon.–Sun.
Hours of Operation: 24 Hours.
Facility Fee: $0.00.
Vessel Size: Unlimited.
Disposal/Treatment: Connection to Municipal System.
Facility Fee: $0.00.

Name: Village of Fairport, NY.
Phone Number: (585) 421–3240.
Lat./Long.: 43. 100742/–77.440136.
VHF Channel: None.
Dates of Operation: Memorial Day–November 1, Mon.–Sun.
Hours of Operation: 24 hrs.
Facility Fee: $0.00.
Vessel Size: 40′.
Disposal/Treatment: N/A.

Name: Little Falls Canal Harbor.
Phone Number: (315) 823–2400.
Lat./Long.: 43.034692/–74.865492.
VHF Channel: 16.
Dates of Operation: Memorial Day–November 1, Mon.–Sun.
Hours of Operation: 7 a.m. to 10 p.m.
Facility Fee: $0.00.
Vessel Size: Unlimited.
Disposal/Treatment: Septic.

Name: Schenectady Yacht Club, Inc.
Phone Number: (585) 384–3707.
Lat./Long.: 42.850978/–73.88734723.
VHF Channel: 16.
Dates of Operation: Memorial Day–November 1, Mon.–Sun.
Hours of Operation: 24 Hours.
Facility Fee: $0.00.
Vessel Size: Unlimited.
Disposal/Treatment: N/A.

In addition, some pumpouts that were included in the tentative decision are no longer available. These are listed below. Midway Marina and Service, Weedsport, NY, Fisher Bay Marina, Bridgeport, NY, Cold Springs Harbor, Baldwinsville, NY.

Determination: EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the New York State Canal System, including the 524 linear miles of navigable waterways within the Erie, Oswego, Champlain, and Cayuga-Seneca canal segments, and including Onondaga, Oneida, and Cross Lakes.

Dated: May 14, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2010–12653 Filed 5–26–10; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

Summary: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Monday, June 7, 2010 from 9 a.m. to 1 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Agenda items include a focus on the congressionally mandated Competitiveness Report, which focuses on how Ex-Im Bank's programs compare with their major G–7 ECA counterparts during 2009.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Susan Houser to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 2, 2010, Susan Houser, Room 1273, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3232 or e-mail: *susan.houser@exim.gov.*

Further Information: For further information, contact Susan Houser, Room 1273, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3232.

Jonathan Cordone,

Senior President and General Counsel.

[FR Doc. 2010–12541 Filed 5–26–10; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: May 24, 2010.

Federal Deposit Insurance Corporation

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION
[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10240	Pinehurst Bank	Saint Paul	MN	5/21/2010

[FR Doc. 2010–12779 Filed 5–26–10; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, May 27, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2010–05: Starchannel Communications, Inc., by Stephen L. Cram, counsel.

Draft Advisory Opinion 2010–06: Famos LLC, by Christopher A. Shining, Senior Vice President.

Draft Advisory Opinion 2010–07: Yes on FAIR, by Brian G. Svoboda and Kate S. Keane of Perkins Cole LLP, counsel; and Frederic D. Woocher and Aimee Dudovitz of Strumwasser & Woocher LLP, counsel.

Discussion of Audit Policies and Procedures.

Report of the Audit Division on the AFL–CIO COPE PCC.

Report of the Audit Division on CWA–COPE.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Acting Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Darlene Harris,

Acting Secretary of the Commission.

[FR Doc. 2010–12549 Filed 5–26–10; 8:45 am]
BILLING CODE 6715–01–M

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 applications 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 June 21, 2010.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. PNBK Holdings LLC, PNBK Sponsor LLC and PNBK Investment Partners LLC, all of Stamford, Connecticut; to become bank holding companies by acquiring 87.5 percent of the voting shares of Patriot National Bancorp, Inc., and thereby indirectly acquire Patriot National Bank, both of Stamford, Connecticut.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. 215 Holding Company, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of White Rock Bank, Cannon Falls, Minnesota.

Board of Governors of the Federal Reserve System, May 21, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–12688 Filed 5–26–10; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 2010.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90

Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Waumandee Bancshares, Ltd., Waumandee, Wisconsin;, to engage *de novo* through its subsidiary, Waumandee Insurance Services, Inc., Waumandee, Wisconsin, in insurance agency activities in a town with a population of less than 5,000, pursuant to section 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 21, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–12689 Filed 5–26–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Standards Committee's Workgroups: Clinical Operations Vocabulary, Clinical Quality, Implementation, and Privacy & Security workgroups.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The HIT Standards Committee Workgroups will hold the following public meetings during June 2010: June 9th Clinical Operations Workgroup/Vocabulary Task Force, 10 a.m. to 11 a.m./ET; June 11th Implementation Workgroup, 3 p.m. to 4 p.m./ET; June 17th Privacy & Security Workgroup, 10 a.m. to 12 p.m./ET; June 18th Clinical Quality Workgroup, 2 p.m. to 4 p.m./ET; and June 29th Clinical Operations/Vocabulary Task Force, 9 a.m. to 4 p.m./ET.

Location: All workgroup meetings will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web. Please check the ONC Web site for additional information as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.,* clinical operations vocabulary standards, clinical quality measure, implementation opportunities and challenges, and privacy and security standards activities. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: May 17, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–12706 Filed 5–26–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology: HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on June 30, 2010, from 9 a.m. to 3 p.m./Eastern Time.

Location: The location is TBD. Please check the ONC Web site for additional information.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Clinical Operations, Clinical Quality, Privacy & Security, and Implementation Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 24, 2010. Oral comments from the public will be scheduled between approximately 1 and 2 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please

visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: May 17, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–12710 Filed 5–26–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on June 25, 2010, from 10 a.m. to 4 p.m./Eastern Time.

Location: TBD. Please check ONC Web site for information on location.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Certification/Adoption Workgroup, the NHIN Workgroup, and the Privacy & Security Policy Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 18, 2010. Oral comments from the public will be scheduled between approximately 3 p.m. to 4 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: May 17, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–12711 Filed 5–26–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology

HIT Policy Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Policy, Adoption/Certification, and Nationwide Health Information Infrastructure (NHIN) workgroups.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The HIT Policy Committee Workgroups will hold the following public meetings during June 2010: June 4th Meaningful Use Workgroup hearing on disparities, 10 a.m. to 4 p.m./ET (location: TBD); June 10th Privacy & Security Policy Workgroup, 2 p.m. to 4 p.m./ET; June 15th NHIN Workgroup, 10 a.m. to 1 p.m./ET; June 18th Certification/Adoption Workgroup, 10 a.m. to 12 p.m./ET; and June 28th Privacy & Security Policy Workgroup, 2 p.m. to 4 p.m./ET.

Location: All workgroup meetings will be available via webcast; for instructions on how to listen via telephone or Web visit *http://healthit.hhs.gov.* Please check the ONC Web site for additional information as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that effect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.,* meaningful use, the NHIN, privacy and security policy, or adoption/certification. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please

visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: May 17, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–12715 Filed 5–26–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Assessing the Long-Term Impacts of the John E. Fogarty International Center's Research and Training Programs

ACTION: Notice.

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the John E. Fogarty International Center, the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Assessing the Long-Term Impacts of the John E. Fogarty International Center's Research and Training Programs.

Type of Information Collection Request: New collection.

Need and Use of Information Collection: This study will inform investment decisions and strategies employed by the Fogarty International Center for the purpose of strengthening biomedical research capacity in low and middle income countries. The primary objective of the study is to develop detailed case studies of the long-term impacts of Fogarty's research and training programs on educational institutions located in low and middle income countries. The findings will provide valuable information concerning return on the Center's investments over the past twenty years and effective strategies for promoting research capacity development in the future.

Frequency of Response: Once.

Affected Public: Individuals.

Type of Respondents: Current and former NIH grantees; Current and former NIH trainees in countries of interest; Leaders and administrators at institutions of interest; Policy-makers and scientific leaders in countries of interest.

Estimated Number of Respondents: 105 per institution; total of 10 institutions over five years.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours per Response: 1 hour for interview participants; 2 hours for focus group participants.

Estimated Total Annual Burden Hours Requested: 290 and the annualized cost to respondents is estimated at $4,841.

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

	Number of respondents/ participants per institution	Number of institutions per year	Number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Interviews with U.S.-based principal investigators	20	2	1	1	40
Focus groups with selected trainees and follow-on survey	40	2	1	2	160
Interviews with university leadership	4	2	1	1	8
Interviews with trainees	13	2	1	1	26
Interviews with foreign grantees	20	2	1	1	40
Interviews with foreign policy-makers/scientific leaders	8	2	1	1	16
Total	105				290

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

ADDRESSES: You may submit comments via regular mail to Dr. Linda Kupfer, Fogarty International Center, National Institutes of Health, 16 Center Drive, MSC 6705, Building 16, Room 202, Bethesda, MD 20892 or via electronic mail to *kupferl@mail.nih.gov.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Linda Kupfer, Fogarty International Center, National Institutes of Health, 16 Center Drive, Building 16, Room 202, Bethesda, MD 20892, or call 301–496–1491 (this is not a toll-free number), or E-mail your request, including your address to: *kupferl@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: May 19, 2010.

Timothy J. Tosten,

Executive Officer, Office of Administrative Management and International Services, John E. Fogarty International Center, National Institutes of Health.

[FR Doc. 2010–12782 Filed 5–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for

licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Simple, Quantitative and Highly Specific Antibody Detection of Lyme Disease

Description of Invention: This invention uses the Luciferase Immunoprecipitation System (LIPS) as a highly specific and high throughput method for diagnosing *Borrelia burgdorferi (Bb)* infection, a causative agent of Lyme disease. Many antigens, fused to the renilla luciferase (RUC) system, were tested for their ability to detect the disease; however, a novel synthetic protein called VOVO displayed the highest sensitivity and specificity of those tested. VOVO demonstrated 94% sensitivity and 100% specificity and markedly out-performed the C6 ELISA test (currently the most sensitive test available, with 76% sensitivity and 98% specificity) in an analysis of independent validation serum sets. Unlike the C6 ELISA, the VOVO LIPS assay displayed a wide dynamic range of antibody detection spanning over a 10,000-fold range without serum dilution. These results indicate that LIPS screening method using VOVO or other *Bb* antigens offer a more convenient, efficient and quantitative approach to serological screening of antibodies to Lyme disease.

The VOVO LIPS test may benefit from a large market as it could potentially become part of a routine screening panel for Lyme disease. In addition to its high sensitivity and specificity, the test also provides a rapid, simple and high-through-put approach for efficient screening of the disease. It may also be adapted for detection of *Borrelia* species endemic to other regions of the world.

Applications:

• Increased sensitivity and specificity for detection of Lyme disease.

• Rapid and convenient detection of Lyme disease.

Development Status: Early Stage.

Market: 29,000 new cases per year in the U.S.

Inventors: Peter D. Burbelo (NIDCR), Michael J. Iadarola (NIDCR), Adriana R. Marques (NIAID).

Publication: PD Burbelo *et al.* Rapid, Simple, Quantitative, and Highly Sensitive Antibody Detection for Lyme Disease. Clin Vaccine Immunol. 2010 Apr 14; Epub ahead of print, doi:10.1128/CVI.00476–09. [PubMed: 20392886]

Patent Status: U.S. Provisional Application No. 61/312,520 filed 10 Mar 2010 (HHS Reference No. E–036–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Susan Ano, PhD; 301–435–5515; *anos@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Dental and Craniofacial Research, Laboratory of Sensory Biology, Neurobiology and Pain Therapeutics Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact David W. Bradley, PhD at 301–402–0540 or *bradleyda@nidcr.nih.gov.*

Software System for Processing and Analysis of Multi-Dimensional NMR Data

Description of Invention: Available for licensing is a software system useful in applications involving nuclear magnetic resonance (NMR). The software system, called NMRPipe, is written in the C programming language, and makes use of the TCL/TK scripting environment. The system includes over 500 modules for processing and analyzing experimental data of one to four dimensions collected on NMR spectrometers. The system exploits the UNIX computer operating system facilities of pipelines and scripts to link modules in a highly flexible, user-definable manner. NMR is a widely used analytical method, applied to both solution and solid state samples. The information obtained from such data pertains to the structure, motion, and interactions of molecular systems, including proteins, nucleic acids, and organic molecules.

Applications:

• Biomedical research for studying protein and nucleic acid structures and their interactions.

• Chemical applications involving synthesis, identification, or production of organic molecules.

Development Status:

• The software is mature.

• Binary executables of the software have been widely distributed, both to academic institutions as well as commercial organizations.

• The software is under active development.

• The software will be readily available upon request.

Inventors: Frank Delaglio (NIDDK).

Related Publications:

1. Kontaxis G, Delaglio F, Bax A. Molecular fragment replacement approach to protein structure determination by chemical shift and dipolar homology database mining. Methods Enzymol. 2005;394:42–78. [PubMed: 15808217]

2. Delaglio F, Wu Z, Bax A. Measurement of homonuclear proton couplings from regular 2D COSY spectra. J Magn Reson. 2001 Apr;149(2):276–281. [PubMed: 11318630]

3. Cornilescu G, Delaglio F, Bax A. Protein backbone angle restraints from searching a database for chemical shift and sequence homology. J Biomol NMR. 1999 Mar;13(3):289–302. [PubMed: 10212987]

4. Delaglio F, Grzesiek S, Vuister GW, Zhu G, Pfeifer J, Bax A. NMRPipe: a multidimensional spectral processing system based on UNIX pipes. J Biomol NMR. 1995 Nov;6(3):277–293. [PubMed: 8520220]

Patent Status: HHS Reference No. E–076–2009/0—Software. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, PhD, MBA; 301–435–4616; UR7a@nih.gov; or John Stansberry, PhD; 301–435–5236; *js852e@nih.gov.*

Collaborative Research Opportunity: The National Institute of Diabetes and Digestive and Kidney Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the NMRPipe software system. Please contact Cindy Fuchs at 301–451–3636 or Frank Delaglio at *frankde@niddk.nih.gov* for more information.

Target Activated Microdissection—Kits and High Throughput Applications

Description of Invention: A variety of techniques have been used to microdissect specific cells or cell populations from a histological sample under direct microscopic visualization. Original microdissection techniques involved painstaking (and sometimes clumsy) manual dissection using needles or other micro-manipulation

devices to isolate individual cells based on visible, histological characteristics.

The subject technology is a novel method of performing specific target activated transfer from a biological sample (i.e. tissue) for analysis using a device system that can be automated for high throughput analysis or using benchtop kits. The method employs a localized reagent, such as an absorbative stain or immunoreagent that specifically determines the microadhesion of desired cellular material in a tissue sample to a transfer surface such as a thermoplastic polymer film. The energy from a light or heat source causes the specific microadhesion of the target cells or cell populations to the thermoplastic transfer surface without damage to the cells. Subsequent separation of the film from the tissue section selectively removes the adhered target from the tissue section. The method is specific and eliminates the need for direct manual visualization. Kits based on the method have the distinct advantage of not requiring expensive equipment; and thus, are a cost effective option for microdissection and analysis.

Applications:

• Microdissection and analysis kits for histological samples.

• High throughput analysis of biological samples.

Advantages:

• Does not require a visual detection step.

• Kits based on the method are low cost options for microdissection.

• Automated high throughput microdissection and analysis capabilities.

Development Status: In vitro data can be provided upon request.

Inventors: Michael R. Emmert-Buck (NCI), Robert F. Bonner (NICHD), *et al.*

Publications:

1. Tangrea MA, Chuaqui RF, Gillespie JW, Ahram M, Gannot G, Wallis BS, Best CJ, Linehan WM, Liotta LA, Bonner RF, Emmert-Buck MR. Expression microdissection: operator-independent retrieval of cells for molecular profiling. Diagn Mol Pathol. 2004 Dec;13(4):207–212. [PubMed: 15538110]

2. Grover A, Woodson KA, Tangrea MA, Wallis BS, Hanson J, Chuaqui RF, Gillespie JW, Erickson HS, Bonner RF, Pohida T, Emmert-Buck MR, Libutti SK. Tumor-associated endothelial cells display GSTP1 and RAR beta2 promoter methylation in human prostate cancer. J Translational Med. 2006 Mar 2;4:13. [PubMed: 16512911]

3. Hanson JC, Rodriguez-Canales J, Bonner RF, Pohida T, Tangrea MT, Emmert-Buck MR. Expression Microdissection Adapted to Commercial Laser Dissection Instruments (Submitted for publication).

Patent Status:

HHS Reference No. E–113–2003/0—

• U.S. Patent Application No. 10/543,218 filed 22 Jul 2005, allowed.

• U.S. Patent Application No. 12/753,566 filed 02 Apr 2010.

• Australian Patent 2003256803 issued 21 Jan 2010.

• Australian Patent Application No. 2009250964 filed 23 Jul 2009.

• Canadian Patent Application No. 2513646 filed 23 Jun 2003.

HHS Reference No. E–113–2003/1—

• U.S. Patent 7,695,752 issued 13 Apr 2010.

• U.S. Patent Application No. 12/713,105 filed 24 Feb 2010.

Licensing Status: Available for licensing.

Licensing Contact: Kevin W. Chang, PhD; 301–435–5018; *changke@mail.nih.gov.*

Therapeutic HIV Vaccine and Associated Protocols

Description of Invention: This technology describes a therapeutic HIV DNA vaccine to be administered to individuals who have previously experienced or are undergoing antiretroviral therapy (ART). The therapeutic DNA vaccine can also be administered in combination with a vector encoding an IL–15 and/or IL–15 receptor alpha (IL–15Ra) polypeptide. In primate studies, the technology was found to be particularly effective when the vaccine composition was administered by electroporation and expressed six (6) HIV antigens (including two (2) gag polypeptides and two (2) envelope polypeptides) and IL–15 and IL–15Ra. The antigens are typically modified with a destabilizing sequence, a secretory polypeptide and/or a degradation signal. Successive administration up to as many as nine resulted in continual boost of the immune response against the encoded antigen. A potent immunotherapeutic vaccine as described here could be an important technology for the fight against HIV/AIDS.

Applications: Therapeutic HIV DNA vaccines.

Development Status: Primate data available.

Inventors: Barbara Felber *et al.* (NCI).

Patent Status:

• U.S. Patent Application No. 12/522,775 filed 10 Jul 2009, claiming priority to 12 Jan 2007 (HHS Reference No. E–103–2007/0–US–03).

• U.S. Patent Application No. 12/160,263 filed 08 Jul 2008, claiming priority to 13 Jan 2006 (HHS Reference No. E–254–2005/2–US–12); and related international patent applications.

• U.S. Patent Application No. 11/571,879 filed 09 Jan 2007, claiming priority to 09 Jul 2004 (HHS Reference No. E–249–2004/1–US–02).

• U.S. Patent Application No. 12/426,901 filed 20 Apr 2009, claiming priority to 01 Nov 2000 (HHS Reference No. E–308–2000/0–PCT–02); and related international patent/patent applications.

Licensing Status: Available for licensing.

Licensing Contact: Kevin W. Chang, PhD; 301–435–5018; *changke@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize HIV DNA vaccines. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A Novel Chimeric Bifunctional Protein for Prevention and Treatment of HIV Infection

Description of Invention: This invention relates to bifunctional fusion proteins effective in HIV neutralization. Specifically, the invention is a genetically engineered chimeric protein composed of a soluble extracellular region of human CD4 (sCD4) attached via a flexible polypeptide linker to a single-chain construct of a human monoclonal antibody directed against a CD4-induced, highly conserved gp120 determinant involved in co-receptor interaction and virus entry. Mechanistically, the binding of the sCD4 moiety to the HIV gp120 Env glycoprotein induces a conformational change that enables the antibody moiety to bind, thereby blocking Env function and virus entry. This novel design provides the protein with unique characteristics that enables its extremely strong binding to gp120, thus rendering it a potential effective antiviral agent against HIV. Recent studies (Lagenaur *et al.* Retrovirology 7:11, 2010) indicate that this novel bispecific protein displays extremely broad neutralizing activity against genetically diverse primary HIV–1 isolates, with breadth much greater than previously described (Dey *et al.* J. Virology 77:2859, 2003). The potency is generally at least 10-fold greater than the best described HIV–1 neutralizing monoclonal antibodies, and the protein is highly active against many HIV–1 isolates that are refractory to neutralization by these antibodies. The bifunctional protein is comparably potent against isogenic virions produced from a human cell line versus PBMC; by contrast, the broadly-reactive monoclonal antibodies are much less

potent against virions produced from PBMC, perhaps due to differences in glycosylation. Importantly, the bifunctional protein is composed of almost entirely human sequences. It potentially can be linked to other functional moieties to achieve desired properties (longer plasma half-life, selective killing of HIV-infected cells, imaging of viral reservoirs, etc.).

The chimeric protein of this invention has considerable potential for prevention of HIV–1 infection, both as a topical microbicide and as a systemic agent to protect during and after acute exposure (*e.g.* vertical transmission, post exposure prophylaxis). It also has potential utility for treatment of chronic infection, including gene therapy strategies involving hematopoietic stem cells and/or viral vectors. Such proteins, nucleic acid molecules encoding them, and their production and use in preventing or treating viral infections are claimed in the patents issued for this invention.

Applications:

• Prophylactic and/or therapeutic treatment for HIV infection.

• Topical microbicide treatment to protect against HIV infection.

• Imaging of HIV infected cells in tissues.

Advantages:

• High neutralization efficiency due to unique bifunctional binding characteristics.

• Potentially minimally immunogenic or toxic (human sequences and possibly low treatment doses).

• Broad neutralizing activity.

• Mechanism of action less susceptible to resistance.

Development Status:

• Reproducible production and scale-up of chimeric protein has been demonstrated.

• Potent and broad neutralization of genetically diverse HIV–1 clinical isolates was demonstrated.

Market: The race to develop effective antiviral strategies against HIV infection is ongoing. The problems exhibited by conventional drugs such (i.e. toxicity and resistance) have triggered the pursuit of alternative approaches to HIV/AIDS prevention and treatment. One of the new approaches is the development of neutralizing antibodies against the HIV envelope proteins. This approach has not yet yielded any commercially viable treatment. It is believed that the approach presented in the subject invention will circumvent many of the shortcomings of the existing drugs and other pursued approaches. If this approach is successful the commercial rewards will be huge because of the global magnitude of HIV epidemics.

Inventor: Edward A. Berger (NIAID).

Related Publications:

1. Lagenaur LA, Villarroel VA, Bundoc V, Dey B, Berger EA. sCD4–17b bifunctional protein: Extremely broad and potent neutralization of HIV–1 pseudotyped viruses from genetically diverse primary isolates. Retrovirology 2010 Feb 16; 7:11. [PubMed: 20158904]

2. Dey B, Del Castillo CS, Berger EA. Neutralization of human immunodeficiency virus type 1 by sCD4–17b, a single-chain chimeric protein, based on sequential interaction of gp120 with CD4 and coreceptor. J Virol. 2003 March; 77(5):2859–2865. [PubMed: 12584309]

Patent Status:

HHS Reference No. E–039–1999/0—

• U.S. Patent No. 7,115,262, issued 03 Oct 2006.

• U.S. Application No. 11/535,957, filed 27 Sep 2006, published 18 Oct 2007 as 20070243208.

• Australian Patent No. 765218, issued 30 Jul 2003.

• European Patent No. 1161445 issued 03 Sep 2008 for France, Germany, Great Britain, Italy.

• Applications pending in Canada, Japan.

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, PhD, MBA; 301–435–4616; *ur7a@nih.gov;* or Susan Ano, PhD, 301–435–5515; *anos@mail.nih.gov*.

Collaborative Research Opportunity: The NIAID, Office of Technology Development, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize "A Novel Chimeric Protein for Prevention and Treatment of HIV Infection." Please contact Marguerite J. Miller at 301–435–8619 for more information.

Dated: May 20, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–12794 Filed 5–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

UOK 257, the First BHD Tumor Cell Line, and UOK257–2 Wild Type FLCN-Restored Renal Cell Line as *In Vitro* and *In Vivo* Models of Energy/Nutrient Sensing Through the AMPK and mTOR Signaling Pathways

Description of Invention: Scientists at the National Institutes of Health (NIH) have developed a novel renal cell carcinoma (RCC) cell line designated UOK257, which was derived from the surgical kidney tissue of a patient with hereditary Birt-Hogg-Dube' (BHD) syndrome and companion cell line UOK257–2 in which FLCN expression has been restored by lentivirus infection. These cell lines harbors a germline mutation of FLCN gene (alias BHD) and displays loss of heterozygosity, can grow as xenograft in nude mice. Patients affected with BHD develop skin papules (fibrofolliculomas), lung cysts, spontaneous pneumothorax and an increased risk for bilateral multifocal renal tumors. Loss of both copies of the FLCN gene has been documented in BHD renal tumors; however, the molecular mechanisms by which inactivation of the encoded protein, folliculin, leads to the BHD phenotype are currently unknown. They have developed an important research tool for in vitro folliculin functional studies. The companion cell line will be extremely useful for comparative biochemical analyses of cell culture systems in which the FLCN gene is either expressed or inactivated, including identification of renal tumor biomarkers, alteration of biochemical pathways resulting from loss of FLCN

function, tumorigenicity of FLCN null versus FLCN restored cells, preclinical therapeutic drug testing in xenograft animal models produced from injection of these cell lines, etc. UOK 257 and UOK257–2 are thus useful cell models for studying the underlying molecular derangements associated with mTOR pathways and other biogenesis pathways in human kidney cancer and for evaluating novel therapeutic approaches for this disease. UOK257 is also one of the 40-member renal cancer cell lines in the Tumor Cell Line Repository of the Urologic Oncology Branch (UOB), National Cancer Institute (NCI).

Applications

• *In vitro* and *in vivo* cell model for BHD cancer syndrome. Research tool for investigating the underlying molecular mechanisms contributing to advanced BHD, including the identification of new BHD tumor antigens for immunotherapy.

• Research tool for studying genes transcription status of genes involved in BHD to reveal the genetic processes occurring in BHD tissues that may contribute to advanced disease.

• Positive control cell line for *FLCN* gene expression and function studies, including cytogenetics, gene mutation research, and examination abnormalities of interaction with other proteins that may contribute to BHD.

• Research tools for testing the activity of potential anti-cancer drugs against BHD, a disease which has no effective treatment options; tool for searching tumor markers for diagnosis, prognosis and drug resistance.

• Therapeutic drug testing for targeting BHD renal tumors, possible starting material for developing a cancer vaccine against BHD.

Advantages

• *Cell line is derived from a BHD patient:* These cell lines are anticipated to retain many features of primary BHD samples and novel BHD antigens identified from this cell line are likely to correlate with antigens expressed on human BHD type of RCC tumors. Studies performed using these cell lines may have a direct correlation to the initiation, progression, treatment, and prevention of BHD type of RCC in humans.

• *Molecular and genetic features are well characterized:* This cell line is part of NCI Urologic Oncology Branch's Tumor Cell Line Repository. The inventor has elucidated many physical characteristics of the cell lines, including chromosomal attributes and valuable studies on functions of *BHD* gene, their data suggest that *FLCN,* mutated in the BHD syndrome, and its novel interacting partner, *f*olliculi*n-i*nteracting *p*rotein (FNIP1), may be involved in energy and/or nutrient sensing through the AMPK and mTOR signaling pathways.

Inventor: W. Marston Linehan (NCI).

Related Publications

1. Yang Y, Padilla-Nash HM, Vira MA, Abu-Asab MS, Val D, Worrell R, Tsokos M, Merino MJ, Pavlovich CP, Ried T, Linehan WM, Vocke CD. The UOK 257 cell line: a novel model for studies of the human Birt-Hogg-Dubé gene pathway. Cancer Genet Cytogenet. 2008 Jan 15;180(2):100–109. [*PubMed:* 18206534.]

2. Baba M, Hong SB, Sharma N, Warren MB, Nickerson ML, Iwamatsu A, Esposito D, Gillette WK, Hopkins RF 3rd, Hartley JL, Furihata M, Oishi S, Zhen W, Burke TR Jr, Linehan WM, Schmidt LS, Zbar B. Folliculin encoded by the BHD gene interacts with a binding protein, FNIP1, and AMPK, and is involved in AMPK and mTOR signaling. Proc Natl Acad Sci USA. 2006 Oct 17;103(42):15552–15557. [*PubMed:* 17028174.]

Patent Status: HHS Reference No. E–131–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov*.

Collaborative Research Opportunity: The Center for Cancer Research, Urologic Oncology Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize kidney cancer tumor cell lines as described in above abstract through MTA, CRADAs, CTAs, BML, *etc.:*

• For laboratory interests in the basis of metazoan tumor cell survival, including growth factor-regulated nutrient uptake; glucose or glutamine metabolism and epigenetic gene control; tumor cell bioenergetics and cell growth through AMPK and mTOR signaling pathways.

• *In vitro* and *in vivo* cell model for BHD cancer syndrome. It is a valuable research tool for a laboratory interested in identification of new BHD tumor antigens for immunotherapy.

• These paired cell lines for *FLCN* gene expression and function studies, including gene therapy, cytogenetics, gene mutation research, and examination of abnormalities of interaction with other proteins that may contribute to BHD.

• The excellent *in vivo* model for preclinical xenograft imaging, including stable transfection. Cells could be labeled with reagents for PET, Luciferase, Fluorescence, for transgenic mice, optical molecular imaging, *etc.,* and provides a useful platform for preclinical drug evaluations.

Please contact John Hewes, Ph.D. at 301–435–3131 or *hewesj@mail.nih.gov* for more information.

Highly Sensitive microRNA 31 *in situ* Hybridization Assay To Detect Endometrial Cancer

Description of Invention: Investigators at the National Cancer Institute have developed a sensitive, specific and robust human microRNA *in situ* hybridization (ISH) assay that can detect, quantify, and identify cancer biomarkers. Currently available microRNA (miRNA) markers can be detected by microarray, Northern Blot, real time RT–PCR, and sequencing analysis. However, these assays cannot specify tissue and cell types that contain miRNAs without laser microdissection (LMD). LMD has severe limitations as it requires expensive equipment and its miRNA yields are too low to be detected by the aforementioned techniques.

Available for licensing is an optimized an ISH assay to detect miRNAs. ISH represents an efficient and specific assay to detect miRNA of interest due to direct interaction with specific tissue and cell types. This ISH assay utilized fresh cell lines and it can be adapted to frozen cells and tissue samples. Utilizing the assay, the investigators have found that miRNA–31 is decreased in cancerous endometrial cells in comparison to controls. This ISH assay provides for a less expensive, more efficient and highly sensitive assay to detect and quantify microRNAs.

Applications

• Method to detect and quantify miRNAs.

• Method and kits to diagnose endometrial cancer.

Advantages: Cost effective, highly sensitive assay to detect miRNAs.

Development Status: The technology is currently in the pre-clinical stage of development.

Market

• U.S. microRNA revenues were $20 million in 2008 will increase to more than an estimated $98 million in 2015.

• Global cancer market is worth more than eight percent of total global pharmaceutical sales.

• Cancer industry is predicted to expand to $85.3 billion by 2010.

Inventors: Hui Han and John E. Niederhuber (NCI).

Patent Status: U.S. Provisional Application No. 61/253,617 filed 21 Oct 2009 (HHS Reference No. E–303–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov*.

Dated: May 20, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–12790 Filed 5–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1997–D–0008] (formerly Docket No. 1997D–0318)

Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products" dated May 2010. The guidance announced in this notice provides blood collecting establishments and manufacturers of plasma derivatives with comprehensive FDA recommendations intended to minimize the possible risk of transmission of CJD and vCJD from blood and blood products. This guidance document amends the January 2002 guidance document of the same title by: Incorporating donor deferral recommendations for donors who have received a transfusion of blood or blood components in France since 1980, providing updated scientific information on CJD and vCJD, revising labeling recommendations for Whole Blood and blood components intended for transfusion, and recognizing AABB's full Donor History Questionnaire Version 1.3 as an acceptable mechanism for collection of donor history information. The guidance announced in this notice supersedes the guidance document entitled "Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products" dated January 2002 (2002 guidance), and the draft guidance document entitled "Draft Guidance for Industry: Amendment (Donor Deferral for Transfusion in France Since 1980) to "Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products'" dated August 2006 (2006 draft guidance).

DATES: Submit electronic or written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic or written comments on the guidance. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Denise Sánchez, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products" dated May 2010. This guidance amends the 2002 FDA guidance of the same title by incorporating donor deferral recommendations as to donors in France (as announced in the 2006 draft guidance), providing updated scientific information on CJD and vCJD, revising labeling recommendations for Whole Blood and blood components intended for transfusion, and recognizing the use of AABB's full Donor History Questionnaire Version 1.3 as an acceptable mechanism that is consistent with FDA requirements and recommendations for collecting donor history information.

In the **Federal Register** of January 16, 2002 (67 FR 2226), FDA announced the availability of a guidance entitled "Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products" dated January 2002 (the 2002 guidance). The 2002 guidance finalized recommendations to all blood collecting establishments and manufacturers of plasma derivatives for deferral of donors with possible exposure to the CJD and vCJD agents. In the **Federal Register** of August 14, 2006 (71 FR 46484), FDA announced the availability of a draft guidance entitled "Draft Guidance for Industry: Amendment (Donor Deferral for Transfusion in France Since 1980) to 'Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products'" (the 2006 draft guidance). The 2006 draft guidance was intended to amend the 2002 guidance by adding a donor deferral recommendation for donors who have received a transfusion of blood or blood components in France since 1980. Specifically, in the 2006 draft guidance, we stated that we intended to incorporate the new donor deferral recommendation after receiving comments on the draft guidance and reissue the revised 2002 guidance as a level 2 guidance document for immediate implementation (71 FR 46484, August 14, 2006). Upon further consideration, however, we believe it appropriate to issue the guidance announced in this notice as a level 1 guidance document.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the

requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 601.12 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR 606.100 have been approved under OMB control number 0910–0116; and the collections of information in 21 CFR Part 600.14 and 606.171 have been approved under OMB control number 0910–0458.

III. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding the guidance. 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. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: May 18, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–12696 Filed 5–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: June 15–17, 2010 (Open from 8 a.m. to 8:15 a.m. on June 15 and closed for remainder of the meeting)

Place: Crowne Plaza Hotel, 3 Research Court, Conference Room TBD, Rockville, MD 20852.

2. *Name of Subcommittee:* Health Systems Research.

Date: June 16–18, 2010 (Open from 8 a.m. to 8:15 a.m. on June 16 and closed for remainder of the meeting)

Place: Sheraton Rockville Hotel, 920 King Farm Boulevard, Conference Room TBD, Rockville, MD 20852.

3. *Name of Subcommittee:* Health Care Research Training.

Date: June 17–18, 2010 (Open from 8 a.m. to 8:15 a.m. on June 17 and closed for remainder of the meeting)

Place: Hyatt Regency Hotel, 7400 Wisconsin Avenue, 1 Bethesda Metro Center, Conference Room TBD, Bethesda, Maryland 20814.

4. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: June 22–24, 2010 (Open from 8:30 a.m. to 8:45 a.m. on June 22 and closed for remainder of the meeting)

Place: Hilton Rockville Executive Meeting Center, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: May 13, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–12547 Filed 5–26–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/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 Cancer Institute Special Emphasis Panel; Integrating Patient-Reported Outcomes in Hospice and Palliative Care Practices.

Date: June 1, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, 6116 Executive Blvd., Room 8018, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Shamala K. Srinivas, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8123, Bethesda, MD 20892, 301–594–1224, *ss537t@nih.gov.*

This notice is being published less than 30 days prior to the meeting due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel; Development of Anticancer Agents.

Date: June 2, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 8018, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Joyce C. Pegues, B.S., B.A., PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

This notice is being published less than 30 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer

Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12778 Filed 5–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of 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 joint meeting of the Interagency Autism Coordinating Committee (IACC) Services Subcommittee and the IACC Subcommittee for Planning the Annual Strategic Plan Updating Process.

The purpose of the joint meeting between the IACC Services Subcommittee and IACC Subcommittee for Planning the Annual Strategic Plan Updating Process is to discuss plans for a fall 2010 IACC Scientific Workshop on ASD services research. The Subcommittees' joint meeting will be conducted as a telephone conference call. This meeting is open to the public through a conference call phone number.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Joint meeting of the Services Subcommittee and Subcommittee for Planning the Annual Strategic Plan Updating Process.

Date: Friday, June 18, 2010.

Time: 10 a.m. to 12 p.m. Eastern Time.

Agenda: The IACC Services Subcommittee and the IACC Subcommittee for Planning the Annual Strategic Plan Updating Process will discuss plans for a fall 2010 IACC Scientific Workshop on ASD services research.

Place: No in-person meeting; conference call only.

Conference Call: Dial: 800–369–3340, Access code: 8415008.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8200, Bethesda, MD 20852–9669, Phone: (301) 443–6040, E-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note: The meeting will be open to the public through a conference call phone number. Individuals who participate using this service and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 10 days prior to the meeting.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. This phone call may end prior to or later than 12 p.m., depending on the needs of the subcommittees.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: *May 20, 2010.*

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12781 Filed 5–26–10; 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 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: Allergy, Immunology, and Transplantation Research Committee.

Date: June 22, 2010.

Time: 9 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Zhuqing (Charlie) Li, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–9523, *zhuqing.li@nih.gov.*

(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: May 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12784 Filed 5–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Career Development, Research Training & Pathways to Independence Review.

Date: June 14, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Officer, NIAMS/NIH, 6701 Democracy Blvd., Suite 824, Bethesda, MD 20892, (301) 594–4955, *browneri@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12791 Filed 5–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10 (d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care

research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the OS ARRA: Scalable Distributed Networks in CE (R01) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: OS ARRA: Scalable Distributed Networks in CE (R01).

Dates: June 24, 2010 (Open on June 24 from 1 p.m. to 1:15 p.m. and closed for the remainder of the meeting.)

Place: Hilton Rockville Executive Meeting Center, 1750 Rockville Pike, Conference Room TBD, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: May 13, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–12542 Filed 5–26–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Medical Imaging.

Date: June 21–22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Leonid V. Tsap, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–2507, *tsapl@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Diagnostics, Food Safety, Sterilization/Disinfection and Bioremediation.

Date: June 21–22, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Developmental Biology and Aging.

Date: June 21–22, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 435–1277, *leepg@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chronic Fatigue Syndrome, Fibromyalgia Syndrome, and Temporomandibular Disorders.

Date: June 22–23, 2010.

Time: 7 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

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: Center for Scientific Review Special Emphasis Panel; PAR–10–018: Accelerating the Pace of Drug Abuse Research Using Existing Epidemiology, Prevention, and Treatment Research Data.

Date: June 22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Elisabeth Koss, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1721, *kosse@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Population Science and Epidemiology PAR.

Date: June 22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Urogenital Epidemiology.

Date: June 22, 2010.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fungai Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Retinopathy Studies.

Date: June 23, 2010.

Time: 8 a.m. to 5:30 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: Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 MDCN–N (02): Molecular Neuroscience.

Date: June 23–24, 2010.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications,

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Health and Related Behaviors of Individuals and Populations.

Date: June 23, 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: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti-Infective Therapeutics.

Date: June 23–24, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications,

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Rossana Berti, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301–402–6411, *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Sensory, Motor, and Cognitive Neuroscience.

Date: June 23, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ARRA: Chronic Fatigue Syndrome, Fibromyalgia Syndrome, and Temporomandibular Disorder Competitive Revisions.

Date: June 23, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications,

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: 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: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Lung Host Defense and Cystic Fibrosis Applications.

Date: June 23, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: 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: Center for Scientific Review Special Emphasis Panel; Small Business: Risk Prevention and Health Behavior.

Date: June 23–25, 2010.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Claire E. Gutkin, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, 301–594–3139, *gutkincl@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: May 21, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12788 Filed 5–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee, (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Times and Dates: 9 a.m.–5 p.m., June 17, 2010; 9 a.m.–12 p.m., June 18, 2010.

Place: CDC, Global Communications Center, Building 19, Auditorium B3, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: This meeting is open to the public, limited only by the space available. Please register for the meeting online at *http://www.cdc.gov/hicpac* or by sending an e-mail to *hicpac@cdc.gov*.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID) regarding (1) The practice of healthcare infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.,* nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Discussed: The agenda will include: Updates on CDC's activities for healthcare associated infections; the draft guideline for the Prevention of Norovirus Gastroenteritis Outbreaks in Healthcare Settings; the draft guideline for prevention of infections among patients in neonatal intensive care units (NICU); the draft guideline for Infection Control in Healthcare Personnel; and a discussion of infection control in ambulatory care settings.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michelle King, HICPAC, Division of Healthcare Quality Promotion, National Center for Emerging and Zoonotic Infectious Diseases, CDC, 1600 Clifton Road, N.E., Mailstop A–07, Atlanta, Georgia 30333 Telephone (404) 639–2936. E-mail: *hicpac@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 19, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–12749 Filed 5–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and

Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10 (d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b (c)(6). Grant applications for the Recovery Act 2009 Limited Competition: Prospect Studies—Building New Clinical Infrastructure for CE (R01) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Recovery Act 2009 Limited Competition: Prospect Studies—Building New Clinical Infrastructure for CE (R01).

Dates: June 16, 2010. (Open on June 16 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting.)

Place: Hyatt Regency Hotel, 7400 Wisconsin Avenue, 1 Bethesda Metro Center, Conference Room TBD, Bethesda, MD 20814.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: May 13, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–12546 Filed 5–26–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the OS ARRA: Enhancing Registries for Quality Improvement and Comparative Effectiveness (RO 1) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: OS ARRA: Enhancing Registries for Quality Improvement and Comparative Effectiveness (R01).

Dates: June 18, 2010. (Open on June 18 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting.)

Place: Crowne Plaza Hotel, 3 Research Court, Conference Room TBD, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: May 13, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–12544 Filed 5–26–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Collaborative Interdisciplinary Team Science—Nuclear Receptors.

Date: June 10, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Robert Wellner, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–4721. *rw175w@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Metabolic Disease and Pregnancy.

Date: June 10, 2010.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7791.

goterrobinsonc@extra.niddk.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases

Special Emphasis Panel, Plant-Based Dietary Intervention Study.

Date: June 23, 2010.

Time: 3 p.m. to 3:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7799. *ls38z@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies to Major Ongoing Clinical Research Studies.

Date: July 15, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8886. *edwardsm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12787 Filed 5–26–10; 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 & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Function, Integration, and Rehabilitation Sciences Subcommittee; Function, Integration and Rehabilitation Sciences Subcommittee.

Date: June 21, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Anne Krey, PhD, Scientific Review Administrator, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12783 Filed 5–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement; Privacy Act of 1974; Computer Matching Agreement

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Notice of a computer matching program.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 522a), as amended, OCSE is publishing notice of a computer matching program between OCSE and state agencies administering the Temporary Assistance for Needy Families (TANF) program.

DATES: HHS invites interested parties to review, submit written data, comments, or arguments to the agency about the matching program until June 28, 2010. As required by the Privacy Act (5 U.S.C. 552a(r)), HHS on May 21, 2010, sent a report of a Computer Matching Program to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The matching program effective date is estimated to be July 13, 2010.

ADDRESSES: Interested parties may submit written comment on this notice by writing to Linda Deimeke, Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments received will be available for public inspection at this address from 9 a.m. to 5 p.m. Monday through Friday. Comments may also be submitted electronically via the Internet at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Deimeke, Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447; telephone (202) 401–5439.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a), as amended, provides for certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records are matched with other federal, state or local government records. The Privacy Act requires agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agency or agencies participating in the matching programs;

2. Provide notification to applicants and beneficiaries that their records are subject to matching;

3. Verify information produced by such matching program before reducing, making a final denial of, suspending, or terminating an individual's benefits or payments;

4. Publish notice of the computer matching program in the **Federal Register;**

5. Furnish reports about the matching program to Congress and OMB; and

6. Obtain the approval of the matching agreement by the Data Integrity Board of any federal agency participating in a matching program.

This matching program meets these requirements.

Dated: May 17, 2010.

Vicki Turetsky,

Commissioner, Office of Child Support Enforcement.

Notice of Computer Matching Program

A. Participating Agencies

The participating agencies are OCSE, which is the "recipient agency," and state agencies administering TANF programs, which are the "source agencies."

B. Purpose of the Matching Program

The purpose of the matching program is to provide new hire, unemployment insurance (UI), and quarterly wage (QW) information from OCSE's National Directory of New Hires (NDNH) to state agencies administering TANF programs for the purpose of verifying the eligibility of adult TANF recipients residing in the state and, if ineligible, to take such action as may be authorized by law and regulation. State agencies administering the TANF programs may also use the NDNH information for the purpose of updating the recipients' reported participation in work activities and updating contact information of recipients and their employers.

C. Authority for Conducting the Match

The authority for conducting the matching program is contained in section 453(j)(3) of the Social Security Act (42 U.S.C. 653(j)(3)).

D. Categories of Individuals Involved and Identification of Records Used in the Matching Program

The categories of individuals involved in the matching program are adult recipients of benefits under TANF programs administered by state agencies. The system of records maintained by OCSE from which records will be disclosed for the purpose of this matching program is the "Location and Collection System" (LCS), No. 09–90–0074, last published in the **Federal Register** at 72 FR 51446 on September 7, 2007. The LCS includes the NDNH, which contains new hire, QW, and UI information. Disclosures of NDNH information to the state agencies administering TANF programs is a "routine use" under this system of records. Records resulting from the matching program and which are disclosed to state agencies administering TANF programs include names, Social Security numbers, home addresses, and employment information.

E. Inclusive Dates of the Matching Program

The computer matching agreement will be effective and matching activity may commence the later of the following: (1) July 13, 2010; (2) 30 days after this Notice is published in the **Federal Register;** or (3) 40 days after OCSE sends a report of the matching program to the Congressional committees of jurisdiction under 5 U.S.C. 552a(o)(2)(A) and to OMB, unless OMB disapproves the agreement within the 40-day review period or grants a waiver of 10 days of the 40-day review period. The matching agreement will remain in effect for 18 months from its effective date, unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement. The agreement is subject to renewal by the HHS Data Integrity Board for 12 additional months if the matching program will be conducted without any change and each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

[FR Doc. 2010–12750 Filed 5–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. FDA–2010–N–0001]

Food and Drug Administration

Food Labeling Workshop; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs, Southwest Regional Small Business Representative (SWR SBR) Program, in collaboration with the University of Arkansas (UA), is announcing a public workshop entitled "Food Labeling Workshop." This public workshop is intended to provide information about FDA food labeling regulations and other related subjects to the regulated industry, particularly small businesses and startups.

Date and Time: This public workshop will be held on August 4 and 5, 2010, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Continuing Education Center, 2 East Center St., Fayetteville, AR (located downtown).

Contact: David Arvelo, Food and Drug Administration, Southwest Regional Office, 4040 North Central Expressway, suite 900, Dallas, TX 75204, 214–253–4952, FAX: 214–253–4970, or e-mail: *david.arvelo@fda.hhs.gov*.

For information on accommodation options, visit *http://www.uark.edu/ua/foodpro/Workshops/Food_Labeling_Workshop.html* or contact Steven C. Seideman, 2650 North Young Ave., Institute of Food Science & Engineering, University of Arkansas, Fayetteville, AR 72704, 479–575–4221, FAX: 479–575–2165, or e-mail: *seideman@uark.edu*.

Registration: You are encouraged to register by July 21, 2010. UA has a $250 registration fee to cover the cost of facilities, materials, and breaks. There is no registration fee for FDA employees. Seats are limited; please submit your registration as soon as possible. Course space will be filled in the order of receipt of registration. Those accepted into the course will receive confirmation. Registration will close after the course is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration at the site is $350 payable to: "The University of Arkansas." If you need special accommodations due to a disability, please contact Steven C. Seideman (see *Contact*) at least 14 days in advance.

Registration Form Instructions: To register online, please visit *http://www.uark.edu/ua/foodpro/Workshops/Food_Labeling_Workshop.html* or submit your full name, business or organization name, complete mailing address, telephone number, e-mail address, optional fax number, and any special accommodations required due to a disability, along with a check or money order for $250 payable to the "The University of Arkansas." Mail to: Institute of Food Science & Engineering, University of Arkansas, 2650 North Young Ave., Fayetteville, AR 72704.

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Course handouts may be obtained in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: This public workshop is being held in response to the large volume of food labeling inquiries from small food manufacturers and startups originating from the area covered by FDA's Dallas

District Office. The SWR SBR presents these workshops to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is consistent with the purposes of the SBR Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by government agencies to small businesses.

The goal of this public workshop is to present information that will enable manufacturers and regulated industry to better comply with labeling requirements, especially in light of growing concerns about obesity and food allergens. Information presented will be based on agency position as articulated through regulation, compliance policy guides, and information previously made available to the public. This is a hands-on workshop. Topics to be discussed at the workshop include: (1) Mandatory label elements, (2) nutrition labeling requirements, (3) the Food Allergen Labeling and Consumer Protection Act of 2004, (4) voluntary health and nutrient content claims and (5) special labeling issues such as exemptions and current topics on food labeling and nutrition. FDA expects that participation in this public workshop will provide regulated industry with greater understanding of the regulatory and policy perspectives on food labeling and increase voluntary compliance.

Dated: May 21, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–12740 Filed 5–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0207]

Tobacco Product Advertising and Promotion to Youth and Racial and Ethnic Minority Populations; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is soliciting information, research, and ideas to assist FDA in fulfilling its responsibilities regarding tobacco product advertising and promotion that is designed to appeal to specific racial and ethnic minority populations in the United States. For the same reasons, we are also interested in receiving information about the advertising and promotion of menthol and other cigarettes to youth in general, and to youth in minority communities. After reviewing the submitted information, research, and ideas, FDA will be better able to fulfill its responsibilities under The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

DATES: Submit electronic or written comments by July 26, 2010.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Quinn, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 240–276–1717, e-mail: *Kathleen.Quinn@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Tobacco products are responsible for more than 440,000 deaths each year. The rates of tobacco use and tobacco-related mortality are higher among certain racial/ethnic groups, including American Indian and Alaska Natives, and African-American men. As the National Cancer Institute (NCI) noted in Monograph 19, "[t]argeting of various population groups—including * * * specific racial and ethnic populations * * * has been strategically important to the tobacco industry." (Ref. 1).

The first Surgeon General's Report to address the tobacco industry's history of targeting its marketing to minority communities was published in 1998 (Ref. 2). Additionally, studies from the early 1990s document that outdoor tobacco advertising was disproportionately targeted to young people and to minority communities (Refs. 3 and 4). A longitudinal study conducted from 1990 to 1994 in 4 types of Los Angeles ethnic neighborhoods found that, "[c]ompared with White neighborhood thoroughfares, African American and Hispanic neighborhoods contained a greater tobacco ad density, and all minority neighborhoods contained greater tobacco ad concentration along the roadsides * * *. These data are consistent with the assertion that tobacco companies target ethnic minorities with higher rates of advertising and ethnically tailored campaigns." (Ref. 5). A meta-analysis published in 2007 confirmed that "African Americans are exposed to a higher volume of pro-tobacco advertising in terms of both concentration and density." (Ref. 6). In addition to the volume of advertising, the methods used in targeting advertisements to some specific communities have also been studied. For example, Monograph 19 discusses how advertising for mentholated brands to African-Americans was designed around lifestyle appeals relating to "fantasy and escapism," "expensive objects," and "nightlife, entertainment, and music" themes (Ref. 7). However, as NCI noted, "little attention has been paid to understanding tobacco marketing aimed at American Indians and Alaska Natives, despite their high prevalence of tobacco use." (Ref. 8). Tobacco marketing to Asian Americans is also under-studied.

On June 22, 2009, the President signed the Tobacco Control Act into law. The Tobacco Control Act grants FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Among its many provisions, the Tobacco Control Act added section 907(e)(1) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 387g(e)(1)). Section 907(e)(1) of the act requires the Secretary of Health and Human Services (the Secretary) to "refer to the [Tobacco Products Scientific Advisory] Committee for report and recommendation * * * the issue of the impact of the use of menthol in cigarettes on the public health, including such use among children,

African-Americans, Hispanics, and other racial and ethnic minorities."

In addition, section 906(d) of the act (21 U.S.C. 387f(d)) gives the Secretary authority to impose restrictions on the advertising and promotion of a tobacco product that the Secretary determines are appropriate to protect the public health.

Section 105(a) of the Tobacco Control Act (21 U.S.C. 387f-1) requires the Secretary to develop and publish an action plan to enforce restrictions on the sale, distribution, promotion, and advertising of menthol and other cigarettes to youth. The provision requires that the Secretary develop this plan in consultation with public health organizations and other stakeholders with demonstrated experience and expertise in serving minority communities. The action plan must also include provisions designed to ensure enforcement of the restrictions on the sale, distribution, promotion, and advertising of menthol and other cigarettes to youth in minority communities.

More information about tobacco advertising, promotion, and marketing to minority population groups will assist FDA in implementing the public health goals of the Tobacco Control Act. To assist FDA in carrying out the previously mentioned provisions in a manner that will protect the public health, FDA seeks information about the advertising and promotion of tobacco products to particular racial and ethnic minority populations. A better understanding of this advertising and promotion will help FDA understand what steps, if any, may be appropriate under section 906(d) of the act. In addition, we are requesting comments that will assist the agency's development of an action plan regarding enforcement of regulations on advertising and promotion of menthol and other cigarettes to youth generally and to youth in minority communities. FDA is also seeking information that will assist the Tobacco Products Scientific Advisory Committee in understanding and developing recommendations regarding the impact of the use of menthol in cigarettes among children, African-Americans, Hispanics, and other racial and ethnic minorities. A copy of the Tobacco Control Act is available at *http://www.fda.gov/tobacco*.

II. Request for Information

1. Product advertising and promotion play a critical role in fostering brand loyalty and communicating messages to consumers. FDA is aware that messages can be conveyed through a variety of visual cues and that, historically, messages about tobacco products have been created to appeal to specific racial and ethnic communities. Increased understanding of such messaging will assist FDA in determining what steps to take, if any, regarding the sale, distribution, advertising, and promotion of tobacco products that may be appropriate for the protection of public health. We are therefore requesting information on ways in which the advertising and promotion of tobacco products may affect tobacco use among racial and ethnic minority populations.

2. In the **Federal Register** of March 19, 2010 (75 FR 13225), FDA published final regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents. Those regulations take effect June 22, 2010. Therefore, FDA is also seeking input specifically on designing an action plan regarding enforcement of the final regulations on advertising and promotion of menthol and other cigarettes to youth generally and to youth in minority communities.

3. FDA is also requesting information that will assist the Tobacco Products Scientific Advisory Committee to better understand, report on, and make recommendations regarding the impact of the use of menthol in cigarettes among children, African-Americans, Hispanics, and other racial and ethnic minorities.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments 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.

IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Cancer Institute, U.S. Department of Health and Human Services, "The Role of the Media in Promoting and Reducing Tobacco Use," *Tobacco Control Monograph No. 19*; p. 11, 2008.

2. U.S. Department of Health and Human Services, "Tobacco Use Among U.S. Racial/Ethnic Minority Groups—African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, and Hispanics," *A Report of the Surgeon General*; p. 220, 1998.

3. Mitchell, O. & M. Greenberg, "Outdoor Advertising of Addictive Products," *New Jersey Medicine*; 88, p. 331, 1991 (finding that billboards in black and Hispanic neighborhoods in four New Jersey cities disproportionately contained advertisements for tobacco and alcohol products.)

4. Ammerman, S.D. & M. Nolden, "Neighborhood-Based Tobacco Advertising Targeting Adolescents," *Western Journal of Medicine*; 162, pp. 514–518, 1995 (finding that adolescent exposure to tobacco billboard advertisements in San Francisco in 1992 and 1993 was greater in Latino neighborhoods due to a greater adolescent population, and finding that qualitative analyses of the tobacco advertisements "suggested that adolescents are the primary targets.")

5. Stoddard, J.L., et. al., "Tailoring Outdoor Tobacco Advertising to Minorities in Los Angeles County," *Journal of Health Communication*; 3, p. 137, 1998.

6. Primack, B.A., et al., "Volume of Tobacco Advertising in African American Markets: Systematic Review and Meta-Analysis," *Public Health Reports*; 122, p. 607, 2007.

7. National Cancer Institute, U.S. Department of Health and Human Services, "The Role of the Media in Promoting and Reducing Tobacco Use," *Tobacco Control Monograph No. 19*; p. 57, 2008.

8. Id., p. 15.

Dated: May 21, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–12684 Filed 5–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010—0029]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0032; U.S. Fire Administration's National Fire Academy Evaluation Collection

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0032; FEMA Form 064–0–4, NFA Distance Learning Course Evaluation Form; FEMA Form 064–0–5, NFA End of Course Evaluation Form; FEMA Form 064–0–10, USFA Conference/Symposium Form.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal

agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning National Fire Academy (NFA) course evaluations and conference/symposia supporting programmatic initiatives.

DATES: Comments must be submitted on or before July 26, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2010–0029. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2010–0029 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Terry Gladhill, Program Analyst, United States Fire Administration, National Fire Academy, (301) 447–1239 for additional information. You may contact the Office of Records Management for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Fire Academy (NFA) of the United States Fire Administration (USFA) is mandated under the Fire Prevention and Control Act of 1974 (Pub. L. 93–498) to provide training and education to the Nation's fire service and emergency service personnel. The state-of-the-art programs offered by the NFA serve as models of excellence and state and local fire service agencies rely heavily on the curriculum to train their personnel. To maintain the quality of these training programs, it is critical that courses be evaluated to determine student satisfaction and reaction to the course materials, instructional delivery, and the training environment.

Collection of Information

Title: U.S. Fire Administration's National Fire Academy Evaluation Collection.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0032.

Form Titles and Numbers: FEMA Form 064–0–4, NFA Distance Learning Course Evaluation Form; FEMA Form 064–0–5, NFA End of Course Evaluation Form; FEMA Form 064–0–10, USFA Conference/Symposium Form.

Abstract: The NFA End of Course Evaluation Form is used to evaluate all traditional classroom based course deliveries and conference/symposia supporting programmatic initiatives. Data provided by students is used to determine the need for course improvements and the degree of student satisfaction with the training experience. Participant stakeholder data provides necessary information in consideration of program revision and development initiatives and evaluates if the information met their needs.

Affected Public: State, local or tribal government.

Estimated Total Annual Burden Hours: 7,590 burden hours.

ANNUAL HOUR BURDEN

Estimated annualized burden hours and costs

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost
State, local or tribal government.	NFA Distance Learning Course Evaluation Form/ FEMA Form 064–0–4.	40,000	1	6 minutes (.10 hours).	4,000	$22.28	$89,120
State, local or tribal government.	NFA End of Course Evaluation Form/ FEMA Form 064–0–5 (Formerly FEMA Form 95–20).	14,000	1	15 minutes (.25 hours).	3,500	22.28	77,980
State, local or tribal government.	USFA Conference/Symposium Form/ FEMA Form 064–0–10.	600	1	9 minutes (.15 hours).	90	22.28	2,005
Total	.....	54,600	.....	.....	7,590	.....	169,105

Estimated Cost: There are no record keeping, capital, start-up or maintenance costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have

practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: May 20, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–12734 Filed 5–26–10; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–918, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–918, Petition for U Nonimmigrant Status; and Supplement A and B; OMB Control No. 1615–0104.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 12, 2010, at 75 FR 11897, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 28, 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 Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0104 in the subject box. Written comments and suggestions from the public and affected agencies 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:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for U Nonimmigrant Status; and Supplement A and B.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–918; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* This application permits victims of certain qualifying criminal activity and their immediate family members to apply for temporary nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–918—12,000 responses at 5 hours per response; Supplement A—24,000 responses at 1.5 hour per response; Supplement B—12,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 108,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: May 21, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–12718 Filed 5–26–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0030]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0102; Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0102; FEMA Form 007–0–1, Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning FEMA conducting surveys to determine the level of satisfaction of applicants for FEMA disaster assistance with contracted inspectors and the process in their housing inspections.

DATES: Comments must be submitted on or before July 26, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2010–0030. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2010–0030 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Dawson Riggleman, Contract Officer Technical Representative, (540) 686–3810 for additional information. You may contact the Office of Records Management for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: This collection is in accordance with Executive Order 12862 (September 11, 1993), that requires all Federal agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. In addition, the Government Performance and Results Act (GPRA) requires agencies to set missions and goals and measure performance against them. FEMA will fulfill these requirements, in part, by collecting customer service information through a survey of the FEMA Recovery Division's external customers.

Collection of Information

Title: Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0102.

Form Titles and Numbers: FEMA Form 007–0–1, Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey.

Abstract: FEMA Housing Inspection Services contracts inspectors to assess dwelling damage and verify personal information of applicants for FEMA disaster assistance in federally declared disasters areas. Because FEMA needs to evaluate the inspectors' performance, FEMA conducts surveys to measure the satisfaction level of the applicants with their inspection experience. FEMA Inspection Services Managers and Task Monitors generally use the survey results to gauge and make improvements to disaster services that increase customer satisfaction and program effectiveness. The information is shared with Regional staff specific to the federal declaration for which the survey is conducted.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 2,541 burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals in Households	Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey/ FEMA Form 007–0–1.	10,164	1	10,164	.25 (15 minutes)	2,541	$28.45	$72,291.45
Total	.....	10,164	.....	10,164	.....	2,541	.....	72,291.45

Estimated Capital or Start-up Cost: There are no record keeping, capital, start-up or maintenance costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: May 20, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–12733 Filed 5–26–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–612, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–612, Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act; OMB Control No. 1615–0030.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has

submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 12, 2010, at 74 FR 11898, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 28, 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 Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0030 in the subject box. Written comments and suggestions from the public and affected agencies 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:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–612; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form I–612 is used by USCIS to determine eligibility for a foreign residence waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,300 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 433 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: May 21, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–12719 Filed 5–26–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

National Communications System

[Docket No. NCS–2010–0002]

President's National Security Telecommunications Advisory Committee

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice of open advisory committee meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will be meeting by teleconference; the meeting will be open to the public.

DATES: June 10, 2010, from 10 a.m. until 10:20 a.m.

ADDRESSES: The meeting will take place by teleconference. For access to the conference bridge and meeting materials, contact Ms. Sue Daage at (703) 235–4964 or by e-mail at *sue.daage@dhs.gov* by 5 p.m. June 3, 2010. If you desire to submit comments regarding the June 10, 2010, meeting, comments must be identified by Docket No. NCS–2010–0002 and may be submitted by *one* of the following methods:

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

E-mail: NSTAC1@dhs.gov. Include docket number in the subject line of the message.

Mail: Office of the Manager, National Communications System (Government Industry Planning and Management Branch), Department of Homeland Security, 245 Murray Lane, SW., Washington, DC 20598–0615; Fax: 1–866–466–5370.

Instructions: All submissions received must include the words "Department of Homeland Security" and NCS–2010–0002, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket, background documents or comments received by the NSTAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sue Daage, Government Industry Planning and Management Branch at (703) 235–4964, e-mail: *sue.daage@dhs.gov* or write the Deputy Manager, National Communications System, Department of Homeland Security, 245 Murray Lane, SW., Washington, DC 20598–0615.

SUPPLEMENTARY INFORMATION: NSTAC advises the President on issues and problems related to implementing national security and emergency preparedness telecommunications policy. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463 (1972), as amended appearing in 5 U.S.C. App. 2. At the upcoming meeting, the NSTAC Principals will deliberate and vote on comments on the draft National Strategy for Secure Online Transactions.

Persons with disabilities who require special assistance should indicate this when arranging access to the teleconference and are encouraged to identify anticipated special needs as early as possible.

Date signed: May 20, 2010.

James Madon,

Director, National Communications System.

[FR Doc. 2010–12698 Filed 5–26–10; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree and Proposed Order on Consent Under the Clean Water Act

Notice is hereby given that, on May 18, 2010, a proposed Consent Decree in *United States* v. *City of Kansas City, Missouri,* Civil Action No. 4:10–cv–0497, was lodged with the United States District Court for the Western District of Missouri.

The proposed Consent Decree will settle the United States' claims on behalf of the U.S. Environmental Protection Agency ("EPA") for violations of Sections 301(a) and 504(a) of the Clean Water Act, 33 U.S.C. 1311(a) & 1364(a), in connection with un-permitted discharges from the City's combined and separate sewer systems and failure to comply with various provisions of its National Pollutant Discharge Elimination System Permits. The State of Missouri is joined as a non-aligned party pursuant to Section 309(e) of the Act, 33 U.S.C. 1319(e). The Consent Decree resolves the claims alleged in the Complaint in return for payment by the City of a civil penalty of $600,000 to be paid to the United States, performance by the City of injunctive relief valued at $2.5 billion, and performance of a Supplemental Environmental Project valued at $1.6 million.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments on the Consent Decree 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. *City of Kansas City, Missouri,* Civil Action No. 4:10–cv–0497 (W.D. Mo.), D.J. Ref. No. 90–5–1–1–06438/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Missouri, Charles Evans Whittaker Courthouse, 400 East Ninth Street, Kansas City, Missouri 64106, and at EPA, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site: *http://www.justice.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone number (202) 514–1547. If requesting a copy by mail from the Consent Decree Library, please enclose a check in the amount of $25.50 ($0.25 per page reproduction cost) payable to the United States Treasury or, if requesting by e-mail or fax, forward the check in that amount to the Consent Decree Library at the address stated above. If requesting a copy exclusive of appendices, please enclose a check in the amount of $14.25 ($0.25 per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–12729 Filed 5–26–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the Annual Refiling Survey (ARS). A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 26, 2010.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7628. (*See* **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Quarterly Census of Employment and Wages (QCEW) program is a Federal/State cooperative effort which compiles monthly employment data, quarterly wages data, and business identification information from employers subject to State Unemployment Insurance (UI) laws. These data are collected from State Quarterly Contribution Reports (QCRs) submitted to State Workforce Agencies (SWAs). The States send micro-level employment and wages data, supplemented with the names, addresses, and business identification information of these employers, to the BLS. The State data are used to create the BLS sampling frame, known as the longitudinal QCEW data.

To ensure the continued accuracy of these data, the information supplied by employers must be periodically verified and updated. For this purpose, the Annual Refiling Survey (ARS) is used in conjunction with the UI tax reporting system in each State. The information collected on the ARS is used to review the existing industry code assigned to each establishment as well as the physical location of the business establishment. As a result, changes in the industrial and geographical compositions of our economy are captured in a timely manner and reflected in the BLS statistical programs.

The ARS also asks employers to identify new locations in the State. If these employers meet QCEW program reporting criteria, then a Multiple Worksite Report (MWR) is mailed to the employer requesting employment and wages for each worksite each quarter. Thus, the ARS is also used to identify new potential MWR-eligible employers.

II. Current Action

Office of Management and Budget clearance is being sought for the ARS. While the primary purpose of the ARS

is to verify or to correct the North American Industry Classification System (NAICS) code assigned to establishments, there are other important purposes of the ARS. The ARS seeks accurate mailing and physical location addresses of establishments as well as geographic codes such as county and township (independent city, parish, or island in some States).

Once every four years, the SWAs survey employers that are covered by the State's UI laws to ensure that State records correctly reflect the business activities and locations of those employers. States send an ARS form to approximately one-fourth of their businesses each year, surveying the entire universe of covered businesses over a four-year cycle. The selection criterion for surveying establishments is based on the nine-digit Federal Employer Identification Number of the respondent.

The ARS remains largely a mail survey, although steps have been taken to reduce the amount of paperwork involved in responding to the survey. For example, BLS staff review selected, large multi-worksite national employers rather than surveying these employers with traditional ARS forms. This central review reduces postage costs incurred by the States in sending ARS forms. It also reduces respondent burden, as the selected employers do not have to submit ARS forms.

Single-worksite employers have been identified as potential users of the BLS Touchtone Response System (TRS). Employers can use the TRS if they meet certain conditions and there are no changes to specific data elements based upon the employer's review. The TRS reduces respondent burden because it is quick, free, and convenient. It also allows respondents to help BLS reduce survey costs because they do not return the form in the business reply envelope provided. All States are using the TRS in conducting the ARS.

Another initiative to reduce the costs associated with the ARS is the use of a private contractor to handle various administrative aspects of the survey. This initiative is called the Centralized Annual Refiling Survey (CARS). Under CARS, BLS effectively utilizes the commercial advantages related to printing, stuffing, and mailing large volumes of survey forms.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Type of Review: Extension of currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Annual Refiling Survey (ARS).

OMB Number: 1220–0032.

Affected Public: Business or other for-profit institutions, not-for-profit institutions, and farms.

Frequency: Annually.

Form No.	Total respondents	Frequency	Total responses	Average time per response	Total burden (hours)
BLS 3023–(NVS)	1,074,982	Once	1,074,982	5	89,582
BLS 3023–(NVM)	28,362	Once	28,362	15	7,091
BLS 3023–(NCA)	192,990	Once	192,990	10	32,165
Totals	1,296,334		1,296,334		128,838

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 24th day of May 2010.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2010–12792 Filed 5–26–10; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program, FY 2010

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notification of Funding Opportunity for Susan Harwood Training Grant Program, FY 2010.

Funding Opportunity No.: SHTG–FY–10–01.

Catalog of Federal Domestic Assistance No.: 17.502.

SUMMARY: This notice announces grant availability of approximately $8 million for the Susan Harwood Training Grant Program for Capacity Building grants. The complete Harwood solicitation for grant applications (SGA) for Capacity Building grants is available at: *http://www.grants.gov.*

Capacity Building grants will support and assist organizations to establish or expand the capacity of the organization at all levels to address occupational safety and health problems, and provide training and education as well as related assistance. Capacity Building grants will be awarded for one-year Pilot and multi-year Developmental grants.

OSHA will also be publishing a second Susan Harwood Training Grant Program solicitation for grant applications for Targeted Topic training grants in the near future.

DATES: Capacity Building grant applications must be received electronically by the Grants.gov system no later than 4:30 p.m., *e.t.* on July 2, 2010, the application deadline date.

ADDRESSES: The complete Susan Harwood Training Grant Program solicitation for grant applications for

Capacity Building grants and all information needed to apply for this funding opportunity are available at: *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Any questions regarding this solicitation for grant applications should be directed to Cynthia Bencheck, Program Analyst, e-mail address: *bencheck.cindy@dol.gov,* tel: 847–759–7700 (note this is not a toll-free number), or Jim Barnes, Director, Office of Training and Educational Programs, e-mail address: *barnes.jim@dol.gov,* tel: 847–759–7700 (note this is not a toll-free number.)

To obtain further information on the Susan Harwood Training Grant Program of the U.S. Department of Labor, visit the OSHA Web site at: *https://www.osha.gov,* select "Training" under the "Top Links" section, and then select "Susan Harwood Training Grant Program".

Authority: The Occupational Safety and Health Act of 1970, (29 U.S.C. 670), Public Law 111–117, and the 2010 Consolidated Appropriations Act.

Signed at Washington, DC, this 21st day of May 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–12692 Filed 5–26–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

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

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before June 28, 2010.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov.*

2. *Facsimile:* 1–202–693–9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Numbers: M–2010–020–C.

Petitioner: The Wolf Run Mining Company, Route 3, Box 146, Philippi, West Virginia 26416.

Mine: Sentinel Mine, MSHA I.D. No. 46–04168, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.1909(b)(6) (Non-permissible diesel-powered equipment; design and performance requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the Getman Roadbuilder, Serial Number 379514 to be operated as it was originally designed, without front brakes. The petitioner states that: (1) The rule does not address equipment with more than four wheels, specifically the Getman Roadbuilder, Model RDG–1504S, with six wheels; (2) the machine has dual brake systems on the four rear wheels, and is designed to prevent loss of braking due to a single component failure; (3) seventy-four percent (74%) of the machines total weight is over the four (4) rear wheels; and (4) with the weight distribution, brakes on the rear of the machine are sufficient to safely stop the machine. The petitioner further states that: (1) Training will be provided to the grader operators to lower the moldboard to provide additional stopping capability in emergency situations and recognize the appropriate speeds to use on different roadway conditions; and (2) limit the maximum speed to 10 miles per hour. The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection at the Sentinel Mine than would be provided with compliance with the existing standard.

Docket Numbers: M–2010–023–C.

Petitioner: Rosebud Mining Company, 301 Market Street, Kittanning, Pennsylvania 16201.

Mines: Tracy Lynne Mine, MSHA I.D. No. 36–08603, Clementine Mine, MSHA I.D. No. 36–08862, both located in Armstrong County, Pennsylvania; Penfield Mine, MSHA I.D. No. 36–09355, located in Clearfield County, Pennsylvania; Mine 78, MSHA I.D. No. 36–09371, located in Somerset County, Pennsylvania; and Heilwood Mine, MSHA I.D. No. 36–09407, Lowry Mine, MSHA I.D. No. 36–09287, Toms Run Mine, MSHA I.D. No. 36–08525, and Cherry Tree Mine, MSHA I.D. No. 36–09224, all located in Indiana County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable trailing cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of the 480-volt trailing cables for supplying power to the Fletcher Roof Ranger II Twin Boom Roof Bolters to be 950 feet. The petitioner states that: (1) The trailing cables for the 480-volt Fletcher Roof Ranger II Roof Bolter will

not be smaller than No. 2 American Wire Gauge (AWG) cable; (2) all circuit breakers used to protect the No. 2 AWG trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 500 amperes. The trip setting of these circuit breakers will be sealed to insure that the settings on the breakers cannot be changed, and will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting the No. 2 AWG cables; (3) replacement circuit breakers and/or instantaneous trip units, used to protect the No. 2 AWG trailing cables will be calibrated to trip at 500 amperes, and the setting to be sealed; (4) all components that provide short-circuit protection will have a sufficient interruption rating in accordance with the maximum calculated fault current available; (5) the No. 2 AWG cables and the circuit breakers will be examined in accordance with all 30 CFR provisions during each production day; (6) permanent warning labels will be installed and maintained on the load center identifying the location of each short-circuit protective device. These labels will warn miners not to change or alter the settings of these devices; (7) the affected trailing cables will be de-energized and repaired if the cables are damaged in any way during the shift; (8) the alternative method will not be implemented until after all miners who have been designated to operate the Roof Ranger II, or any other person designated to examine the trailing cables or trip settings on the circuit breakers have received proper training as to the performance of their duties; and (9) within sixty (60) days after the Proposed Decision and Order becomes final, proposed revisions for its approved 30 CFR part 48 training plan will be submitted to the District Manager. The proposed revisions will specify task training for miners designated to examine the trailing cables for safe operating conditions and verify that the short-circuit settings of the circuit interrupting device(s) that protect the affecting trailing cables do not exceed the specified setting(s) in Item No. 3. Training will include the following elements: (a) The hazards of setting the short-circuit interrupting device(s) too high to adequately protect the trailing cables; (b) how to verify that the interrupting device(s) protecting the trailing cable(s) are properly set and maintained; (c) mining methods and operating procedures that will protect the trailing cables against damage; and (d) the proper procedure for examining the trailing cable to insure that the cable(s) are in safe operating condition by a visual inspection of the entire cable, observing the insulation, the integrity of the splices, nicks and abrasions. The petitioner states that the procedures as specified in 30 CFR 48.3 for approval of proposed revisions to approved training plans will apply. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by such standard with no diminution of safety to miners.

Dated: May 21, 2010.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–12691 Filed 5–26–10; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0187]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1248, "Nuclear Power Plant Simulation Facilities for Use in Operator Training, License Examinations, and Applicant Experience Requirements."

FOR FURTHER INFORMATION CONTACT: Robert G. Carpenter, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7483 or e-mail *Robert.Carpenter@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Nuclear Power Plant Simulation Facilities for Use in Operator Training, License Examinations, and Applicant Experience Requirements," is temporarily identified by its task number, DG–1248, which should be mentioned in all related correspondence. DG–1248 is proposed Revision 4 of Regulatory Guide 1.149, dated October 2001.

This guide describes methods acceptable to the staff of the U.S. Nuclear Regulatory Commission (NRC) for complying with those portions of the Commission's regulations associated with approval or acceptance of a nuclear power plant simulation facility for use in operator and senior operator training, license examination operating tests, and meeting applicant experience requirements.

II. Further Information

The NRC staff is soliciting comments on DG–1248. Comments may be accompanied by relevant information or supporting data and should mention DG–1248 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any of the following methods:

1. *Mail comments to:* Rules, Announcements, and Directives Branch, Mail Stop: TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2010–0187]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

3. *Fax comments to:* Rules, Announcements, and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Comments would be most helpful if received by August 27, 2010. Comments received after that date will be

considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Requests for technical information about DG–1248 may be directed to the NRC contact, Robert G. Carpenter at (301) 251–7483 or e-mail *Robert.Carpenter@nrc.gov*.

Electronic copies of DG–1248 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML100770145.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 20th day of May 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–12762 Filed 5–26–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting

Board meeting: June 29, 2010—Idaho Falls, Idaho; the U.S. Nuclear Waste Technical Review Board will meet to discuss U.S. Department of Energy plans for managing spent nuclear fuel and high-level radioactive waste.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will meet in Idaho Falls, Idaho, on Tuesday, June 29, 2010. to review U.S. Department of Energy (DOE) plans for managing spent nuclear fuel (SNF) and high-level radioactive waste (HLW). Among the topics that will be discussed are the amounts and characteristics of waste stored at the Idaho National Laboratory, agreements in place between the State of Idaho and the federal government related to the packaging and movement of the waste, how the recent decision to terminate the Yucca Mountain repository program will affect waste management plans, and plans underway at DOE to transition its responsibilities under the Nuclear Waste Policy Act (NWPA) from the Office of Civilian Radioactive Waste Management to the Office of Nuclear Energy. Also on the agenda are discussions of innovative reactor technologies that could affect amounts or types of SNF or HLW requiring disposal and presentations on studies of advanced fuel cycles. The Nuclear Waste Policy Amendments Act of 1987 requires the Board to conduct an independent review of the technical and scientific validity of DOE activities related to nuclear waste management, including transporting, packaging, and disposing of SNF and HLW.

The Board meeting will be held at the Hilton Garden Inn, 700 Lindsay Boulevard; Idaho Falls, ID 83402; (tel.) 208–522–9500, (fax) 208–522–9501. A block of rooms has been reserved for meeting attendees. When making a reservation, please ask for the "NWTRB" rate. Reservations should be made by June 21, 2010, to ensure receiving the meeting rate.

A detailed meeting agenda will be available on the Board's Web site *http://www.nwtrb.gov* approximately one week before the meeting. The agenda also may be obtained by telephone request at that time. The meeting will be open to the public, and opportunities for public comment will be provided.

The meeting will begin at 8:30 a.m. on Tuesday morning. Time has been set aside at the end of the day for public comments. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

Transcripts of the meeting will be available on the Board's Web site, by e-mail, on computer disk, and in paper format on library-loan from Davonya Barnes of the Board's staff no later than July 19, 2010.

The Board was established as an independent federal agency to provide objective expert advice to Congress and the Secretary of Energy on technical issues and to review the technical validity of DOE activities related to implementing the NWPA. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board is required to report to Congress and the Secretary no fewer than two times each year. All Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's Web site.

For information on the meeting agenda, contact Carl Di Bella, for information on lodging or logistics, contact Linda Coultry; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495.

Dated: May 19, 2010.

Nigel Mote,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2010–12519 Filed 5–26–10; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Act Clean Technologies, Inc.; Order of Suspension of Trading

May 25, 2010.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of ACT Clean Technologies, Inc. ("ACT") because of questions regarding the accuracy of assertions by ACT concerning, among other things: (1) British Petroleum's purported expression of interest in using a so-called oil fluidizer technology purportedly licensed to ACT's wholly-owned subsidiary, American Petroleum Solutions, Inc., for use in cleanup operations in the Gulf of Mexico, and its purported request that field tests be conducted on the oil fluidizer technology; and (2) the purported results of field tests finding that the oil fluidizers are effective for use in clean up efforts in the Gulf of Mexico.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, May 25, 2010 through 11:59 p.m. EDT, on June 8, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–12876 Filed 5–25–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62141; File No. SR–CBOE–2010–036]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval of Proposed Rule Change To Permit $1 Strikes for Options on Trust Issued Receipts

May 20, 2010.

I. Introduction

On April 13, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit $1 strikes for options on Trust Issued Receipts. The proposed rule change was published for comment in the **Federal Register** on April 23, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

CBOE has proposed to amend Rule 5.5, Series of Option Contracts Open for Trading, by adding new Interpretation and Policy .17 that would allow the Exchange to list options on the Trust Issued Receipts ("TIRs"), including HOLding Company Depository ReceiptS ("HOLDRS"), as defined under Interpretation and Policy .07 to Rule 5.3, in $1 or greater strike price intervals, where the strike price is $200 or less and $5 or greater where the strike price is greater than $200 (TIRs and HOLDRS are hereafter collectively referred to as TIRs).[4] The proposed strike price intervals for options on TIRs are consistent with the strike price intervals currently permitted for options on exchange-traded funds ("ETFs").[5]

In support of its proposal, CBOE stated that it believes the marketplace and investors will be expecting options on TIRs to trade in a similar manner to options on ETFs because TIRs have characteristics similar to ETFs.[6] Accordingly, the Exchange asserts that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for options on TIRs and that investors will be better served if $1 strike price intervals are available for options on TIRs (where the strike price is less than $200).

CBOE further stated that it has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes (where the strike price is less than $200) for options on TIRs.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed strike price intervals for options on TIRS are consistent with the strike price intervals currently permitted for options on ETFs.[9] Accordingly, the proposal should provide consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and may provide investors with greater flexibility in achieving their investment objectives.

In addition, the Commission notes that CBOE has represented that it believes the Exchange and the Options Price Reporting Authority CBOE and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes for options on TIRS.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register.** The Commission notes that it recently approved similar changes to strike price intervals for options on Index-Linked Securities for the Exchange.[11] The Commission also notes that it has not received any comments regarding this proposal. The Commission believes that the proposed changes to strike price intervals for options on TIRs do not raise any novel regulatory issues and accelerating approval of this proposal should benefit investors by creating consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and greater flexibility in achieving their investment objectives.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2010–036) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12693 Filed 5–26–10; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 61935 (April 16, 2010), 75 FR 21373 ("Notice").

[4] As more fully explained in the Notice, HOLDRS are a type of TIR. Currently, the strike price intervals for options on TIRs are as follows: (1) $2.50 or greater where the strike price is $25.00 or less; (2) $5.00 or greater where the strike price is greater than $25.00; and (3) $10.00 or greater where the strike price is greater than $200. *See* CBOE Rule 5.5.01(c)–(e).

[5] *See* Interpretation and Policy .08 to Rule 5.5. *See also* Securities Exchange Act Release No. 46507 (September 17, 2002), 67 FR 60266 (September 25, 2002) (permitting list of options on ETFs at $1 strike price intervals) (SR–CBOE–2002–54).

[6] *See* Notice, *supra* note 3, for CBOE's explanation of how TIRS are similar to ETFs.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra* note 5.

[10] 15 U.S.C. 78s(b)(2).

[11] *See* Securities Exchange Act Release No. 61696 (March 12, 2010), 75 FR 13174 (March 18, 2010) (SR–CBOE–2010–005).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62140; File No. SR–Phlx–2010–69]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Applicability of Fees

May 20, 2010.

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 April 30, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule by adding language at the beginning of the Fee Schedule to describe with more specificity the applicability of fees to transactions. It is also making certain additional wording changes to the Fee Schedule for purposes of clarity and to conform the Fee Schedule to the Exchange's current billing practices.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently charges its members certain transaction-related fees for options trades. These fees are assessed at differing rates that depend on the option contract and on the characteristics of the particular trade. Category I of the Fee Schedule sets forth fees assessed in connection with rebates for adding and fees for removing liquidity in certain specific option contracts identified in the first bullet point of Category I.[5] Category II identifies fees assessed with respect to transactions in the other equity options traded on the Exchange as well as ETFs, HOLDRS, RUT, RMN, MNX and NDX (together, these Category II fees are the "Equity Options Fees"). Categories III and IV set forth fees assessed with respect to transactions in the Exchange's sector index options and U.S. dollar-settled foreign currency options, respectively.

The six subcategories of transaction fees within Category I, the rebates for adding and fees for removing liquidity are (1) Customer, (2) Directed Participant, (3) Specialist, ROT, SQT and RSQT, (4) Firm, (5) Professional and (6) Broker-Dealer. Within Category II, there are five fee subcategories, identified as (1) Customer Executions, (2) Professional (3) Registered Options Traders (on-floor) and Specialists, (4) Firm, and (5) Broker-Dealer. Categories III and IV each contain the following six subcategories: (1) Customer Executions, (2) Professional (3) Registered Options Traders (on-floor), (4) Specialist, (5) Firm, and (6) Broker-Dealer.

As a preliminary matter, the Exchange is deleting the word "Executions" from the caption of the "Customer Executions" subcategory within Categories II, III and IV of the Fee Schedule as unnecessary and potentially confusing. Hereafter, this proposed rule change will refer to the "Customer Executions" subcategories as simply the "Customer" subcategories. Similarly, the Exchange is proposing to delete references to the term "Firm Proprietary" wherever they appear in Categories II, III and IV. Currently, the Fee Schedule uses the terms "Firm" and "Firm Proprietary" to refer to the same types of transactions. The Exchange is proposing to delete the words "Firm Proprietary" and instead use the term "Firm" consistently in the Fee Schedule. A conforming change is also made to endnote 5.

The Exchange proposes to add language to the beginning of the Fee Schedule in a preface immediately preceding Category I to address the applicability of its fees to certain transactions. The Exchange is proposing to add this text to the Fee Schedule to clarify the below terms for purposes of assessing fees.

The term "*Customer*" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).[6]

The term "*Directed Participant*" applies to transactions for the account of a Specialist,[7] Streaming Quote Trader[8] (an "SQT") or Remote Streaming Quote Trader[9] (an "RSQT") resulting from a Customer order that is (1) directed to it by an order flow provider,[10] and (2) executed by it electronically on Phlx XL II.[11]

The term "*Specialist, ROT, SQT and RSQT*" applies to transactions for the accounts of Specialists, Registered

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Category I also sets forth certain rebates for adding liquidity. The rebates apply as set forth within the various subcategories that also apply to fees within Category I.

[6] Rule 1000(b)(14) provides in relevant part: "The term "professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[7] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[8] A Streaming Quote Trader is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned.

[9] A Remote Streaming Quote Trader is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned.

[10] An Order Flow Provider is defined in Exchange Rule 1080(l)(1)(B) as "any member or member organization that submits, as agent, customer orders to the Exchange."

[11] A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT nor a RSQT. *See* Exchange Rule 1014 (b)(i) and (ii).

Option Traders [12] ("ROTs"), Streaming Quote Traders, and Remote Streaming Quote Traders, unless the Directed Participant transaction fee applies.

The term "*Firm*" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. For purposes of clarity, these trades are received by the Exchange with an origin type of "F" and are billed the Firm rate.

The term "*Professional*" applies to transactions for the accounts of Professionals (as defined in Exchange Rule 1000(b)(14)).

The term "*Broker-Dealer*" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. Thus, for example, "Broker-Dealer" transaction fees do not apply to rebates and fees for adding and removing liquidity which are subject to "Customer", "Directed Participant", "Specialist, ROT, SQT and RSQT", "Firm", or "Professional" transaction fees. For example, the Broker-Dealer fee would be applicable to transactions by away market makers or broker dealers clearing in the customer range.

The Fee Schedule currently refers to "Registered Options Traders (on floor) and Specialists" in Category II, the equity option fees. These fees, which are referred to as "Registered Options Traders (on floor) and Specialists", apply only to transactions for the accounts of ROTs and Specialists. Likewise the Fee Schedule refers to "Registered Options Traders (on-floor)" in Categories III and IV, sector index options and U.S. dollar-settled options. These fees, which are referred to as "Registered Options Traders *(on-floor)*", apply only to transactions for the accounts of ROTs. Finally the Fee Schedule refers to "Specialist" in Categories III and IV, sector index options and U.S. dollar-settled options. These fees, which are referred to as "Specialist", apply only to transactions for the accounts of Specialists. The Exchange proposes to replace these three fee terms with the broader term "Specialist, ROT, SQT and RSQT" for clarity. The Exchange defines a ROT as a SQT, a RSQT and a non-SQT. The Exchange is proposing to change the title of certain fees for ease of reference. This category is the Exchange's market maker category and will not impact the fees as Specialists, ROTs, SQTs and RSQTs are charged the same rate.

The Exchange is deleting the second bullet point under Category I as unnecessary and duplicative of language in the new Preface. Clarifying changes are made to the seventh and eight bullet points in Category I, the rebates for adding and fees for removing liquidity.[13]

Endnote (C) is proposed to be amended to more clearly identify the transaction charges that are subject to the cap described in that endnote. No change in meaning is intended.

Additionally, the Exchange proposes to delete endnote (15) from the Fee Schedule. Currently, endnote (15) states that the Broker-Dealer "charge applies to members for transactions, received from other than the floor of the Exchange for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes transactions for the account of an ROT entered from off the floor. The Exchange proposes to delete endnote (15) and instead clarify what fees will be assessed to a broker-dealer utilizing the proposed new term "Broker-Dealer" as set forth in the preface. The Exchange will continue to assess members as defined in (i) and (ii) of current endnote (15) fees applicable to a broker-dealer.[14]

With respect to the last sentence of endnote (15), the Exchange notes that ROTs entering into transactions from off-floor include RSQTs because RSQTs are a subset of ROTs by definition.[15] The Exchange proposes to assess transactions for the account of a ROT entered from off-floor the fees applicable to Specialists, ROTs, SQTs and RSQTs, as to the rebates and fees for adding and removing liquidity. With respect to the equity options, RSQTs are currently assessed at the "Registered Options Traders (on-floor) and Specialists" rate. With respect to sector index options and U.S. dollar-settled index options, RSQTs are currently assessed at the "Registered Options Traders (on-floor)" rate. These fee subcategories apply to ROTs generally, regardless of whether they are RSQTs and therefore are streaming quotes from off the trading floor. An off-floor ROT will be assessed fees applicable to the newly termed Specialist, ROT, SQT and RSQT category as opposed to the broker dealer category as is currently stated in endnote (15). The elimination of endnote (15) and adoption of the language explaining how a Specialist, ROT, SQT and RSQT are billed will conform the text of the Fee Schedule to the current billing practice.

Additionally, the Exchange proposes to amend endnote 5. The proposed language discussed above to be added as a preface to the Fee Schedule will supersede the first sentence of endnote 5, which will therefore be deleted. The Exchange is also amending endnote 5 to replace current references to "Firm Proprietary Options Transaction Charge" with references to "Firm equity options charges". This change will not result in new or changed fees but is intended only to simplify the fee schedule by eliminating inconsistent references to the same fee.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(4) of the Act [17] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and because it clarifies the applicability of various Exchange fees, to the benefit of market participants. Specifically, the Exchange believes that the added preface will provide its members guidance in understanding how the Exchange assesses fees.

The Exchange is amending its assessment of fees to broker dealer transactions. Specifically, the Exchange believes that it is reasonable to assess off-floor ROTs in the newly termed Specialist, ROT, SQT, RSQT category because the Exchange is proposing to assess all ROTs, on-floor and off-floor, the same rate. The Exchange believes that it is equitable to assess all Specialists, ROTs, SQT and RSQTs the same rate.

[12] A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account.

[13] In addition, the current Fee Schedule states that "Customer, Professional, Directed Participant and Specialist, ROT, SQT and RSQT fees for removing liquidity will not apply to transactions resulting from electronic auctions. Electronic auctions include, without limitation, the Complex Order Live Auction ("COLA"), and Quote and Market Exhaust auctions. Firm and Broker-Dealer fees for removing liquidity will, however apply to transactions resulting from electronic auctions." The Exchange proposes to make clear that a Specialist, ROT, SQT and RSQT do not receive a rebate for adding liquidity in an electronic auction. The Exchange proposes to file a separate 19b–4 to that effect shortly. *See* E-mail from Angela S. Dunn, Assistant General Counsel, Phlx, to Johnna B. Dumler, Special Counsel, Commission, and Andrew Madar, Special Counsel, Commission, dated May 17, 2010. The exchange also requested that paragraph 17 of the 19b–4 and exhibit 1 to the 19b–4 be deleted because it was inadvertently included in the filing and was not applicable. *See id.*

[14] *Id.*

[15] A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. *See* Exchange Rule 1014 (b)(i) and (ii).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

Finally, the Exchange has made clarifying amendments to its terminology throughout the Fee Schedule to eliminate extraneous terms and outdated language. The Exchange believes that these amendments should simplify the Fee Schedule to the benefit of its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [18] and paragraph (f)(2) of Rule 19b–4 [19] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–69 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2010–69. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2010–69 and should be submitted on or before June 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12694 Filed 5–26–10; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62143; File No. SR–NYSEAMEX–2010–45]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Deleting Rule 413—NYSE Amex Equities To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

May 20, 2010.

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 May 12, 2010, 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 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 delete Rule 413—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 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

The purpose of the proposed rule changes is to delete Rule 413—NYSE Amex Equities (Uniform Forms) 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

[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. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010) (order approving SR–FINRA–2009–093).

(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]

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 Amex Equities Rules

FINRA recently deleted FINRA Incorporated NYSE Rule 413 (Uniform Forms), which required that each member had to adopt such uniform forms as may be prescribed by the Exchange to facilitate the orderly flow of transactions within the financial community.[7]

In deleting FINRA Incorporated NYSE Rule 413, FINRA noted that several provisions in its By-Laws required its members to provide certain information in the manner and form prescribed by FINRA, including membership applications, registration of branch offices, registration of registered representatives and associated persons, and termination of registered employees. FINRA also noted its proposal to adopt a new Rule 4540 governing information and data reporting and filing requirements.[8]

In order to harmonize the NYSE Amex Equities Rules with the approved consolidated FINRA Rules, the Exchange correspondingly proposes to delete Rule 413—NYSE Amex Equities.[9] As with FINRA, the Exchange has a number of rules that require members and member organizations to provide certain information in the manner and form prescribed by the Exchange: For example, Rules 301(b)– and 311–313—NYSE Amex Equities deal with membership applications; Rule 342(c)—NYSE Amex Equities requires filing for branch offices (Form BR); Rule 345—NYSE Amex Equities, particularly 345.12, covers applications for registered representatives (Form U–4); and Rules 312(a)– and 345—NYSE Amex Equities require reporting termination of registered persons (Form U–5). In addition, similar to proposed consolidated FINRA Rules 4530 and 4540, Rule 351—NYSE Amex Equities (*see* 351.10) requires members and member organizations to provide the Exchange with certain regulatory and disciplinary information, and Rules 341– and 416A—NYSE Amex Equities require members and member organizations to maintain current contact information with the Exchange.[10]

Notwithstanding these other rules, Rule 416(a)—NYSE Amex Equities broadly provides that members and member organizations must "submit to the Exchange at such times as may be designated in such form and within such time period as may be prescribed such information as the Exchange deems essential for the protection of investors and the public interest."[11] Thus, deletion of Rule 413—NYSE Amex Equities will not limit the Exchange's authority to require its members and member organizations to provide information in a prescribed manner as needed.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[12] in general, and further the objectives of Section 6(b)(5) of the Act,[13] in particular, in that they are 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 changes support 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 has proposed changes that differ from the 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[14] and Rule 19b–4(f)(6) thereunder.[15] 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.

[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, 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. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010).

[8] *See* Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010).

[9] The NYSE has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. *See* SR–NYSE–2010–38.

[10] *See* FINRA Regulatory Notices 08–71 (November 28, 2008) (discussing proposed FINRA Rule 4530) *and* 09–02 (January 6, 2009) (discussing proposed FINRA Rule 4540). Per the rule harmonization process, the Exchange will likely adopt versions of these rules once they are filed with and approved by the Commission.

[11] FINRA has proposed to delete portions of NYSE Rule 416 as part of its broader proposal to adopt new membership rules. *See* FINRA Regulatory Notice 10–01 (January 4, 2010) (discussing proposed FINRA Rules 1111–1190). Per the rule harmonization process, the Exchange will likely adopt versions of these rules once they are filed with and approved by the Commission.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.[18] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change is merely deleting a rule that is duplicative of other rules in its rulebook.[19] The Exchange has represented that the deletion of the rule will not limit the Exchange's authority to require its members and member organizations to provide needed information.

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–2010–45 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–2010–45. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAMEX–2010–45 and should be submitted on or before June 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12746 Filed 5–26–10; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See id*. Pursuant to Rule 19b–4(f)(6)(iii) under the Exchange Act, the Exchange is required to give the Commission written notice of its intent to file a 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.

[19] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62147; File No. SR–Phlx–2010–43]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving a Proposed Rule Change Relating to Quote Spread Parameters and Batching of Violations

May 21, 2010.

On March 26, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to quote spread parameters and batching of violations. The proposed rule change was published for comment in the **Federal Register** on April 16, 2010.[3] The Commission did not receive any comment letters on the proposed rule change. This order approves the proposed rule change.

The Exchange proposed to update Advice F–6 to reflect language requiring options quoted electronically to be quoted with a $5 quote spread after the opening that was previously inadvertently omitted from Advice F–6. With respect to the proposed changes to Advice F–6, the Exchange represented that those who are quoting verbally (in open outcry) must, throughout the trading day, comply with the regular quote spread parameters that apply at the opening. The language of quote spreads not exceeding $5 after the opening for those quoting options electronically was inadvertently not incorporated into Advice F–6 in a previous rule filing.[4] The Exchange proposed to correct this oversight by inserting this language regarding electronically quoted options into Advice F–6.

The Exchange also proposed to amend the Exchange's fine schedule applicable to Advice F–6, which is administered pursuant to the Exchange's minor rule plan ("MRP"). As amended, the fine schedule would now consist of Warning Letters for the first three violations, and three fines thereafter ($250, $500 and $1,000). A seventh violation would result in referral to the Exchange's Business Conduct Committee ("BCC") for disciplinary action. In addition, the Exchange proposed that the fine schedule would be administered on a one-year running calendar basis, such that violations within one year of the last "occurrence" would count as the next "occurrence." Currently, the fine schedule is administered on a two-year running calendar basis.

Finally, the Exchange proposed amendments to Rules 960.2 and 970 to permit the aggregation or "batching" of quote spread parameter violations. Phlx notes that quoting on the Exchange has become entirely electronic; thus, when there is a quoting error, the error can affect every series that a firm is quoting, generating multiple instances of quote spread violations. The Exchange believes that, rather than taking each

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61862 (April 16, 2010), 75 FR 20016.

[4] *See* Securities Exchange Act Release No. 50728 (November 23, 2004), 69 FR 69982 (December 1, 2004) (SR–Phlx–2004–74).

event to the BCC as a fourth violation under the current rule, such violations should be batched together and treated as one violation. This way, pursuant to the revised rules, the firm would receive a warning letter for the first three batched violations before being subject to a monetary fine. The Exchange further noted that it could, in any particular situation, deem the violations to be egregious rather than "minor" and refer the matter directly to the BCC for disciplinary action. The Exchange believes that this approach is appropriate because the relevant warning letters or monetary fines should serve as a deterrent against future violations, while recognizing that a single programming error can have a widespread effect. In addition, the Exchange believes that Advice F–6 (and its corresponding rule) is appropriate for batching because the automated surveillance for quote spread parameter compliance,[5] as well as the issuance of sanctions pursuant to the minor rule plan,[6] will be conducted daily.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[9] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Furthermore, the Commission believes that the proposed changes to the MRP should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In addition, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[10] which governs minor rule violation plans.

The Commission believes that the Exchange's proposal to amend Advice F–6 to add rule text referencing quote spread parameters for options that are quoted electronically is appropriate because the text was inadvertently omitted. In addition, the Commission believes that batching of violations of the quote spread parameter rule, under the MRP, reasonably addresses quoting violations on an electronic market, where one inadvertent error can potentially result in multiple quotes that fall outside the quote spread parameters.

The Exchange has represented it will conduct automated surveillance for quote spread parameter compliance on a daily basis, and will issue sanctions for quote spread violations pursuant to the MRP also on a daily basis. The Commission further notes that pursuant to Rules 960.2(f)(ii) and 970.01, the batching program will continue to require that the violations be determined based on an exception-based surveillance program. Any further proposal by the Exchange to permit the batching of violations of any Exchange rule would be subject to Commission approval.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRP, whether it might not be appropriate to batch a series of actions as a single violation under the MRP, or whether a violation or series of violations may require formal disciplinary action.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[11] and Rule 19d–1(c)(2) under the Act,[12] that the proposed rule change (SR–Phlx–2010–43) be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12748 Filed 5–26–10; 8:45 am]

BILLING CODE 8010–01–P

[5] Confidential letters from Stephen M. Pettibone, Managing Director Surveillance, Phlx, to Michael Gaw, Assistant Director, Division of Trading and Markets, and Tina Barry, Assistant Director, Office of Compliance Inspections and Examinations, Commission, dated October 6, 2009 and December 30, 2009.

[6] *See* letter from Charles Rogers, Chief Regulatory Officer, Phlx, to Tina Barry, Assistant Director, Office of Compliance Inspections and Examinations and Michael Gaw, Assistant Director, Division of Trading and Markets, Commission, dated February 18, 2010.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[10] 17 CFR 240.19d–1(c)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 240.19d–1(c)(2).

[13] 17 CFR 200.30–3(a)(12) and 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62146; File No. SR–FINRA–2010–023]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Certain Cross-References and Make a Non-Substantive Technical Change to a FINRA Rule

May 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook and to make a non-substantive technical change to a FINRA rule.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA is in the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").[4] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references to reflect recent changes adopted in the Consolidated FINRA Rulebook. The proposed rule change would update FINRA Rule 0150 to reflect (1) the adoption into the Consolidated FINRA Rulebook of FINRA Rule 2261 and the deletion of NASD Rules 2270 and 2910[5] and (2) the deletion of NASD Rules 2450[6] and 2780.[7] The rule cross-references in FINRA Rule 6630[8] would be similarly updated to reflect (1) the adoption of FINRA Rule 2261 and the deletion of NASD Rule 2270[9] and (2) the deletion of NASD Rule 2450.[10] Finally, the rule references in FINRA Rule 9217, which sets forth FINRA's Minor Rule Violation Plan, would be updated to reflect the deletion of Incorporated NYSE Rule 411(b).[11]

In addition, the proposed rule change would make a technical amendment to FINRA Rule 3160 to reflect a change in FINRA's style convention when referencing federal securities regulations.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule change will be June 14, 2010, the date on which the previously approved rule changes will be implemented.[12]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b-4(f)(6) thereunder.[15]

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–FINRA–2010–023 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2010–023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 61540 (February 18, 2010), 75 FR 8771 (February 25, 2010) (Order Approving File No. SR–FINRA–2009–081).

[6] *See* Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010) (Order Approving File No. SR–FINRA–2009–093).

[7] *See* Securities Exchange Act Release No. 61473 (February 2, 2010), 75 FR 6422 (February 9, 2010) (Order Approving File No. SR–FINRA–2009–087).

[8] The text of FINRA Rule 6635 has recently been amended and been renumbered as FINRA Rule 6630. The amended rule text is reflected in the attached Exhibit 5. *See* Securities Exchange Act Release No. 61979 (April 23, 2010), 75 FR 23316 (May 3, 2010) (SEC Approval Order for File No. SR–FINRA–2010–003).

[9] *See* note 5.

[10] *See* note 6.

[11] *See* note 7.

[12] *See Regulatory Notice* 10–21 (April 2010).

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

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 Web site viewing and printing 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2010–023 and should be submitted on or before June 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12747 Filed 5–26–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62142; File No. SR–NYSE–2010–38]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Rule 413 To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

May 20, 2010.

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 May 12, 2010, 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 delete NYSE Rule 413 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 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

The purpose of the proposed rule changes is to delete NYSE Rule 413 (Uniform Forms) 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 recently deleted FINRA Incorporated NYSE Rule 413 (Uniform Forms), which required that each member had to adopt such uniform forms as may be prescribed by the Exchange to facilitate the orderly flow of transactions within the financial community.[7]

In deleting FINRA Incorporated NYSE Rule 413, FINRA noted that several provisions in its By-Laws required its members to provide certain information in the manner and form prescribed by FINRA, including membership applications, registration of branch offices, registration of registered representatives and associated persons, and termination of registered employees. FINRA also noted its proposal to adopt a new Rule 4540 governing information and data reporting and filing requirements.[8]

In order to harmonize the NYSE Rules with the approved consolidated FINRA Rules, the Exchange correspondingly proposes to delete NYSE Rule 413.[9] As with FINRA, the Exchange has a number of rules that require members and member organizations to provide certain information in the manner and form prescribed by the Exchange: for example, NYSE Rules 301(b) and 311–

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010) (order approving SR–FINRA–2009–093).

[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. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010).

[8] *See* Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010).

[9] NYSE Amex has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. *See* SR–NYSEAmex–2010–45.

313 deal with membership applications; Rule 342(c) requires filing for branch offices (Form BR); Rule 345, particularly 345.12, covers applications for registered representatives (Form U–4); and Rules 312(a) and 345 require reporting termination of registered persons (Form U–5). In addition, similar to proposed consolidated FINRA Rules 4530 and 4540, NYSE Rule 351 (*see* 351.10) requires members and member organizations to provide the Exchange with certain regulatory and disciplinary information, and Rules 341 and 416A require members and member organizations to maintain current contact information with the Exchange.[10]

Notwithstanding these other rules, NYSE Rule 416(a) broadly provides that members and member organizations must "submit to the Exchange at such times as may be designated in such form and within such time period as may be prescribed such information as the Exchange deems essential for the protection of investors and the public interest."[11] Thus, deletion of NYSE Rule 413 will not limit the Exchange's authority to require its members and member organizations to provide information in a prescribed manner as needed.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[12] in general, and further the objectives of Section 6(b)(5) of the Act,[13] in particular, in that they are 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 changes support 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 has proposed changes that differ from the FINRA version of the Rules, such changes 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[14] and Rule 19b–4(f)(6) thereunder.[15] 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)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.[18] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change is merely deleting a rule that is duplicative of other rules in its rulebook.[19] The Exchange has represented that the deletion of the rule will not limit the Exchange's authority to require its members and member organizations to provide needed information.

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–2010–38 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2010–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[10] *See* FINRA Regulatory Notices 08–71 (November 28, 2008) (discussing proposed FINRA Rule 4530) *and* 09–02 (January 6, 2009) (discussing proposed FINRA Rule 4540). Per the rule harmonization process, the Exchange will likely adopt versions of these rules once they are filed with and approved by the Commission.

[11] FINRA has proposed to delete portions of NYSE Rule 416 as part of its broader proposal to adopt new membership rules. *See* FINRA Regulatory Notice 10–01 (January 4, 2010) (discussing proposed FINRA Rules 1111–1190). Per the rule harmonization process, the Exchange will likely adopt versions of these rules once they are filed with and approved by the Commission.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See id.* Pursuant to Rule 19b–4(f)(6)(iii) under the Exchange Act, the Exchange is required to give the Commission written notice of its intent to file a 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.

[19] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2010–38 and should be submitted on or before June 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12745 Filed 5–26–10; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections and a collection in use without an OMB number.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Director to the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, DCBFM, Attn: Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–0454, E-mail address: *OPLM.RCO@ssa.gov.*

SSA submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than June 28, 2010. You can obtain a copy of the OMB clearance packages by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above e-mail address.

1. *Application for Lump Sum Death Payment—20 CFR 404.390–404.392—0960–0013.* SSA uses Form SSA–8–F4 to collect information needed to authorize payment of the lump sum death payment (LSDP) to a widow, widower, or children as defined in Section 202(i) of the Social Security Act. Respondents complete the application for this one-time payment via paper form, telephone, or an in-person interview with SSA employees. Respondents are applicants for the LSDP.

Collection method	Number of respondents	Estimated completion time	Burden hours
MCS	278,825	10 minutes	46,471
MCS/Signature Proxy	278,825	9 minutes	41,824
Paper	29,350	10 minutes	4,892
Totals	587,000		93,187

2. *Supplemental Statement Regarding Farming Activities of Person Living Outside the U.S.A.—0960–0103.* SSA uses Form SSA–7163A to document beneficiary or claimant reports of working on a farm outside the United States. Specifically, the information helps us to determine if we should apply foreign work deductions to the recipient's Title II benefits. We collect the information either annually or every other year, depending on the respondent's country of residence. Respondents are Social Security recipients engaged in farming activities outside the United States.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden per Response: 1 hour.

Estimated Annual Burden: 1,000 hours.

3. *Request for Earnings and Benefit Estimate Statement—20 CFR 404.810—0960–0466.* SSA uses the information respondents provide on Form SSA–7004 to identify respondents' Social Security earnings records, extract posted earnings information, calculate potential benefit estimates, produce the resulting Social Security statements, and mail them to the requesters. The respondents are Social Security number holders requesting information about their Social Security earnings records and estimates of their potential benefits.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Paper Version	127,000	1	5	10,583
Internet Version	426,000	1	5	35,500

[20] 17 CFR 200.30–3(a)(12).

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Totals	553,000			46,083

4. *Beneficiary Recontact Form—20 CFR 404.703, 404.705—0960–0502.* SSA must ensure that recipients of disability benefits continue to be eligible for their payments. Research has indicated benefit recipients may fail to report circumstances that affect their benefits. Two such cases are: (1) When a parent receiving disability benefits for his or her child marry; and (2) the removal of an entitled child from parents' care. SSA uses Form SSA–1588–OCR–SM to ask parents about their marital status and children in their care to detect overpayments and avoid improper payments. Respondents are recipients of mother/father Title II Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 133,400.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 11,117 hours.

5. *Complaint Form for Allegations of Discrimination in Programs or Activities Conducted by the Social Security Administration—0960–0585.* SSA uses Form SSA–437 to investigate and formally resolve complaints of discrimination based on disability, race, color, national origin (including limited English proficiency), sex, sexual orientation, age, religion, or retaliation for having participated in a proceeding under this administrative complaint process in connection with an SSA program or activity. SSA also uses this form to review, investigate, and resolve complaints alleging discrimination based on status as a parent in education, training programs, or activities conducted by SSA. Individuals who believe SSA discriminated against them on any of the above basis may file a written complaint of discrimination. SSA uses the information to identify the complainant; identify the alleged discriminatory act; ascertain the date of such alleged act; obtain the identity of any individual(s) with information about the alleged discrimination; and ascertain other relevant information that would assist in the investigation and resolution of the complaint. Respondents are individuals who believe SSA or SSA employees, contractors, or agents in programs or activities conducted by SSA discriminated against them.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 140.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 140 hours.

Dated: May 24, 2010.

Faye I. Lipsky,

Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–12752 Filed 5–26–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7031]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Survey of International Educational Exchange Activity With the United States

Announcement Type: New Cooperative Agreement

Funding Opportunity Number: ECA/A/S/A–11–01.

Catalog of Federal Domestic Assistance Number: 19.432.

Key Dates: October 1, 2010 to September 30, 2012.

Application Deadline: Thursday, June 24, 2010.

Executive Summary: The Educational Information and Resources Branch, Office of Global Educational Programs, Bureau of Educational and Cultural Affairs announces an open competition for a Survey of International Educational Exchange Activity with the United States. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to conduct a statistical survey (census) of foreign nationals enrolled in institutions of higher learning in the United States; foreign scholars at U.S. institutions; and U.S. students participating in study abroad programs.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose

To gain an accurate and up-to-date picture of international educational exchange activity in the United States in fulfillment of the Bureau's mandate, under the Fulbright-Hays Act, to promote mutual understanding through international educational exchange. The survey will focus on foreign students, foreign scholars, U.S. students studying overseas in credit-bearing programs, and enrollees in intensive English language programs.

Guidelines

Proposals to conduct this project should describe plans for a statistical survey that will offer a detailed and comprehensive picture of the number and academic characteristics (*e.g.,* major fields of study or program, level of study) of non-immigrant foreign nationals (*i.e.,* excluding permanent residents and refugees) enrolled as students or affiliated as scholars in American institutions of higher learning, as well as the number of U.S. students studying abroad. Topics that should be covered in the survey include the number of foreign students and scholars, their gender and countries of origin. Information should be included about students' academic levels (undergraduate, graduate, post-doctorate), fields of study, primary sources of financial support, the financial contributions they make while in the United States, and geographic locations. Applications should include a plan to conduct research that increases understanding of student exchange

activity with the United States vis-à-vis student exchanges with other countries. Proposals may request Bureau funding for a publication, Web site, database, newsletter, and/or other media that can serve to make the results widely available to the public in a timely manner and with a clear and concise format. The Bureau reserves the right to reproduce, publish or otherwise use any work developed under this grant for U.S. Government purposes. Please see the Proposal Submission Instructions (PSI) for additional information.

Applicants should consult the Project Objectives, Goals, and Implementation (POGI) document for additional program specific guidelines.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2011.

Approximate Total Funding: $500,000.

Approximate Number of Awards: 1.

Approximate Average Award: $500,000, pending availability of funds.

Anticipated Award Date: Pending availability of funds, October 1, 2010.

Anticipated Project Completion Date: September 30, 2012.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount of approximately $500,000, to support program and administrative costs required to implement this program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the Educational Information and Resources Branch, ECA/A/S/A, SA–5, 4th Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0504, telephone 202–632–6354, fax 202–632–9479, e-mail *forestal@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/A/S/A–11–01) located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Amy Forest and refer to the Funding Opportunity Number located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the Solicitation Package, which contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document, for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page

document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa. The following section is provided for information only. The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The award recipient will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation.

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the

first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for sustainability, overall program management, staffing, and coordination with ECA and PAS.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Salaries and fringe benefits; travel and per diem;

(2) Other direct costs, inclusive of rent, utilities, etc.;

(3) Overhead expenses and auditing costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: Thursday, June 24, 2010.

Reference Number: ECA/A/S/A–11–01.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1—Submitting Printed Applications.

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/A/S/A–11–01, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format, as well as the summary and detailed budgets in Excel spreadsheet format, on CD–ROM.

IV.3f.2—Submitting Electronic Applications.

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time; E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program planning/Ability to achieve program objectives: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

3. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity and demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. Institutional Capacity/Institution's Record/Ability: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Grants Division. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

6. Cost-effectiveness/Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants, http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1.) A final program and financial report no more than 90 days after the expiration of the award;

(2.) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's *USAspending.gov* Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3.) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4.) Quarterly program reports describing program activity accomplished and financial reports detailing expenditures.

(5.) Formal printed report detailing data collected along with analyses, as described previously, representing the culmination of all grant activity.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Amy Forest, U.S. Department of State, Educational Information and Resources Branch, ECA/A/S/A, SA–5, 4th Floor, ECA/A/S/A–11–01, 2200 C Street, NW., Washington, DC 20522–0503, telephone 202–632–6354, fax 202–632–9479, e-mail *forestal@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–11–01.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: May 19, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–12772 Filed 5–26–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) extension of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 8, 2010, vol. 75, no. 44, page 10548. The date of manufacture and compliance status stamped on a nameplate of each turbojet engine permits rapid determination by FAA inspectors, owners, and operators whether an engine can legally be installed and operated on an aircraft in the United States.

DATES: Please submit comments by June 28, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0508.

Form(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 1,200 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 100 hours annually.

Abstract: The date of manufacture and compliance status stamped on a nameplate of each turbojet engine permits rapid determination by FAA inspectors, owners, and operators whether an engine can legally be installed and operated on an aircraft in the U.S. The information is used by FAA inspectors, purchasers, owners, and operators periodically, to confirm that the engines meet U.S. EPA pollution requirements in lieu of searching through extensive paper records.

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 attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 20, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–12726 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) extension of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 8, 2010, vol. 75, no. 44, page 10549. Airworthiness directives are regulations issued to require correct corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition. The respondents are aircraft owners and operators.

DATES: Please submit comments by June 28, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Report of Inspections Required by Airworthiness Directives, Part 39.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0056.

Form(s) There are no FAA forms associated with this collection.

Affected Public: An estimated 1,120 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 2,800 hours annually.

Abstract: Airworthiness directives are regulations issued to require correct corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition. The respondents are aircraft owners and operators.

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 attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 20, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–12727 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 8, 2010, vol. 75, no. 44, page 10549. Title 49 U.S.C. 44703(h) mandates that all U.S. air carriers operating under 14 CFR parts 121 or 135, and all U.S. air operators under 14 CFR part 125, and certain others, request and receive certain training, safety, and testing records before extending a firm offer of employment to an individual who is applying to their company as a pilot.

DATES: Please submit comments by June 28, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilot Records Improvement Act of 1996.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0607.

Form(s) 8060–10, 8060–10A, 8060–11, 8060–11A, 8060–12, 8060–13.

Affected Public: An estimated 14,974 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 2.5 hours per response.

Estimated Annual Burden Hours: An estimated 37,432 hours annually.

Abstract: An air carrier may use these forms to request the applicable records of all applicants for the position of pilot with their company. The information collected on these forms will be used only to facilitate search and retrieval of the requested records.

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 attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 20, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–12725 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) extension of a current information collection. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 8, 2010, vol. 75, no. 44, page 10550. This information collection is required for compliance with the final rule that codifies special flight rules and airspace and flight restrictions for certain operations in the Washington, DC Metropolitan Area. The FAA form number and time per response listed below have been corrected from those reported on the **Federal Register** notice of March 8, 2010 (75 FR 10550).

DATES: Please submit comments by June 28, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Washington, DC Metropolitan Area Special Flight Rules.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0706.

Form(s) Form 7233–1.

Affected Public: An estimated 17,097 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 15 minutes per response.

Estimated Annual Burden Hours: An estimated 49,233 hours annually.

Abstract: This information collection is required for compliance with the final rule that codifies special flight rules and airspace and flight restrictions for certain operations in the Washington, DC Metropolitan Area.

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 attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 20, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–12724 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system, or relief as detailed below.

Docket Number: FRA–2010–0088.

Applicant: Union Pacific Railroad Company, Mr. William E. Van Trump, AVP Engineering—Signal/Comm/TCO, 1400 Douglas Street, STOP 0910, Omaha, Nebraska 68179.

The Union Pacific Railroad Company seeks approval of the proposed modification of the traffic control system at Milepost 5.46 on the Houston East Belt Subdivision, near Houston, Texas. The modification consists of the discontinuance and removal of intermediate signals numbers 55, 56, 57, & 58. The reason given for the proposed change is to improve efficiency of train operation.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0088) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on May 20, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–12728 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35348]

CSX Transportation, Inc. and Delaware and Hudson Railway Company, Inc.—Joint Use Agreement

AGENCY: Surface Transportation Board.

ACTION: Decision No. 2 in FD 35348; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed on April 27, 2010, by CSX Transportation, Inc. (CSXT), and Delaware and Hudson Railway Company, Inc. (D&H). The application seeks Board approval under 49 U.S.C. 11321–26 for CSXT and D&H to commence operations pursuant to an agreement between CSXT and D&H, known as the New York Joint Use Agreement (Joint Use Agreement). This proposal is referred to as the transaction, and CSXT and D&H are referred to collectively as Applicants.

The Board finds that the transaction is a "minor transaction" under 49 CFR 1180.2(c), and that the application, as supplemented, is complete.[1] The Board adopts a procedural schedule for consideration of the application, under which the Board's final decision would be issued on October 22, 2010, and would become effective November 21, 2010, assuming that there is no need for further environmental analysis. *See* the discussion on environmental matters, below.

DATES: The effective date of this decision is May 27, 2010. Any person who wishes to participate in this proceeding as a party of record (POR)

[1] By a letter dated May 11, 2010, Applicants supplemented their application with additional information regarding the environmental and passenger service impacts of the proposed transaction.

must file, no later than June 7, 2010, a notice of intent to participate. Discovery requests to Applicants are due by June 11, 2010. Applicants' responses to discovery requests are due by June 25, 2010. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by July 2, 2010. Comments on the Board's Section of Environmental Analysis (SEA) Environmental Notice are due by July 21, 2010. Responses to comments, protests, requests for conditions, and other opposition, and rebuttal in support of the application must be filed by July 23, 2010. If a public hearing or oral argument is held, it will be held on a date to be determined by the Board. The Board will issue its final decision on October 22, 2010, and the Board will make any such approval effective on November 21, 2010, unless an extension is needed to permit the completion of formal environmental review. For further information respecting dates, see the Appendix (Procedural Schedule).

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at "*www.stb.dot.gov*" at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Terence M. Hynes (representing D&H), Sidley Austin LLP, 1501 K Street, NW., Washington, DC 20005; (4) Louis E. Gitomer (representing CSXT), Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204; and (5) any other person designated as a POR on the service list notice (as explained below, the service list notice will be issued as soon after June 2, 2010, as practicable).

Comments (an original and 10 copies) on the Environmental Notice should be submitted in writing to: Surface Transportation Board, Section of Environmental Analysis, Attn: Phillis Johnson-Ball, Docket No. FD 35348, 395 E Street, SW., Washington, DC 20423–001.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245–0359. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: CSXT is a wholly owned subsidiary of CSX Corporation and is a Class I railroad that owns and operates approximately 21,000 miles of railroad lines in the United States and Canada. As relevant here, CSXT currently provides service between the Eastern United States and points in Eastern Canada over lines between Selkirk and Syracuse, N.Y., and its St. Lawrence and Montreal Subdivisions (the Massena Line), between Syracuse and Huntingdon, Que. CSXT interchanges this cross-border rail traffic with Canadian National Railway Company (CN) at Huntingdon, with CN handling the traffic to and from the Montreal terminal area. The current CSXT/CN route between Selkirk and Montreal is 403 miles, consisting of 156 miles between Selkirk Yard and Syracuse, 214 miles between Syracuse and Huntingdon, and 33 miles via CN between Huntingdon and Montreal. CSXT currently serves 15 major local customers at points along the Massena Line. Local freight is shuttled on a daily basis between Syracuse and Massena, N.Y., in the same trains that handle overhead traffic for interchange with CN at Huntingdon, with prior or subsequent movement to and from customer facilities handled by CSXT local trains.

D&H, a Class II railroad, is a wholly owned, indirect subsidiary of Canadian Pacific Railway Company (CP), a Class I railroad. D&H owns and/or operates 1,138 miles of rail lines in New Jersey, New York, and Pennsylvania. As relevant here, D&H currently accesses the New York City metropolitan area via trackage rights over CSXT's "East-of-the-Hudson" rail line and a related switching agreement with CSXT.[2] The trackage rights agreement grants D&H overhead trackage rights over CSXT's lines between Schenectady, N.Y., and Oak Point Yard, N.Y. Under the switching agreement, D&H has the right to access customers in Queens and the Bronx, N.Y., via switching performed by CSXT. D&H also has trackage rights over CSXT's line between Oak Point Yard and Fresh Pond Junction, N.Y., for the purpose of interchanging traffic with the New York & Atlantic Railway Company.

D&H currently operates 2 trains per week in each direction between Albany, N.Y., and New York City via a route consisting of: D&H's line between Albany and Schenectady; trackage rights over CSXT's line between Schenectady and Poughkeepsie, N.Y.; trackage rights owned by Metro North Commuter Railroad (MNCR), between Poughkeepsie and milepost 7 near High Bridge, N.Y.; and trackage rights over CSXT and Amtrak lines between Harlem River Yard, Oak Point Yard, and Fresh Pond Junction. D&H states that trains in this corridor currently average less than 27 revenue carloads per train and asserts that such traffic volume is not sufficient to support more frequent, profitable train service.

The proposed transaction involves the joint use of certain rail lines owned by CSXT or D&H, located between Rouses Point Junction, N.Y., and Fresh Pond Junction, consisting of 3 segments: The Saratoga Springs-Rouses Point Segment,[3] the Albany-Saratoga Springs Segment,[4] and the Albany-Fresh Pond Segment[5] (collectively, Joint Use Lines). The joint use rights granted to D&H and CSXT in the Joint Use Agreement are for overhead traffic only. Pursuant to the Joint Use Agreement, D&H has granted CSXT the non-exclusive right to use, jointly with D&H, the Saratoga Springs-Rouses Point Segment and the Albany-Saratoga Springs Segment. CSXT has reciprocally granted to D&H the non-exclusive right to use, jointly with CSXT, the Albany-Fresh Pond Segment. Applicants state that the fundamental purpose of the proposed transaction is to address certain inefficiencies in the

[2] D&H obtained those rights in connection with Norfolk Southern Railway Company (NS) and CSXT's acquisition of control of Conrail. *See CSX Corp.—Control and Operating Leases/Agreements—Conrail Inc.,* 3 S.T.B. 196, 282–83 (1998) (*Conrail*).

[3] The Saratoga Springs-Rouses Point Segment extends between D&H's Saratoga Springs Yard, located at D&H milepost 36.10 ± near Saratoga Springs, N.Y., and the United States-Canada border at D&H milepost 192.08 ± in the vicinity of Rouses Point Junction, N.Y., a total distance of approximately 155.98 miles.

[4] The Albany-Saratoga Springs Segment extends between a point of connection with CSXT's rail lines near D&H's Kenwood Yard located at D&H milepost 0.0 ± in the vicinity of Albany, N.Y., and D&H's Saratoga Springs Yard, a total distance of approximately 42.52 miles.

[5] The Albany-Fresh Pond Segment extends between a point of connection between CSXT's and D&H's rail lines near D&H's Kenwood Yard at CSXT milepost QCP 7.1 in the vicinity of Albany, and CSXT's Oak Point Yard and milepost QVK 8 in the vicinity of Fresh Pond Junction, a total distance of approximately 146.31 miles.

current north-south operations of CSXT and D&H in New York.

Under the Joint Use Agreement, Applicants state that CSXT would perform operations over the Albany-Fresh Pond Segment with its own trains and crews. D&H currently has the right to operate between Albany and Fresh Pond Junction and to access shippers in the New York City metropolitan area under the trackage rights and switching arrangements obtained in the *Conrail* proceeding.[6] Under the proposed transaction, D&H's traffic volumes would be added to CSXT's larger trains, which, Applicants state, would eliminate D&H's operation of inefficient short trains in the Albany-New York City corridor and reduce the number of freight carriers conducting separate train operations over the Albany-New York City corridor, which is also used by Amtrak and MNCR commuter trains. Applicants also state that D&H would be able to offer shippers rail service 5 to 7 days per week, up from the twice-weekly train service currently offered.

Likewise, D&H would perform all train operations over the Saratoga Springs-Rouses Point Segment, with D&H crews handling CSXT cars. D&H would also handle traffic beyond Rouses Point, to and from the Montreal terminal area, thus eliminating the need for physical interchange between CSXT and CN. D&H currently handles traffic for both NS and CN over the Saratoga Springs-Rouses Point Segment. Under the terms of the Joint Use Agreement, Applicants state that no more than 3 trains carrying CSXT Joint Use traffic per calendar day would move over the Albany-Saratoga Springs Segment and the Saratoga Springs-Rouses Point Segment. Applicants state that CSXT having access to the Saratoga Springs-Rouses Point Segment would greatly reduce the one-way mileage for CSXT/CN interchange traffic moving between Selkirk and Montreal, from 403 miles to 261 miles. Under the proposed transaction, Applicants state that there would be no change in service to any local industry served by CSXT between Selkirk and Syracuse and that CSXT anticipates re-instituting a shuttle train service between Syracuse and Massena on a 2 to 3 days per week basis, thereby allowing CSXT to meet the demands of local shippers on the Massena Line.

Each carrier would perform its own train operations over the Albany-Saratoga Springs Segment, which links both carriers' Albany area terminal facilities (CSXT's Selkirk Yard and D&H's Kenwood Yard) with the Saratoga Springs-Rouses Point Segment.[7]

Financial Arrangements. No new securities would be issued, nor would CSXT or D&H enter into any new financial arrangements in connection with the proposed transaction.

Passenger Service Impacts. Applicants state that the proposed transaction would not adversely impact commuter or other passenger service. The elimination of separate D&H train operations on the Albany-Fresh Pond Segment would reduce the overall number of freight train movements on lines that are shared by Applicants with Amtrak and MNCR. According to Applicants, D&H's use of those portions of the Albany-Fresh Pond Segment that are owned by Amtrak and MNCR, respectively, would continue to be governed by the terms and conditions set forth in D&H's agreements with those parties.

Nor would the proposed transaction, according to the supplementary information provided by Applicants, adversely impact Amtrak services north of Albany. Amtrak currently operates 2 pairs of trains over portions of D&H's lines north of Albany. Applicants state that D&H's lines are capable of accommodating the modest increase in CSXT joint use traffic over the Saratoga Springs-Rouses Point Segment. Applicants further note that D&H is required by law (and by the terms of its existing agreement with Amtrak) to give Amtrak trains dispatching priority across all segments of D&H's lines between Albany and Rouses Point.

Discontinuances/Abandonments. The proposed transaction does not involve the abandonment of, or discontinuance of service over, any rail lines. Nor do Applicants have any plans at this time to abandon any lines involved in the proposed transaction.

Public Interest Considerations. Applicants assert that the proposed transaction would not have any anticompetitive effects. Because the Joint Use Agreement addresses the movement of only overhead traffic in New York, Applicants state that no shipper would experience a reduction in the number of rail competitive options currently available. Applicants note that the Joint Use Agreement expressly preserves D&H's right to serve every customer in the Bronx and Queens that it currently has the right to serve under the agreements reached in *Conrail.* Likewise, CSXT would continue to serve all shippers on the Massena Line and all shippers between Albany Port, N.Y., and New York City that it serves today. Applicants further state that there would be no change in rail service to the U.S. Military at Fort Drum in New York, or to CSXT customers located in the Syracuse vicinity.

According to Applicants, the transaction would generate significant public benefits. Applicants state that the Joint Use Agreement would eliminate the need for D&H to operate inefficient, low-density trains in the Albany-New York City Corridor by allowing D&H to move its traffic to and from the New York metropolitan area in CSXT's regularly scheduled train service. Further, Applicants note that service to shippers along the Albany-New York City Corridor would improve with D&H's ability to offer service 5 to 7 days a week, up from its current twice-weekly train service, thus enhancing D&H's ability to compete for traffic along this segment.

The Joint Use Agreement, according to Applicants, would also give CSXT a dramatically shorter route for traffic moving between Eastern Canada and the Eastern United States. By using the Saratoga Springs-Rouses Point Segment, CSXT would reduce the one-way mileage for CSXT/CN interchange traffic between Selkirk and Montreal by 35 percent and over-the-road transit time (excluding terminal dwell time) by 45 percent. Applicants assert that this would reduce CSXT's operating costs, increase operating efficiency, and result in better service for CSXT's customers on shipments to and from Eastern Canada.

Applicants assert that the transaction would also enhance competition, not only between CSXT and D&H (and among Applicants and other railroads), but also with other modes of transportation (e.g., truck service) in the corridors served by the Joint Use Lines. The more efficient, lower cost services that D&H and CSXT would be able to provide pursuant to the Joint Use Agreement would, according to Applicants, spur the competitiveness of rail transportation for freight moving through New York State.

Applicants further note that the proposed transaction would simplify

[6] Applicants note that, while D&H would retain its existing trackage rights over CSXT's lines, it would not exercise those rights but would have all traffic along the Albany-Fresh Pond Segment handled by CSXT pursuant to the Joint Use Agreement. Upon termination of the Joint Use Agreement, D&H would have the right to reinstitute immediately operations under its trackage rights and switching agreements with CSXT.

[7] It appears that portions of the proposed transaction essentially resemble haulage arrangements, which, standing alone, generally would not need Board authority. However, the overall transaction, which includes trackage rights over the Albany-Saratoga Springs Segment, has been submitted to the Board as a joint use agreement, over which the Board has jurisdiction under 49 U.S.C. 11323(a)(6).

rail operations. The proposed transaction would eliminate separate D&H trains and reduce the overall number of freight train movements along the Albany-New York Corridor. D&H's handling of trains containing CSXT joint use traffic over the Saratoga Springs-Rouses Point Segment would likewise promote simplified, efficient operations by avoiding the need to coordinate train movements among multiple railroads on that line.

The proposed transaction, according to Applicants, would also enable more efficient use of customs and border security resources at the United States-Canada border, particularly at Rouses Point Junction, which currently serves as a primary freight rail checkpoint for traffic moving to or from Quebec. By rerouting CSXT/CN interline traffic via the Saratoga Springs-Rouses Point Segment, Applicants state that the vast majority of traffic moving between New York and Quebec would be consolidated at a single border crossing (Rouses Point Junction), thereby reducing the amount of cross-border rail traffic that would need to be cleared at Huntingdon.

Time Schedule for Consummation. Applicants expect to consummate this transaction promptly after the effective date of a Board decision approving the transaction.

Environmental Impacts. Applicants contend that no environmental documentation, under the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347 (NEPA), is required because there would be no operational changes that would exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5), and there would be no action that would normally require environmental documentation.

Historic Preservation Impacts. Applicants contend that there is no need for historic review under section 106 of the National Historic Preservation Act, 16 U.S.C. 470 (NHPA), because neither CSXT nor D&H proposes to abandon any rail line or other rail facility or structure. Applicants further state that there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

Labor Impacts. Applicants state that the impact on CSXT employees as a result of the proposed transaction would be relatively small. As train starts on the Massena Line are reduced, and train starts along the Joint Use Lines are increased, CSXT estimates that 10 CSXT engineer and 10 CSXT conductor jobs would be abolished, while 5 new CSXT engineer jobs and 5 new CSXT conductor jobs would be created.

For D&H employees, 1 locomotive engineer assignment and 1 conductor assignment, which currently operate D&H's trackage rights trains over CSXT's "East-of-the-Hudson" line, would be discontinued. Under the proposed transaction, 3 new engineer assignments and 3 new conductor assignments would be created to operate D&H trains over the Saratoga Springs-Rouses Point Segment. Because all of these assignments operate from the same home terminal (Saratoga Springs), Applicants state that these changes would not cause any reduction in D&H engineer or conductor employment or work opportunities.

Applicants state that they would not integrate their employees maintaining, dispatching, or operating the Joint Use Lines. Accordingly, the Albany-Fresh Pond Segment would be maintained and dispatched in the same manner as it is today. The Albany-Saratoga Springs and Saratoga Springs-Rouses Point Segments would continue to be maintained by D&H and dispatched by D&H's affiliate, Soo Line Railroad Company. CSXT and D&H employees working on the Joint Use Lines would be managed only by their existing employer.

Applicants request that the Board impose the employee protective conditions set forth in *Norfolk and Western Railway Co.—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980). Applicants have not entered into any employee protection agreements affecting their employees in connection with the proposed transaction.

Application Accepted. Based on the information provided in the application and supplement, the Board finds the proposed transaction to be a "minor transaction" under 49 CFR 1180.2(c). A transaction that does not involve the control or merger of 2 or more Class I railroads, nor is of regional or national transportation significance, is minor if (1) it would clearly not have anticompetitive effects, or (2) any anticompetitive effects would clearly be outweighed by the transaction's contribution to the public interest in meeting significant transportation needs. This transaction does not involve the control or merger of 2 or more Class I carriers. Nor, based on the application, does this transaction appear to be of regional or national transportation significance. On the face of the proposed application, there does not appear to be a likelihood of any anticompetitive effects resulting from the transaction, if approved. Nor does it appear, under the terms of proposed transaction, that any shipper would have fewer competitive rail alternatives as a result of the transaction.

The Board's finding regarding competitive impact is preliminary. The Board will give careful consideration to any claims that the transaction, if approved, would have anticompetitive effects that are not apparent from the application itself.

The Board accepts the application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. *See* 49 U.S.C. 11321–26; 49 CFR part 1180. The Board reserves the right to require the filing of supplemental information as necessary to complete the record.

Environmental Matters. Under both the regulations of the Council on Environmental Quality (CEQ) implementing NEPA, and the Board's own environmental rules, actions for which environmental effects are ordinarily insignificant may be excluded categorically from NEPA review, without a case-by-case review. Such activities are said to be covered by a "categorical exclusion," which CEQ defines at 40 CFR 1508.4 as:

> [A] category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations * * * and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

An agency's procedures for categorical exclusions "shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect," thus requiring preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). *Id.;* 49 CFR 1105.6(d). But, absent extraordinary circumstances, once a project is found to fit within a categorical exclusion, no further NEPA procedures are warranted.

In its environmental rules, the Board has promulgated various categorical exclusions. As pertinent here, a joint use agreement is a classification of action that normally requires no environmental review if certain thresholds would not be exceeded.[8] The

[8] The thresholds differ depending on whether a rail line segment is in an area designated as "attainment" or "nonattainment" with the National Ambient Air Quality Standards established under the Clean Air Act, 42 U.S.C. 7401–7671 (CAA). For rail lines located in attainment areas, environmental documentation normally will be prepared if the proposed action would result in: (1) An increase of

Board's regulations also provide that historic review normally is not required for joint use agreements where there will be no significant change in operations, and properties 50 years old and older will not be affected. 49 CFR 1105.8. And, even when the Board's presumptive thresholds for environmental analysis are met, the Board may reclassify a particular transaction or modify the requirement that an EIS or EA be prepared, if the railroad applicant demonstrates that the proposed transaction has no potential for significant environmental effects. 49 CFR 1105.6(d).

The Proposed Joint Use Agreement. Applicants assert in their application that the proposed Joint Use Agreement, if implemented, would result in 2 restrictions on the movement of traffic between Albany and Rouses Point Junction: (1) No more than 8 pairs of trains (1 north bound train plus 1 south bound train equals a pair) per week carrying CSXT Joint Use traffic and (2) no more than 3 trains per day carrying CSXT Joint Use traffic. Also, as part of the Joint Use Agreement, D&H would deliver Joint Use traffic to CSXT at Kenwood Yard, Oak Point Yard, or Fresh Pond for movement in CSXT trains. Applicants state that no notable increases in rail yard activity would likely result from these movements.

Applicants state that D&H currently operates 2 trains 2 days per week on Albany-Fresh Pond Segment, and under the Joint Use Agreement, this traffic would continue to move only over this segment. As noted by Applicants, this movement would not add traffic in the nonattainment area between Albany and Saratoga Springs.

After reviewing the application, SEA requested clarification from Applicants regarding the number of new trains that would move through the Albany-Saratoga Springs nonattainment area under the Joint Use Agreement and further explanation to support Applicants' contention that the transaction does not warrant environmental and historic documentation. In a letter dated May 11, 2010, Applicants responded to SEA's request for additional information. Applicants state that the Joint Use Agreement, as set forth in the application, limits the number of trains that CSXT may operate between Albany and Rouses Point Junction, which includes the Albany-Saratoga Springs nonattainment area, to no more than 8 pairs of trains per week (16 trains), and no more than 3 trains per day. Applicants explained that, on a daily basis, the operating plan (Exhibit 15 of the application) and the Joint Use Agreement contemplate that Applicants would actually operate only 2 trains (1 in each direction) per day carrying CSXT traffic between Albany and Rouses Point Junction, even though the Joint Use Agreement allows the movement of up to 3 trains per day and 16 trains per week. Applicants support their 2 trains per day traffic projection with the explanation that CSXT currently operates 2 trains per day over its Massena Line, and that, under the Joint Use Agreement, the traffic currently on the Massena Line consisting of 2 trains per day would, under the proposed transaction, operate between Albany and Rouses Point Junction. Applicants further explain that, based on current traffic levels, trains carrying CSXT joint use traffic between Albany and Rouses Point Junction would be, on average, approximately 3,300 feet in length, which would allow substantial room for future traffic growth without adding a third train, if the transaction is implemented. The Joint Use Agreement would allow trains of 8,000 feet in length.

In sum, Applicants state that, based on the information provided in their application and supplemental information, the traffic movements described above would not result in operational changes that exceed the Board's environmental thresholds established at 49 CFR 1105.7(e)(4) or (5), nor would there be any action that would normally require environmental documentation or historic review, if the transaction is implemented. Applicants therefore assert that the transaction does not require environmental documentation under 49 CFR 1105.6(b)(4), and that historic review is not required because neither CSXT nor D&H proposes to abandon any rail line or other rail facility or structure. Furthermore, there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

To allow the public the opportunity to comment on Applicants' conclusion that approval of the transaction would not result in significant environmental impacts and does not require further environmental review under NEPA or historic review under NHPA, SEA will prepare an Environmental Notice discussing the proposed transaction, the Board's regulatory review process, NEPA's relevance to this transaction, and any anticipated impacts associated with the transaction, if it is implemented. SEA will distribute the Environmental Notice to certain agencies and communities, as well as all of the parties on the Board's service list. SEA's purpose in providing this information to the public is to encourage public involvement and consultation on any potentially significant environmental impacts related to the proposed transactions so that SEA, and ultimately the Board, can consider public concerns and issues in determining whether further environmental analysis is needed. Based on SEA's consideration of all timely comments and its own independent review of all available information, SEA will recommend to the Board whether there is a need for the preparation of environmental or historic documentation in this case. The Board will then determine whether to issue a finding of no significant impact or whether further environmental or historic documentation should be prepared. The Environmental Notice will be served by July 1, 2010. SEA is providing a 20-day comment period, and interested parties may submit comments on the Environmental Notice directly to SEA by July 21, 2010.

Procedural Schedule. The Board has considered Applicants' request for a procedural schedule (filed April 27, 2010), under which the Board would issue its final decision on October 22, 2010, 180 days after the application has been filed. The Board will adopt a procedural schedule based on the schedule proposed by Applicants but modified to give parties more time, following the Federal holiday, to file notices of intent to participate (with subsequent deadlines changed accordingly). The procedural schedule adopted by the Board also allows for comments to be filed on the Environmental Notice. The Board also notes that its decision will be effective on November 21, 2010, 30 days after its final decision is served (not November 22, 2010, as provided by Applicants). For further information regarding dates,

at least 8 trains per day; (2) an increase in rail traffic of at least 100 percent (measured in annual gross ton miles); or (3) an increase in carload activity at rail yards of at least 100 percent. 49 CFR 1105.7(e)(5)(i). For rail lines in nonattainment areas, environmental documentation typically is required when the proposed action would result in: (1) An increase of at least 3 trains per day; (2) an increase in rail traffic of at least 50 percent (measured in annual gross ton miles); or (3) an increase in carload activity at rail yards of at least 20 percent. 49 CFR 1105.7(e)(5)(ii). An attainment area is an area considered to have air quality as good as, or better than, the national ambient air quality standards as defined in the CAA. A nonattainment area is any area that does not meet, or that contributes to ambient air quality in a nearby area that does not meet, the ambient air quality standards for the pollutant under the CAA.

see the Appendix (Procedural Schedule).

Notice of Intent to Participate. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than June 7, 2010, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, Mr. Hynes (representing D&H) and Mr. Gitomer (representing CSXT).

If a request is made in the notice of intent to participate to have more than 1 name added to the service list as a POR representing a particular entity, the extra name will be added to the service list as a "Non-Party." The list will reflect the Board's policy of allowing only 1 official representative per party to be placed on the service list, as specified in Press Release No. 97–68 dated August 18, 1997, announcing the implementation of the Board's "One Party-One Representative" policy for service lists. Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4, and any other requirements set forth in this decision.

Service List Notice. The Board will serve, as soon after June 7, 2010, as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any MOC or GOV has requested to be, and is designated as, a POR.

Service of Decisions, Orders, and Notices. The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, GOV, or Non-Party. All other interested persons are encouraged to secure copies of decisions, orders, and notices via the Board's Web site at "*www.stb.dot.gov*" under "E-LIBRARY/Decisions & Notices."

Access to Filings. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished by the filer to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). Such documents are available for inspection in the Docket File Reading Room (Room 131) at the offices of the Surface Transportation Board, 395 E Street, SW., in Washington, DC. The application and other filings in this proceeding will also be available on the Board's Web site at "*www.stb.dot.gov*" under "E-LIBRARY/Filings."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application in FD 35348 is accepted for consideration.

2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in the Appendix.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on May 27, 2010.

Decided: May 24, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

Kulunie L. Cannon,

Clearance Clerk.

Appendix: Procedural Schedule [9]

April 27, 2010
Application, Motion for Protective Order, and Motion to Establish Procedural Schedule filed.
May 21, 2010
Protective order issued.
May 27, 2010
Board notice of acceptance of application published in the **Federal Register.**
June 7, 2010
Notices of intent to participate in this proceeding due.
June 11, 2010
Discovery requests to Applicants due.
June 25, 2010
Applicants' responses to discovery requests due.
July 2, 2010
All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings of DOJ and DOT, due.
July 21, 2010
Comments to the Environmental Notice due.
July 23, 2010
Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the application due.
TBD
A public hearing or oral argument may be held.
October 22, 2010
Date of service of final decision.
November 21, 2010
Effective date of final decision.

[FR Doc. 2010–12774 Filed 5–26–10; 8:45 am]

BILLING CODE 4915–01–P

[9] This schedule will be amended, if necessary, to accommodate further environmental review, if needed.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixth Meeting: RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 221 meeting: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures.

DATES: The meeting will be held June 15–16, 2010. June 15th from 12 p.m. to 5 p.m., June 16th from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Colson Board Room, 1828 L Street, NW., Suite 805, Washington, DC 20036.

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.*

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 an RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures meeting. The agenda will include:

- Welcome/Introductions/ Administrative Remarks

- Approval of Summary of the Fifth Meeting held March 16–17, 2009, RTCA Paper No. 080–10/SC221–017
- Leadership Comments
- Review of Threat Work Group—Status Report
- Review of Alternative Methods Work Group—Status Report
- Review of Installed Physical Secondary Barrier (IPSB) Work Group—Status Report
- Presentation/Discussion of SC–221 tentative conclusions, discussion of framework and content for final report
- Discussion of Working Group reports: Re-allocation of groups, capture learning points, discuss additional or follow-on goals
- Approval and Tasking of Existing/Proposed Working Groups
- Other Business—Including Proposed Agenda, Date and Place for Next Meeting

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 May 21, 2010.

Meredith Gibbs,

RTCA Advisory Committee.

[FR Doc. 2010–12722 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held June 10, 2010 from 8:30 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

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 an RTCA Program Management Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions)
- Review/Approve Summary of March 17, 2010 PMC meeting, RTCA Paper No. 056–10/PMC–787.
- Publication Consideration/Approval
  - Final Draft, New Document, *Operational Services and Environmental Definition (OSED) for Unmanned Aircraft Systems (UAS),* RTCA Paper No. 066–10/PMC–791, prepared by SC–203.
- Integration and Coordination Committee (ICC)—Report
  - SC–186/206/214 Coordination—Weather Data Dissemination—Discussion—Recommendation
  - Special Committee Interface Matrix—Review
- Action Item Review
  - SC–214—Standards for Air Traffic Data Communications Services—Discussion—Review/Approve Revised Terms of Reference
  - SC–186—Automatic Dependent Surveillance—Broadcast—Discussion—Review/Approve Revised Terms of Reference
- Discussion
  - Trajectory Operations
  - RTCA Annual Awards
  - Special Committees—Chairmen's Reports
- Closing Plenary (Other Business, Document Production and PMC Meeting Schedule Meeting, Adjourned)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, 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 May 21, 2010.

Meredith Gibbs,

RTCA Advisory Committee.

[FR Doc. 2010–12721 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

21st Meeting: RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services.

DATES: The meeting will be held June 14–18, 2010, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Service de l'Information Aeronautique, 8, Avenue Roland Garros, F–33698 Merignac Cedex, France. Contact Person: Stephane Dubet, Phone: 33–5–57 92 57 81, Cell Phone: 33–6–10 74 56 00.

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.*

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 a RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services meeting. The agenda will include:

14 June—Monday

9 a.m. Opening Plenary

- Chairmen's remarks and Host's comments.
- Introductions, approval of previous meeting minutes, review and approve meeting agenda.
- Schedule for this week.
- Action Item Review.
- Schedule for next meetings.

11 a.m. Presentations

- Report from Tiger Team.
- Report for ED 2A Effort—Roger Li.

1 p.m. SPR—Joint AIS and MET Subgroup Meetings

15 June—Tuesday

9 a.m. Joint AIS and MET Subgroup Meetings

16 June—Wednesday

11 a.m. Joint AIS and MET Subgroup Meetings

17 June—Thursday

9 a.m. Joint AIS and MET Subgroup Meetings

18 June—Friday

9 a.m. Joint AIS and MET Subgroup Meetings

10:30 a.m. Plenary Session

- Other Business.
- Meeting Plans and Dates.

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 May 21, 2010.

Meredith Gibbs,

RTCA Advisory Committee.

[FR Doc. 2010–12720 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments; Waybill Compliance Survey

AGENCY: Surface Transportation Board, DOT.

ACTION: 60-day Notice of Intent to seek extension of approval.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek from the Office of Management and Budget (OMB) an extension of approval for the currently approved Waybill Compliance Survey. This information collection is described in detail below. Comments are requested concerning (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Waybill Compliance Survey.
OMB Control Number: 2140–0010.
STB Form Number: None.
Type of Review: Extension without change.
Respondents: Regulated railroads that did not submit carload waybill sample information to the STB in the previous year.
Number of Respondents: 120.
Estimated Time per Response: .5 hours.
Frequency: Annually.
Total Burden Hours (annually including all respondents): 60.
Total "Non-hour Burden" Cost: No "non-hour cost" burdens associated with this collection have been identified.
Needs and Uses: The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred to the STB the responsibility for the economic regulation of common carrier rail transportation, including the collection and administration of the Carload Waybill Sample. Under 49 CFR 1244, a railroad terminating 4, 500 or more carloads, or terminating at least 5% of the total revenue carloads that terminate in a particular state, in any of the three preceding years is required to file carload waybill sample information (Waybill Sample) for all line-haul revenue waybills terminating on its lines. The information in the Waybill Sample is used to monitor traffic flows and rate trends in the industry. The Board needs to collect information in the Waybill Compliance Survey—information on carloads of traffic terminated each year by U.S. railroads—in order to determine which railroads are required to file the Waybill Sample. In addition, information collected in the Waybill Compliance Survey, on a voluntary basis, about the total operating revenue of each railroad helps to determine whether respondents are subject to other statutory or regulatory requirements. Accurate determinations regarding the size of a railroad helps the Board minimize the reporting burden for smaller railroads. The Board has authority to collect this information under 49 U.S.C. 11144 and 11145 and under 49 CFR 1244.2.

DATES: Comments on this information collection should be submitted by July 26, 2010.

ADDRESSES: Direct all comments to Marilyn Levitt, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, or to *levittm@stb.dot.gov.* When submitting comments, please refer to "Waybill Compliance Survey, OMB control number 2140–0010."

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE STB FORM, CONTACT: Paul Aguiar, (202) 245–0323 or at *paul.aguiar@stb.dot.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under section 3506(c)(2)(A) of the PRA, Federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: May 24, 2010.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–12766 Filed 5–26–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Volkswagen

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Volkswagen Group of America (Volkswagen) petition for an exemption of the new vehicle line [confidential nameplate] in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is

granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements of the Theft Prevention Standard (49 CFR part 541). Volkswagen requested confidential treatment for the information it submitted in support of its petition until the market introduction of its new MY 2010 vehicle line (expected to be not later than December 2011). The agency addressed Volkswagen's request for confidential treatment by letter dated April 30, 2010.

DATES: The exemption granted by this notice is effective beginning with the 2012 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., West Building, W43–439, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated March 8, 2010, Volkswagen requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the new MY 2012 vehicle line. The petition requested an exemption from parts marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Volkswagen provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its new vehicle line. Volkswagen will install its fourth generation, transponder-based electronic engine immobilizer antitheft device as standard equipment on its new vehicle line beginning with MY 2012. Volkswagen stated that the aim of its immobilizer device is to actively incorporate the engine control unit into the evaluation and monitoring process. Key components of the antitheft device will include a passive immobilizer, a warning message indicator, an adapted ignition key, an ignition lock reading coil, an engine control unit and an immobilizer control unit. The antitheft device will also include an audible and visible alarm feature as optional equipment. Volkswagen's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

Volkswagen stated that it will also offer an optional advanced key ("keyless") device with its new vehicle line. Volkswagen stated that with the "keyless" device, a transmitter in the key fob communicates with the vehicle ignition control system to perform immobilizer and engine start and stop functions without the need to insert a physical key into the mechanical ignition switch device. Volkswagen further stated that the immobilizer function is the same with both the standard key and the keyless device.

Volkswagen stated that activation of the standard key device occurs automatically when the transponder key is removed from the ignition switch or when the key fob is taken outside the vehicle in the optional advanced key device. Deactivation of the standard key device occurs when the key is inserted, the ignition is turned on and the transponder key is recognized by the immobilizer control unit, enabling start up of the vehicle. After recognition by the electronic module of the key transponder, the key is paired up with the immobilizer control module and cannot be used for any other immobilizer. Deactivation of the optional advanced key device occurs when the key fob transponder is inside the vehicle and is recognized by the immobilizer control unit.

In addressing the specific content requirements of 543.6, Volkswagen provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Volkswagen stated that the antitheft device will be tested for compliance to its corporate requirements for electrical and electronic assemblies in motor vehicles related to performance.

Volkswagen stated that it believes the immobilizer device in the new vehicle line will be effective in deterring theft as it has been in other Volkswagen vehicle lines for which theft data has been published. Volkswagen provided comparative data in support of its belief that its device will be as effective in deterring and reducing vehicle theft as those vehicle lines for which the theft data was published. Volkswagen stated that its proposed device is similar to the antitheft device installed on the MY 2011 Tiguan vehicle line which was granted an exemption by the agency on December 1, 2009. Volkswagen further stated that its device is also installed on its current Eos, Passat, Golf, Jetta and Touareg vehicle lines. Volkswagen provided data showing that from MY's 2005–2007, theft rates published by the agency for the Jetta, Passat, Eos, and Golf/GTI vehicles installed with the immobilizer device are all below the median theft rate. Specifically, the Jetta, Passat and Golf/GTI vehicle lines have an average theft rate using three MYs' data of 1.3058, 1.0853 and 1.4656 respectively. The Eos vehicle line using one MY's data has a theft rate of 0.8205.

In support of its belief that its antitheft device will be as or more effective in reducing and deterring vehicle theft than the parts-marking requirement, Volkswagen referenced the effectiveness of immobilizer devices installed on other vehicles for which NHTSA has granted exemptions. Specifically, Volkswagen referenced information from the Highway Loss Data Institute which showed that BMW vehicles experienced theft loss reductions resulting in a 73% decrease in relative claim frequency and a 78% lower average loss payment per claim for vehicles equipped with an immobilizer. Volkswagen also stated that Chrysler reported that the average theft rate for the Jeep Grand Cherokee between MYs' 1995 and 1998 (prior to addition of an immobilizer) was significantly reduced from 5.3574 to 2.5492 from MYs' 1995 to 2005 after addition of an immobilizer. Comparatively, Volkswagen stated that Mercedes-Benz reported that the theft rate for the SLK class vehicles dropped from 1.6489 in CY 2005 to 0.1484 in CY 2006 after installation of an immobilizer.

Based on the supporting evidence submitted by Volkswagen on the device, the agency believes that the antitheft device for the new vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking

requirements of part 541. The agency finds that Volkswagen has provided adequate reasons for its belief that the antitheft device for the Volkswagen new vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Volkswagen provided about its device.

For the foregoing reasons, the agency hereby grants in full Volkswagen's petition for exemption for the Volkswagen new vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2012 model year vehicles. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Volkswagen decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Volkswagen wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 24, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–12809 Filed 5–26–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 19, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before June 28, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0742.

Type of Review: Extension without change of a currently approved collection.

Title: EE–111–80 (TD 8019—Final) Public Inspection of Exempt Organization Return.

Abstract: Section 6104(b) authorizes the Service to make available to the public the returns required to be filed by exempt organizations. The information requested in Treasury Reg. section 301.6104(b)–1(b)(4) is necessary in order for the Service not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 22 hours.

OMB Number: 1545–0768.

Type of Review: Extension without change of a currently approved collection.

Title: EE–178–78 Final (TD 7898) Employers Qualified Educational Assistance Programs.

Abstract: Respondents include employers who maintain education assistance programs for their employees. Information verifies that programs are qualified and that employees may exclude educational assistance from their gross incomes.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 615 hours.

OMB Number: 1545–1093.

Type of Review: Extension without change of a currently approved collection.

Title: IA–56–87 and IA–53–87 Final Minimum Tax-Tax Benefit Rule.

Abstract: Section 58(h) of the 1954 Internal Revenue Code provides that the Secretary shall provide for adjusting tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items provided no tax benefit because of available credits and describes how to claim a credit or refund of minimum tax paid on such preferences.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 40 hours.

OMB Number: 1545–1271.

Type of Review: Extension without change of a currently approved collection.

Title: REG–209035–86 (Final) Stock Transfer Rules; REG–208165–91 (Final) Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements.

Abstract: A U.S. person must generally file a gain recognition agreement with the IRS in order to defer gain on a section 367(a) transfer of stock to a foreign corporation, and must file a notice with the Service if it realizes any income in a section 367(b) exchange. These requirements ensure compliance with the respective Code sections.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,390 hours.

OMB Number: 1545–1449.

Type of Review: Extension without change of a currently approved collection.

Title: IA–57–94 (Final) Cash Reporting by Court Clerks.

Abstract: Section 60501(g) imposes a reporting requirement on criminal court clerks that receive more than $10,000 in cash as bail. The IRS will use the information to identify individuals with

large cash incomes. Clerks must also furnish the information to the United States Attorney for the jurisdiction in which the individual charged with the crime resides and to each person posting the bond whose name appears on Form 8300.

Respondents: Federal Government.

Estimated Total Burden Hours: 125 hours.

OMB Number: 1545–1458.

Type of Review: Extension without change of a currently approved collection.

Title: REG–209835–86 (formerly INTL–933–86) (Final) Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes.

Abstract: These regulations provide rules for computing foreign taxes deemed paid under section 902. The regulations affect foreign corporations and their U.S. corporate shareholders.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1507.

Type of Review: Extension without change of a currently approved collection.

Title: INTL–656–87 (Final) Treatment of Shareholders of Certain Passive Investment Companies.

Abstract: The reporting requirements affect U.S. persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). The IRS uses Form 8621 to identify PFICs, U.S. persons that are shareholders and transactions subject to PFIC taxation and to verify income inclusions, excess distributions and deferred tax amounts.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 100,000 hours.

OMB Number: 1545–1555.

Type of Review: Extension without change of a currently approved collection.

Title: REG–115795–97 (Final) General Rules for Making and Maintaining Qualified Electing Fund Elections.

Abstract: The regulations provide rules for making section 1295 elections and satisfying annual reporting requirements for such elections, revoking section 1295 elections, and making retroactive section 1295 elections.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 623 hours.

OMB Number: 1545–1565.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 97–64 Temporary Regulations To Be Issued Under Section 1(h) of the Internal Revenue Code (Applying Section 1(h) to Capital Gain Dividends of RICs and REITs).

Abstract: Notice 97–64 provides notice of forthcoming temporary regulations that will permit Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REIT) to distribute multiple classes of capital gain dividends.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1590.

Type of Review: Extension without change of a currently approved collection.

Title: REG–251698–96 (Final) Subchapter S Subsidiaries.

Abstract: The IRS will use the information provided by taxpayers to determine whether a corporation should be treated as an S corporation, a C Corporation, or an entity that is disregarded for federal tax purposes. The collection of information covered in the regulation is necessary for a taxpayer to obtain, retain, or terminate S corporation treatment.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 10,110 hours.

OMB Number: 1545–1691.

Type of Review: Extension without change of a currently approved collection.

Title: REG–120882–97 (Final) Continuity of Interest.

Abstract: Taxpayers who entered into a binding agreement on or after January 28, 1998 (the effective date of Sec. 1.368–1T), and before the effective date of the final regulations under Sec. 1.368–1(e) may request a private letter ruling permitting them to apply Sec. 1.368–1(e) to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S, tax purposes with respect to the applicability of Sec. 1.368–1(e) to the transaction.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,500 hours.

OMB Number: 1545–1726.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9011—Regulations Governing Practice Before the Internal Revenue Service.

Abstract: These regulations affect individuals who are eligible to practice before the Internal Revenue Service. These regulations also authorize the Director of Practice to act upon applications for enrollment to practice before the Internal Revenue Service. The Director of Practice will use certain information to ensure that: (1) Enrolled agents properly complete continuing education requirements to obtain renewal; (2) practitioners properly obtain consent of taxpayers before representing conflicting interests; (3) practitioners do not use e-commerce to make misleading solicitations.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 50,000 hours.

OMB Number: 1545–1876.

Type of Review: Extension without change of a currently approved collection.

Title: REG–166012–02 (NPRM) Notional Contracts; Contingent Non-periodic Payments.

Abstract: The collection of information in the proposed regulations is in Sec. 1.446–3(g)(6)(vii) of the Income Tax Regulations, requiring Taxpayers to maintain in their books and records a description of the method used to determine the projected amount of a contingent payment, the projected payment schedules, and the adjustments taken into account under the proposed regulations. The information is required by the IRS to verify compliance with section 446 of the Internal Revenue Code and the method of accounting described in Sec. 1.446–3(g)(6).

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 25,500 hours.

OMB Number: 1545–1738.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2001–29, Leveraged Leases.

Abstract: Revenue Procedure 2001–29 sets forth the information and representations required to be furnished by taxpayers in requests for an advance ruling that a leveraged lease transaction is, in fact, a valid lease for federal income tax purposes.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 800 hours.

OMB Number: 1545–2033.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2006–83, Chapter 11 Bankruptcy Cases.

Abstract: The IRS needs bankruptcy estates and individual chapter 11 debtors to allocate post-petition income and tax withholding between the estate and the debtor. The IRS will use the information in administering the internal revenue laws. Respondents will be individual debtors and their bankruptcy estates for chapter 11 cases filed after October 16, 2005.

Respondents: Individuals or households.

Estimated Total Burden Hours: 1,500 hours.

OMB Number: 1545–1856.

Type of Review: Extension without change of a currently approved collection.

Title: Consent to Disclosure of Return Information.

Form: 13362.

Abstract: The Consent Form is provided to external applicant that will allow the Service the ability to conduct tax checks to determine if an applicant is suitable for employment once they are determined qualified and within reach to receive an employment offer.

Respondents: Federal Government.

Estimated Total Burden Hours: 7,664 hours.

OMB Number: 1545–0949.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Special Enrollment Examination.

Form: 2587.

Abstract: This information relates to the determination of the eligibility of individuals seeking enrollment status to practice before the Internal Revenue Service.

Respondents: Individuals or households.

Estimated Total Burden Hours: 11,000 hours.

OMB Number: 1545–1379.

Type of Review: Extension without change of a currently approved collection.

Title: Excise Taxes on Excess Inclusions of REMIC Residual Interests.

Form: 8831.

Abstract: Form 8831 is used by a real estate mortgage investment conduit (REMIC) to figure its excise tax liability under Code sections 860E(e)(1), 860E(e)(6), and 860E(e)(7). IRS uses the information to determine the correct tax liability of the REMIC.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 237 hours.

OMB Number: 1545–1823.

Type of Review: Extension without change of a currently approved collection.

Title: e-Services Registration TIN Matching—Application and Screens for TIN Matching Interactive/e-Services Products.

Form: 13350.

Abstract: E-services is a system which will permit the Internal Revenue Services to electronically communicate with third party users to support electronic filing and resolve tax administration issues for practitioners, payers, states, and Department of Education Contractors Registration is required to authenticate users that plan to access e-services products. This system is a necessary outgrowth of advanced information and communication technologies. TIN Matching is one of the products available through e-Services offered via the Internet and accessible through the irs.gov Web site.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,670,000 hours.

OMB Number: 1545–1863.

Type of Review: Extension without change of a currently approved collection.

Title: IRS e-file Signature Authorization for Form 1120S.

Form: 8879–S.

Abstract: Form 8879–S authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 74,181 hours.

OMB Number: 1545–1865.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2003–75, Registered Retirement Savings Plans (RRSP) and Registered Income Funds (RRIF) Information Reporting.

Abstract: This notice announces an alternative, simplified reporting regime for the owners of certain Canadian Individual retirement plans that have been subject to reporting on Forms 3520 and 3520–A, and it describes the interim reporting rules that taxpayers must follow until a new form is available.

Respondents: Individuals or households.

Estimated Total Burden Hours: 1,500,000 hours.

OMB Number: 1545–1864.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8879–C, IRS e-file Signature Authorization for Form 1120; Form 8879–I, IRS e-file Signature Authorization for Form 1120–F.

Form: 8879–C, 8879–I.

Abstract: Form 8879–C authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent. Form 8879–I authorizes a corporate officer and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 95,986 hours.

OMB Number: 1545–1867.

Type of Review: Extension without change of a currently approved collection.

Title: S Corporation Declaration and Signature for Electronic Filing.

Form: 8453–S.

Abstract: Form 8453–S is used to authenticate and authorize transmittal of an electronic Form 1120S.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 10,530 hours.

OMB Number: 1545–1868.

Type of Review: Extension without change of a currently approved collection.

Title: REG–116664–01 (TD 9300-final) Guidance to Facilitate Business Electronic Filing.

Abstract: These regulations remove certain impediments to the electronic filing of business tax returns and other forms. The regulations reduce the number of instances in which taxpayers must attach supporting documents to their tax returns. The regulations also expand slightly the required content of a statement certain taxpayers must submit with their returns to justify deductions for charitable contributions.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 250,000 hours.

OMB Number: 1545–1871.

Type of Review: Extension without change of a currently approved collection.

Title: REG–122379–02 (TD 9165-final) Regulations Governing Practice Before the Internal Revenue Service.

Abstract: These disclosures will ensure that taxpayers are provided with adequate information regarding the limits of tax shelter advice that they receive, and also ensure that practitioners properly advise taxpayers of relevant information with respect to tax shelter opinions.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 13,333 hours.

OMB Number: 1545–2030.

Type of Review: Extension without change of a currently approved collection.

Title: REG–120509–06 (TD 9465-Final), Determination of Interest Expense Deduction of Foreign Corporations.

Abstract: This document contains final regulations under section 882(c) of the Internal Revenue Code concerning the determination of the interest expense deduction of foreign corporations engaged in a trade or business within the United States. These final regulations conform the interest expense rules to recent U.S. Income Tax Treaty agreements and adopt other changes to improve compliance.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 35 hours.

OMB Number: 1545–2032.

Type of Review: Extension without change of a currently approved collection.

Title: Income Verification Express Service Application and Employee Delegation Form.

Form: 13803.

Abstract: Form 13803, Income Verification Express Service Application and Employee Delegation Form, is used to submit the required information necessary to complete the e-services enrollment process for IVES users and to identify delegates receiving transcripts on behalf of the principle account user.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 100 hours.

OMB Number: 1545–2075.

Type of Review: Extension without change of a currently approved collection.

Title: Form 13614–NR, Nonresident Alien Intake and Interview Sheet.

Form: 13614–NR.

Abstract: The completed form is used by screeners, preparers, or others involved in the return preparation process to more accurately complete tax returns of International Students and Scholars. These persons need assistance having their returns prepared so they can fully comply with the law.

Respondents: Individuals or households.

Estimated Total Burden Hours: 141,260 hours.

OMB Number: 1545–2077.

Type of Review: Extension without change of a currently approved collection.

Title: EFTPS Individual Enrollment with Third Party Authorization Form.

Form: 9783T.

Abstract: The information derived from the Form 9783T will allow individual taxpayers to authorize a Third Party to pay their federal taxes on their behalf using the Electronic Federal Tax Payment System (EFTPS).

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 167 hours.

OMB Number: 1545–1866.

Type of Review: Extension without change of a currently approved collection.

Title: U.S. Corporation Income Tax Declaration for an IRS e-file Return.

Form: 8453–C, 8453–I.

Abstract: Form 8453–C is used to enable the electronic filing of Form 1120. Form 8453–I is used to enable the electronic filing of Form 1120–F.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 28,880 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–12761 Filed 5–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 1345

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Publication 1345, Handbook for Authorized IRS e-file Providers.

DATES: Written comments should be received on or before July 26, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Publication 1345, Handbook for Authorized IRS e-file Providers.

OMB Number: 1545–1708.

Form Number: 1345.

Abstract: Publication 1345 informs those who participate in the IRS e-file Program for Individual Income Tax Returns of their obligations to the Internal Revenue Service, taxpayers, and other participants.

Current Actions: There are no changes being made to the publication at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 145,000.

Estimated Time per Respondent: 25 hours, 5 minutes.

Estimated Total Annual Burden Hours: 3,636,463.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 21, 2010.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2010–12735 Filed 5–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Internal Revenue Service Tax Exempt and Government Entities Division (TE/GE); Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Advisory Committee on Tax Exempt and Government Entities (ACT) will hold a public meeting on Wednesday, June 9, 2010.

FOR FURTHER INFORMATION CONTACT: Steven J. Pyrek, Director, TE/GE Communications and Liaison; 1111 Constitution Ave., NW.; SE:T:CL—Penn Bldg; Washington, DC 20224. Telephone: 202–283–9966 (not a toll-free number). E-mail address: *Steve.J.Pyrek@irs.gov.*

SUPPLEMENTARY INFORMATION: By notice herein given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the ACT will be held on Wednesday, June 9, 2010, from 9 a.m. to 12 p.m., at the Internal Revenue Service; 1111 Constitution Ave., NW.; Room 3313; Washington, DC. Issues to be discussed relate to Employee Plans, Exempt Organizations, and Government Entities.

Reports from five ACT subgroups cover the following topics:

- Employee Plans: Analysis and Recommendations Regarding the IRS's Determination Letter Program
- Federal-State-Local Government Compliance Verification Checklist for Public Employers (Phase II)
- FICA Taxes in Indian Country and the Problem of Selective Incorporation in Administration of the Code
- The Implementation of Tribal Economic Development Bonds Under the American Recovery and Reinvestment Act of 2009
- Tax Exempt Bonds: Improvements to the Voluntary Closing Agreement Program for Tax-Exempt, Tax Credit and Direct Pay Bonds
- Exempt Organizations: Getting It Right: An Online Guide to Setting Executive Compensation for Charities

Last minute agenda changes may preclude advance notice. Due to limited seating and security requirements, attendees must call Cynthia PhillipsGrady to confirm their attendance. Ms. PhillipsGrady can be reached at (202) 283–9954. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for security clearance. Picture identification must be presented. Please use the main entrance at 1111 Constitution Ave., NW., to enter the building. Should you wish the ACT to consider a written statement, please call (202) 283–9966, or write to: Internal Revenue Service; 1111 Constitution Ave., NW.; SE:T:CL–Penn Bldg; Washington, DC 20224, or e-mail *Steve.J.Pyrek@irs.gov.*

Dated: May 19, 2010.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division.

[FR Doc. 2010–12736 Filed 5–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled "Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA" (34VA12) as set forth in the **Federal Register** 40 FR 38095, dated August 26, 1975 and last amended in 59 FR 16705, dated March 27, 2001. VA is amending the system by revising the System Location, Categories of Individuals Covered by the System, Categories of Records in the System, Purpose, Routine Uses of Records Maintained in the System, Storage, Safeguards, Retention and Disposal, and Records Sources Categories. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than June 28, 2010. If no public comment is received, the amended system will become effective June 28, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02Reg), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: Categories of individuals covered by the system has been amended to add members of research committees or subcommittees. In addition research and development employees.

Categories of records in the system has been amended to include electronic or other databases containing research information developed during a research project(s) or for future research; and research information systems such as the Research and Development Information System (RDIS). In addition, the purpose has been expanded to include the development programs within research.

Routine use 9 has been amended in its entirety. Routine use 20 was added to disclose information to other Federal agencies that may be made to assist such agencies in preventing and detecting

possible fraud or abuse by individuals in their operations and programs. This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

Routine use 21 was added so that the VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

The Privacy Act permits the VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to the VA, or disclosure is required by law.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, 100 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR Parts 160 and 164. The VA Veterans Health Administration may not disclose individually identifiable health information (as defined in HIPAA and the Privacy Rule, 42 U.S.C. 1320(d)(6) and 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by the HHS Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this amended system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses and is adding a preliminary paragraph to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule before VHA may disclose the covered information.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: April 26, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

34VA12

SYSTEM NAME:

"Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA."

SYSTEM LOCATION:

Records are maintained at each VA health care facility where the research project was conducted, at VA facilities where research administration or oversight activities occur, and at VA Central Office (VACO). Address locations are listed in VA Appendix 1 of the biennial Privacy Act Issuance publication. In addition, records are maintained at contractor and fieldwork sites as studies are developed, data collected and reports written. A list of locations where individually identifiable data are currently located is available from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by this system: (1) Veterans; (2) patients; (3) employees; (4) volunteers who have indicated their willingness to be a participant in research projects being performed by VA, by a VA contractor or by another Federal agency in conjunction with VA; and (5) members of research committee or subcommittees, (6) research and development investigators, and research development employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records, or information contained in records, vary according to the specific research involved or research related activity involved and may include: (1) Research on biomedical, prosthetic and health care services; (2) research stressing spinal cord injuries and diseases and other disabilities that tend to result in paralysis of the lower extremities; and (3) morbidity and mortality studies on former prisoners of war, (4) research related to injuries sustained while on active duty military service such as traumatic amputations, traumatic brain injury, and burns; (5) electronic or other databases containing research information developed during a research project(s) or for future research; (6) research information systems such as the Research and Development Information System (RDIS); (7) copies of medical records of research participants; (8) merit review of the research projects; (9) review and evaluation of proposed research; (10) continuing review and oversight of ongoing research; (11) evaluation of research committees, and (12) a review and evaluation of the research and development investigators and of the participants in the program. The review and evaluation information concerning the research and development investigators may include personal and educational background information as well as specific information concerning the type of research conducted. Invention records contain: a certification page, describing the place, time, research support related to the invention and co-inventors; Technology Transfer Program Invention Evaluation Sheet Internal or External Invention Assessment reports; Research and Development Information System (RDIS) reports or other research information system reports on research support related to the invention; Correspondence; and the Office of General Counsel Letter of Determination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 7301.

PURPOSE(S):

The records and information may be used to determine eligibility for research funding, to determine handling of intellectual properties, to manage proposed and/or approved research endeavors, and to evaluate the research and development program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. Transfer of statistical and other data to Federal, State, and local government agencies and national health organizations to assist in the development of programs.

2. VA may disclose on its own initiative any information in this system, except the names, home addresses, scrambled social security number, and social security number of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names, scrambled social security number, and social security number addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto unless a Certificate of Confidentiality has been issued for the research by the National Institutes of Health under section 301(d) of the Public Health Service Act (42 U.S.C. 241(d)).

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to National Archives and Records Administration (NARA), General Services Administration (GSA) in records management inspections conducted under authority of 44 United States Code.

5. Disclosure of medical record data, excluding name, address, scrambled social security number, and social security number (unless name, address, scrambled social security number, and social security number is furnished by the requester) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel of the Armed Services and/or their dependents may be disclosed (a) to a Federal department or agency or (b) directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency or contractor to ensure the appropriateness of the disclosure to the contractor.

7. In order to conduct VA research, names, addresses, and social security numbers may be disclosed to other Federal and state agencies for the purpose of the Federal or state agency disclosing information on the individuals back to VA.

8. Upon request for research project data from VA approved research, the following information will be released to the general public, including governmental and non-governmental agencies and commercial organizations: Project title and number; name and educational degree of principal investigator unless the release of this information would place the investigator at risk (physical, professional, *etc.*); VHA medical center location; type (initial, progress, or final) and date of last report; name and educational degree of associate investigators unless the release of this information would place the investigator at risk (physical, professional, *etc.*); project abstract if the project is ongoing, and project summary if the project has been completed. In addition, upon specific request, keywords and indexing codes will be included for each project.

9. Upon request for information regarding VA employees conducting research, the following information will be released to the general public, including governmental agencies and commercial organizations: Name and educational degree of investigator; VHA title; academic affiliation and title; hospital service; primary and secondary specialty areas and subspecialty unless the release of this information would place the investigator at risk (physical, professional, etc.).

10. A record from this system of records may be disclosed to a Federal agency, state or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity, upon its request for use in the issuance of a security clearance, the investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting that organization's decision on the matter.

11. Identifying information in this system, including name, address, social security number and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention or termination of the applicant or employee.

12. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and State Licensing Board in the States in which a practitioner is licensed, in which the VA facility is located, or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (a) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice of an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (b) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (c) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the

health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

13. Information concerning individuals who have submitted research program proposals for funding, including the investigator's name, social security number, research qualifications and the investigator's research proposal, may be disclosed to qualified reviewers for their opinion and evaluation of the applicants and their proposals as part of the application review process.

14. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

15. Any invention information in this system may be disclosed to affiliated intellectual property partners to aid in the possible use, interest in, or ownership rights in VA intellectual property.

16. VA may disclose information concerning merit review of proposals submitted by an individual to the individual except that information concerning a third party, such as the name or other identifying information about the qualified reviewer of the proposal.

17. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

18. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

19. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Reports of all transactions dealing with data will be used within VA and will not be provided to any consumer-reporting agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Paper documents (2) Microscope slides (3) Magnetic tape or disk or other electronic media (4) Photographs and (5) Microfilm.

RETRIEVABILITY:

Records are retrieved by individual identifiers and indexed by a specific project site or location, project number, or under the name of the research or development investigator.

SAFEGUARDS:

This list of safeguards furnished in this System of Record is not an exclusive list of measures that has been, or will be, taken to protect individually-identifiable information. VHA will maintain the data in compliance with applicable VA security policy directives that specify the standards that will be applied to protect sensitive personal information. Physical Security: Access to VA working space and medical record storage areas is restricted to VA employees on a "need to know" basis.

Generally, VA file areas are locked after normal duty hours and protected from outside access by the Federal Protective Service. Employee file records and file records of public figures or otherwise sensitive medical record files are stored in separate locked files. Strict control measures are enforced to ensure that disclosure is limited to a "need to know" basis.

Access to a contractor's records and their system of computers used with the particular project are available to authorized personnel only. Records on investigators stored on automated storage media are accessible by authorized VA personnel via VA computers or computer systems. They are required to take annual VA mandatory data privacy and security training. Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Contractors and their subcontractors who access the data are required to maintain the same level of security as VA staff.

RETENTION AND DISPOSAL:

The records contained in this system have not been scheduled and will be kept indefinitely until such time as they are. The records may not be destroyed until VA obtains an approved records disposition authority from the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Operations, Research and Development (12), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Interested persons should write to: Director of Operations, Research and Development (12), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All inquiries must reasonably identify the project and site location; date of project and team leader.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they made application for employment or are or were employed.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

(1) Patients and patient records (2) employees and volunteers (3) other Federal agencies (4) National Institutes of Health (5) Centers for Disease Control (Atlanta, Georgia) (6) individual veterans (7) other VA systems of records (8) research and development investigators, and (9) research and development databases.

[FR Doc. 2010–12758 Filed 5–26–10; 8:45 am]

BILLING CODE P

Federal Register

Thursday,
May 27, 2010

Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators, Refrigerator-Freezers, and Freezers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0003]

RIN 1904–AB92

Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators, Refrigerator-Freezers, and Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: The U.S. Department of Energy (DOE) today is issuing a notice of proposed rulemaking (NOPR) to amend the test procedures for refrigerators, refrigerator-freezers, and freezers. The NOPR consists of two parts. First, it proposes amending the current procedure by adding test procedures to account for refrigerator-freezers equipped with variable anti-sweat heater controls, amending the long-time automatic defrost test procedure to capture all energy use associated with the defrost cycle expended during testing, establishing test procedures for refrigerator-freezers equipped with more than two compartments, making minor adjustments to the language to eliminate any potential ambiguity regarding how to conduct tests, and requiring certain information in certification reports to clarify how some products are tested to determine their energy ratings. Second, the notice proposes amended test procedures for refrigerators, refrigerator-freezers, and freezers that would be required for measuring energy consumption once DOE promulgates new energy conservation standards for these products. These new standards are currently under development in a separate rulemaking activity. Pursuant to the Energy Policy and Conservation Act of 1975, as amended, these new standards would apply to newly manufactured products starting on January 1, 2014. While the amended test procedures would be based largely on the test methodology used in the existing test procedures, they also include significant revisions with respect to the measurement of compartment temperatures and compartment volumes that would provide a more comprehensive accounting of energy usage by these products. Finally, the new test procedure for 2014 would incorporate into the energy use metric the energy use associated with icemaking for products with automatic icemakers. This NOPR also discusses the proposed treatment of combination wine storage-freezer products that were the subject of a recent test procedure waiver, the testing of refrigeration products with the anti-sweat heater switch turned off, the treatment of auxiliary features used in refrigeration products, the treatment of electric heaters in the current and proposed test procedures, and the incorporation of icemaking energy use in the test procedure.

DATES: DOE will hold a public meeting on Tuesday, June 22, 2010, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Tuesday, June 8, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Tuesday, June 15, 2010.

DOE will accept comments, data, and information regarding this NOPR before and after the public meeting, but no later than August 10, 2010. *See* section V, "Public Participation," of this NOPR for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the public meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures.)

Any comments submitted must identify the NOPR on Test Procedures for Refrigerators, Refrigerator-Freezers, and Freezers, and provide the docket number EERE–2009–BT–TP–0003 and/or Regulatory Information Number (RIN) 1904–AB92. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Refrig-2009–TP–0003@ee.doe.gov.* Include docket number EERE–2009–BT–TP–0003 and/or RIN 1904–AB92 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, "Public Participation," of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–1317. E-mail: *Lucas.Adin@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. E-mail: *Michael.Kido@hq.doe.gov*.

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.;* "EPCA" or, "the Act") sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007)). Part A of title III (42 U.S.C. 6291–6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles," which includes refrigerators, refrigerator-freezers, and freezers, all of which are referred to below as "covered products". (42 U.S.C. 6291(1)–(2) and 6292(a)(1)) "Refrigerators, refrigerator-freezers, and freezers" are referred to below, collectively, as "refrigeration products". Under the Act, this program consists essentially of three parts: (1) Testing, (2) labeling, and (3) Federal energy conservation standards. The testing requirements consist of test procedures that, pursuant to EPCA, manufacturers of covered products must use (1) as the basis for certifying to the DOE that their products comply with applicable energy conservation standards adopted under EPCA, and (2) for making representations about the efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA.

By way of background, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, amended EPCA by including, among other things, performance standards for residential refrigeration products. (42 U.S.C. 6295(b)). On November 17, 1989, DOE amended these performance standards for products manufactured on or after January 1, 1993. 54 FR 47916. DOE subsequently published a correction to revise these new standards for three product classes. 55 FR 42845 (October 24, 1990). DOE again updated the performance standards for refrigeration products on April 28, 1997, for products manufactured on or after July 1, 2001. 62 FR 23102.

EISA 2007 amended EPCA to require DOE to determine by December 31, 2010, whether amending the energy conservation standards in effect for refrigeration products would be justified. (42 U.S.C. 6295(b)(4)) As a result, DOE has initiated a standards rulemaking for these products. On September 18, 2008, DOE announced the availability of a framework document to initiate that rulemaking. (73 FR 54089) On September 29, 2008, DOE held a public workshop to discuss the framework document and issues related to the rulemaking. The framework document identified several test procedure issues, including: (1) Compartment temperature changes; (2) modified volume calculation methods; (3) products that deactivate energy-using features during energy testing; (4) variable anti-sweat heaters; (5) references to the updated Association of Home Appliance Manufacturers (AHAM) HRF–1 test standard, "Energy and Internal Volume of Refrigerating Appliances", published in 2008 (HRF–1–2008); (6) convertible compartments; and (7) harmonization with international test procedures. ("Energy Conservation Standards Rulemaking Framework Document for Residential Refrigerators, Refrigerator-Freezers, and Freezers", RIN 1904–AB79, Docket No. EERE–2008–BT–STD–0012) Separately, DOE raised the issue of how to address various aspects related to the icemaker, including the manner in which to measure icemaking energy usage as well as set-up issues during testing. ("Additional Guidance Regarding Application of Current Procedures for Testing Energy Consumption of Refrigerator-Freezers with Automatic Ice Makers", (December 18, 2009) published at 75 FR 2122 (January 14, 2010)) The test procedure rulemaking announced by today's notice seeks to address these issues and to establish a procedure that will be used for determining compliance with the new energy conservation standards under development.

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures for DOE's adoption and amendment of such test procedures. EPCA provides in relevant part that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments. (U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine "to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered

product as determined under the existing test procedure." (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

With respect to today's rulemaking, DOE has tentatively determined that at least some of the amendments it is proposing may result in a change in measured efficiency when compared to the current test procedure, although DOE has not quantified the full impact of these anticipated changes. In such situations, EPCA requires a standards rulemaking to address such changes in measured energy efficiency. (42 U.S.C. 6293(e)(2)) However, DOE is presently under an obligation under 42 U.S.C. 6295(b)(4) to conduct an amended standards rulemaking for refrigeration products by December 31, 2010. Consequently, DOE will consider the impacts of the test procedure changes that are affected by this rulemaking in the context of that standards rulemaking. DOE requests comments regarding what impacts, if any, would be associated with the test procedure amendments proposed to be adopted prior to the effective date of the new energy conservation standards. These comments should specifically address the amendments proposed in section III.D.

DOE also considers the activity initiated by today's notice sufficient to satisfy the 7-year review requirement established by Section 302 of EISA 2007 to review its test procedures for all covered products at least once every seven years, including refrigeration products, and either amend the applicable test procedures or publish a determination in the **Federal Register** not to amend it. (42 U.S.C. 6293(b)(1)(A))

Because DOE's existing test procedures for these products were already in place on December 19, 2007, when the 7-year test procedure review provisions of EPCA were enacted (42 U.S.C. 6293(b)(1)(A)), DOE would have had to review these test procedures by December 2014. However, since DOE is already considering changes to the test procedure in anticipation of the 2014 rulemaking required by Congress, DOE is satisfying this requirement in advance of that date. This rulemaking satisfies those review requirements in that it constitutes a review of the current procedures and proposes amendments to those procedures for refrigeration products.

Refrigerators and Refrigerator-Freezers

DOE's test procedures for refrigerators and refrigerator-freezers are found at 10 CFR part 430, subpart B, Appendix A1. DOE initially established its test procedures for refrigerators and refrigerator-freezers in a final rule published in the **Federal Register** on September 14, 1977. 42 FR 46140. Industry representatives viewed these test procedures as too complex and eventually developed alternative test procedures in conjunction with AHAM that were incorporated into the 1979 version of HRF–1, "Household Refrigerators, Combination Refrigerator-Freezers, and Household Freezers" (HRF–1–1979). Using this industry-created test procedure, DOE revised its test procedures on August 10, 1982. 47 FR 34517. On August 31, 1989, DOE published a final rule establishing test procedures for variable defrost control (a system that varies the time intervals between defrosts based on the defrost need). 54 FR 36238. DOE most recently amended these test procedures in a final rule published March 7, 2003, which modified the test period used for products equipped with long-time automatic defrost. 68 FR 10957. The term "long-time automatic defrost" identifies the use of an automatic defrost control in which successive defrosts are separated by more than 14 hours of compressor run time. The test procedures include provisions for determining the annual energy use in kilowatt-hours (kWh) and the annual operating cost for electricity for refrigerators and refrigerator-freezers.

Also, consistent with the regulations set out in 10 CFR part 430, the 1989 and 2003 final rules terminated all the previous refrigerator and refrigerator-freezer test procedure waivers that DOE had previously granted to manufacturers before the issuance of the 2003 rule. Since the issuance of that rule, DOE has granted four waivers and three interim waivers. First, on April 24, 2007, DOE permitted Liebherr Hausgeräte to test a combination wine storage-freezer line of appliances using a standardized temperature of 55 °F for the wine storage compartment, as opposed to the 45 °F prescribed for fresh food compartments of refrigerators and refrigerator-freezers. 72 FR 20333, 20334.

Second, DOE has granted waivers and interim waivers allowing manufacturers to use a modified procedure to test refrigeration products that use ambient condition sensors that adjust anti-sweat heater power consumption. These heaters prevent condensation on the external surfaces of refrigerators and refrigerator-freezers. The new control addressed by the waivers uses sensors that detect ambient conditions to energize the heaters only when needed. The procedure described by these waivers provides a method for manufacturers to determine the energy consumed by a refrigerator using this type of variable control system. The first of these waivers was granted to the General Electric Company (GE) on February 27, 2008. 73 FR 10425. DOE granted a similar waiver to Whirlpool Corporation on May 5, 2009. 74 FR 20695. DOE published a petition for a third waiver from Electrolux Home Products, Inc. (Electrolux) and granted its application for an interim waiver on June 4, 2009. 74 FR 26853. On December 15, 2009, DOE granted a waiver to Electrolux (74 FR 66338) and published a petition for a second waiver to Electrolux seeking to extend the coverage of this waiver to additional basic models. 74 FR 66344. On December 15, 2009, DOE also published a petition from Samsung Electronics America (Samsung) seeking a waiver for variable control of anti-sweat heaters and granted the company an interim waiver. 74 FR 66340.

After granting a waiver, DOE regulations generally direct the agency to initiate a rulemaking that would amend the regulations to eliminate the continued need for the waiver. 10 CFR 430.27(m). Today's notice addresses this requirement. Once this rule becomes effective, any waivers it addresses will terminate.

Freezers

DOE's test procedures for freezers are found at 10 CFR part 430, subpart B, Appendix B1. DOE established its test procedures for freezers in a final rule published in the **Federal Register** on September 14, 1977. 42 FR 46140. As with DOE's test procedures for refrigerators and refrigerator-freezers, industry representatives viewed the freezer test procedures as too complex and worked with AHAM to develop alternative test procedures, which were incorporated into the 1979 version of HRF–1. DOE revised its test procedures for freezers based on this AHAM standard on August 10, 1982. 47 FR 34517. The test procedures were amended on September 20, 1989, to correct the effective date published in the August 31, 1989 rule. See 54 FR 38788. The test procedures include provisions for determining the annual energy use in kWh and annual electrical operating costs for freezers.

DOE has not issued any waivers from the freezer test procedures since the promulgation of the 1989 final rule.

II. Summary of the Proposal

The proposed rule contains two basic parts. First, it would amend the current DOE test procedures for refrigerators, refrigerator-freezers, and freezers, to clarify the manner in which to test for compliance with existing energy conservation standards. As indicated in greater detail below, these proposed amendments, if adopted, would apply strictly to the current procedures in Appendices A1 and B1. These minor amendments would eliminate any potential ambiguity contained in these appendices and clarify regulatory text to ensure that regulated entities fully understand the long-standing views and interpretations that the Department holds with respect to the application and implementation of the test procedures that are in place. The current procedures would also be amended to account for, among other things, the various waivers granted by DOE.

Second, the proposal would establish comprehensive changes to the manner in which the procedures are conducted by creating new Appendices A and B. Elements from the proposed amendments to Appendices A1 and B1 would also be carried over into the new Appendices A and B. The procedures contained in these new appendices would apply only to those products that would be covered by any new standard that DOE promulgates and would be organized separately from the current test procedures found in Appendices A1 and B1. EPCA requires these new standards to take effect by January 1, 2014. While DOE is proposing to retain current Appendices A1 and B1 for this rulemaking to cover products manufactured before the effective date of the new standards, once the new standards become effective, these appendices would be replaced by Appendices A and B, respectively. Consequently, DOE would apply the procedures detailed in the proposed Appendices A and B to potential revisions to the energy conservation standards for refrigerators, refrigerator-freezers, and freezers.

The proposed amendments discussed in this notice would, if adopted, take effect 30 days after issuance of the final rule. However, manufacturers would not need to use Appendices A and B until the compliance date for the 2014 standards, which has been set by Congress through EISA 2007 (*i.e.* January 1, 2014). See EISA 2007, sec. 311(a)(3) (42 U.S.C. 6295(b)(4))

The proposed revisions of Appendices A1 and B1 would achieve four primary goals: (1) Address issues raised in the framework document, by stakeholders during the framework workshop, and in written comments; (2) incorporate test procedures for refrigerator-freezers with variable anti-sweat heater controls that were the subject of test procedure waivers granted to General Electric, Whirlpool, and Electrolux and an interim waiver granted to Samsung, (3) modify the long-time automatic defrost test procedure to ensure that the test procedure measures all energy use associated with the defrost function, and (4) clarify the test procedures for addressing special compartments and those refrigerator-freezers that are equipped with more than two compartments. The revisions also address areas of potential inconsistency in the current procedure, and eliminate an optional test that DOE understands is not used by the industry.

The test procedure revisions in the new Appendices A and B would include (1) new compartment temperatures for refrigerators and refrigerator-freezers, and (2) new methods for measuring compartment volumes for all refrigeration products. These two amendments would improve harmonization with relevant international standards and test repeatability. The compartment temperature changes would significantly impact the energy use measured by the test for refrigerators and refrigerator-freezers. The new volume calculation method being proposed would change the adjusted volume for all refrigeration products. The proposed temperature changes would also affect the calculated adjusted volume, which is equal to the fresh food compartment volume plus a temperature-dependent adjustment factor multiplied by the freezer compartment volume. Since the standards for refrigeration products are expressed as equations that specify maximum energy use as a function of adjusted volume, the proposed modifications would impact the allowable energy use for all of these products. The proposed changes would also change the energy factor, which is equal to adjusted volume divided by daily energy consumption.

This notice also discusses the combination wine storage-freezer products that were the subject of the Liebherr Hausgeräte test procedure waiver. While DOE expects to propose modified product definitions to include coverage of wine storage products in a separate future rulemaking addressing just these products, DOE proposes in this current rulemaking to establish consistency in its treatment of wine coolers and wine storage-freezers.

Lastly, this notice also discusses (1) the measurement of energy use of electric heaters in refrigeration products, (2) the energy use of auxiliary features, and (3) the incorporation of the measurement of icemaking energy use into the test procedure. Incorporating the measurement of icemaking energy use would add the energy used to produce ice in refrigeration products that are equipped with automatic icemakers. This addition would improve the consistency of the measurement with the representative use cycle for such products.

III. Discussion

Table 1 below summarizes the subsections of this section and indicates where the proposed amendments would appear in each appendix. Three of the subsections address proposed changes in sections of 10 CFR 430 other than appendices A1, B1, A, or B, and four of the subsections would not have any proposed test procedure changes associated with them.

TABLE 1—SECTION III SUBSECTIONS

Section	Title	Affected appendices			
		A1	B1	A	B
A	Products Covered by the Proposed Revisions	No proposed change is associated with this section of the NOPR.			
B	Combination Wine Storage-Freezer Units	*			
C	Establishing New Appendices A and B, and Compliance Date for the Amended Test Procedures.	✓	✓	✓	✓

TABLE 1—SECTION III SUBSECTIONS—Continued

Section	Title	Affected appendices			
		A1	B1	A	B
D.1	Procedures for Test Sample Preparation	✓	✓	✓	✓
D.2	Product Clearances to Walls During Testing	✓	✓	✓	✓
D.3	Alternative Compartment Temperature Sensor Locations.	✓	✓	✓	✓
D.4	Median Temperature Settings for Electronic Control Products.	✓	✓	✓	✓
D.5	Test Procedures for Convertible Compartments and Special Compartments.	✓		✓	
D.6	Establishing a Temperature-Averaging Procedure for Auxiliary Compartments.	✓	✓	✓	✓
D.7	Modified Definition for Anti-Sweat Heater	✓	✓	✓	✓
D.8	Testing with the Anti-Sweat Heater Switch Turned Off.	**			
D.9	Incorporation of Test Procedures for Products with Variable Anti-Sweat Heating Control Waivers.	✓		✓	
D.10	Modification of Long-Time and Variable Defrost Test Method to Capture Precooling Energy.	✓	✓	✓	✓
D.11	Establishing Test Procedures for Multiple Defrost Cycle Types.	✓		✓	
D.12	Elimination of Part 3 of the Variable Defrost Test.	✓	✓	✓	✓
D.13.A	A: Simplification of Energy Use Equation for Products with Variable Defrost Control.	✓	✓	✓	✓
D.13.B	B: Energy Testing and Energy Use Equation for Products with Dual Automatic Defrost.	✓		✓	
D.14	Including in Certification Reports Basic Information Clarifying Energy Measurements.	***			
E.1	Incorporating by Reference AHAM Standard HRF–1–2008 for Measuring Energy and Internal Volume of Refrigerating Appliances.			✓	✓
E.2	Establishing New Compartment Temperatures			✓	✓
E.3	Establishing New Volume Calculation Method			✓	✓
E.4	Control Settings for Refrigerators and Refrigerator-Freezers During Testing.			✓	✓
E.5	Icemakers and Icemaking			✓	✓
F.1	Electric Heaters	No proposed changes to the regulatory language are associated with these sections of the NOPR.			
F.2	Rounding Off Energy Test Results				
G.1	Test Burden				
G.2	Potential Amendments to Include Standby and Off Mode Energy Consumption.				

* This amendment would appear in 10 CFR 430.2.
** This amendment would appear in 10 CFR 430.23.
*** This amendment would appear in 10 CFR 430.62.

A. Products Covered by the Proposed Revisions

The current regulations define the terms "refrigerators," "refrigerator-freezers," and related terms as follows:

"Refrigerator" means an electric refrigerator.

"Refrigerator-freezer" means an electric refrigerator-freezer.

"Electric refrigerator" means a cabinet designed for the refrigerated storage of food at temperatures above 32 °F and below 39 °F, configured for general refrigerated food storage, and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 °F, but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F.

"Electric refrigerator-freezer" means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food at temperatures above 32 °F and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8 °F which may be adjusted by the user to a temperature of 0 °F or below. The source of refrigeration requires single phase, alternating current electric energy input only.

10 CFR 430.2.

This rulemaking proposes to change the definition for electric refrigerator-freezer to limit the fresh food compartment temperature range to a maximum temperature of 39 °F, consistent with the definition for electric refrigerator. This specific

proposal is discussed further in section III.B. No change is being proposed to the definition for electric refrigerator but DOE is open to comments on possible improvements to enhance the clarity of this term and may incorporate such changes in the final rule.

DOE notes that its regulations currently define a freezer as "a cabinet designed as a unit for the freezing and storage of food at temperatures of 0 °F or below, and having a source of refrigeration requiring single phase, alternating current electric energy input only." 10 CFR 430.2. No change in this definition is being proposed at this time but, as with the definition for electric refrigerator-freezers, DOE is interested in receiving comments on this issue to help improve the definition's clarity and may decide to modify the definition based on these comments.

B. Combination Wine Storage-Freezer Units

DOE amended its definition of electric refrigerators to exclude wine storage products on November 19, 2001. 66 FR 57845. Specifically, the definition was changed to exclude products that do not maintain internal temperatures below 39 °F. The final rule explained that these products "are configured with special storage racks for wine bottles and in general do not attain as low a storage temperature as a standard refrigerator. These characteristics make them unsuitable for general long-term storage of perishable foods." 66 FR 57846. The final rule also stated that "sales of these products are small and excluding them from coverage would not have any significant impacts." Id.

DOE, however, did not change the definition of electric refrigerator-freezers to exclude products such as the Liebherr line of wine storage-freezer appliances, which contain both freezer and wine storage compartments. DOE believes that the arguments made in favor of excluding wine storage products from the definition of electric refrigerators also apply to combination appliances such as these wine storage-freezer combination appliances—*i.e.,* the wine storage compartment does not attain temperatures which are suitable for long-term storage of perishable foods, and the sales levels of such products are small.

The current test procedure does not address the treatment of wine storage-freezer products. Because of this gap, Liebherr Hausgeräte (Liebherr) petitioned the agency for a test procedure waiver to address this product. (72 FR 20333) DOE granted a test procedure waiver to Liebherr on April 24, 2007 (Liebherr waiver) that permitted the company to test and certify its combination wine storage-freezer line of appliances. (72 FR 20333) The waiver specified that testing shall be conducted following the test procedures for refrigerator-freezers, except that the standard temperature for the wine-storage compartment shall be 55 °F, as opposed to 45 °F as specified in the test procedures for refrigerator-freezers. (72 FR 20334)

Under DOE's regulations, DOE must publish a NOPR to amend the DOE test procedures to eliminate the continued need for the waiver. A final rule must issue "as soon thereafter as practicable." The waiver would then terminate on the effective date of the final rule. 10 CFR 430.27(m). Accordingly, to address this requirement and the treatment of these products, DOE proposes to modify the definition of electric refrigerator-freezers in order to exclude products with wine storage or other compartments that do not attain suitable temperatures for food storage. The proposed modified definition is as follows:

> "Electric refrigerator-freezer" means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food at temperatures above 32 °F and below 39 °F and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8 °F which may be adjusted by the user to a temperature of 0 °F or below. Additional compartments shall be designed for temperatures in any range up to 39 °F. The source of refrigeration requires single phase, alternating current electric energy input only.

This definition of refrigerator-freezer, if adopted, would exclude the Liebherr product line and other similar products from coverage under the test procedures and energy conservation standards for refrigerator-freezers. DOE is proposing this approach to maintain consistency with treatment of single-compartment wine storage products, which were eliminated from coverage by the definition change for refrigerators discussed above in this section, and to clarify that energy conservation standards have not been established for these products. DOE expects to propose modifications to cover wine storage products in a separate future rulemaking.

DOE notes that beer refrigerators, in contrast to wine coolers, generally are designed to operate with compartment temperature below 39°F. Hence, these products are, and would continue to be treated as, refrigerators and would continue to remain subject to the current test procedures and energy conservation standards of 10 CFR 430.

C. Establishing New Appendices A and B, and Compliance Date for the Amended Test Procedures

As briefly discussed above, the effective date for all of today's proposed amendments would be 30 days after publication of a final rule. However, only the amendments to Appendices A1 and B1 would have an immediate impact on manufacturers.

For purposes of representations, under 42 U.S.C. 6293(c)(2), effective 180 days after amending a test procedure, manufacturers cannot make representations regarding energy use and efficiency unless the product was tested in accordance with the amended test procedure. A manufacturer, distributor, retailer or private labeler may petition DOE to obtain an extension of time for making these representations. (42 U.S.C. 6293(c)(3))

However, manufacturers would need to use proposed Appendices A and B once amended energy conservation standards become effective on January 1, 2014. Likewise, the proposed Appendices A and B would be mandatory for representations regarding energy use or operating cost of these products once the new energy conservation standards take effect. Under EPCA, DOE must determine by no later than December 31, 2010, whether to amend energy conservation standards that would apply to refrigeration products manufactured on or after January 1, 2014. As discussed earlier, because the proposed modified test procedures of Appendices A and B would change the measured energy use of these products, DOE is planning to amend its energy conservation standards for these products. (42 U.S.C. 6293(e)(2)) These amended test procedures would be used in analyzing and developing any amended standards.

D. Amendments To Take Effect Prior to a New Energy Conservation Standard

1. Procedures for Test Sample Preparation

Current DOE test procedures generally address product features and functions available at the time that the test procedures were written. Advances in technology and product design, however, can lead to operating conditions and/or product features and functions that are not addressed in current applicable test procedures. In particular, these existing test procedures may not specifically address these new features or functions that are in addition to (and not involved in) the primary functions of maintaining temperatures suitable for food storage *(i.e.* temperatures up to 39 °F). To the extent

that these new features or functions may be directly involved with the primary functions, in DOE's view, the energy use impact of these secondary functions should be included when measuring the overall energy consumption of a covered product under the DOE test procedure.

Because DOE's test procedures provide a measurement of a representative average use cycle, the procedures need to reflect the changes in technology and product design that are present in current products. If installation of a refrigeration product according to its accompanying instructions does not clearly explain how to set up products with new technology or design features, concerns may arise as to whether a given test can be conducted in a fashion that would measure the representative energy use of the product.

HRF–1–1979, parts of which are included in the current DOE test procedure by reference, requires that, "the cabinet with its refrigerating mechanism is to be assembled and set up as nearly as practicable in accordance with the printed instructions supplied with the cabinet." HRF–1–1979, section 7.4.2. Similarly, HRF–1–2008, parts of which are proposed to be included in the new Appendices A and B, has an essentially identical requirement: "The cabinet with its refrigerating mechanism shall be assembled and set up as nearly as practical in accordance with the printed instructions supplied with the cabinet." HRF–1–2008, section 5.5.2. DOE proposes to emphasize this set-up requirement by eliminating the words, "as nearly as practical", and providing specific (permitted and required) deviations from this set-up requirement as warranted. DOE is proposing the use of these specific deviations in order to ensure that the procedure is clear and yields consistent test results. This provision would be inserted directly into section 2 of Appendices A1, B1, A, and B.

Permitted deviations from this requirement would include set-up details that are required for consumer installation but do not affect measured energy use. Examples include:

- Connection of water lines and installation of water filters (not required).
- Anchoring or otherwise securing a product to prevent tipping during energy testing (also not required, but encouraged if necessary to ensure safety during testing).

Required deviations needed to achieve the necessary testing conditions and obtain consistent results would include, but are not limited to, the following:

- Clearance requirements: Establishing a consistent approach for wall-to-cabinet clearances that would limit the clearance ranges when compared to actual field installations.
- The electric power supply: Establishing a tighter tolerance on the voltage of the power supply than would be found during field use.
- Temperature control settings: Establishing standardized compartment temperatures to ensure meaningful comparisons of test results.

All of the permitted and required deviations from the printed instructions included with the manufacturer's product would be listed in section 2 of Appendices A1, B1, A, and B. DOE conducted a review of product installation instructions to determine which instructions would require specific language describing allowed or required deviations during testing. However, there may be other specific installation instructions that would affect energy use or would otherwise not be necessary to conduct the test. DOE seeks comment on whether these proposed deviations are sufficient to ensure that the procedure is clear and produces consistent results.

DOE recognizes that in some cases there may still be questions about how to set up a product for testing. In cases where the proposed modified language does not address the specific type of situation presented by a particular basic model, a test procedure waiver would be the appropriate course of action to allow test procedures to be developed for the specific characteristics of the product. DOE proposes to incorporate language into the test procedure instructing manufacturers to apply for a test procedure waiver in such cases. DOE proposes adding language to the set-up instructions of section 2 to alert manufacturers to this issue.

In addition, DOE proposes to add a new section 7 to the test procedure that explains when a test procedure waiver would be needed:

> To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a refrigerator or refrigerator-freezer, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product. Such instances could, for example, include situations where the test set-up for a particular refrigerator or refrigerator-freezer basic model is not clearly defined by the provisions of section 2. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

DOE proposes to add this language to Appendices A1, B1, A, and B.

In addition to questions about product set-up during testing, the introduction of new technology in refrigeration products may cause the product to operate in a manner inconsistent with a representative average use cycle. An example of such technology in modern refrigerators is the variable anti-sweat heater control described in section III.D.9. This type of control, which responds to ambient humidity, generally will not allow the anti-sweat heaters to operate in a fashion consistent with a representative use cycle when tested in accordance with the required 90 °F ambient temperature. This occurs because the control operates on the basis of relative humidity, which is not required to be controlled and is typically lower in a test chamber at 90 °F than in the temperatures typically found in homes (approximately 70 °F). (*See, e.g.,* Appendix A1, section 2.1). Measuring the energy use of such a product using the current test procedure would not be repeatable because the measurement can be affected by this uncontrolled parameter. Hence, the modifications provided by the current waivers associated with this control (and by the proposed amended test procedure) provide a reasonably designed procedure to obtain energy costs during a representative average use cycle.

In order to address these types of situations, AHAM introduced the following additional language in AHAM standard HRF–1–2007:

> The following principles of interpretation should be applied to AHAM HRF–1, and should apply to and guide any revisions to the test procedure. The intent of the energy test procedure is to simulate typical room conditions (approximately 70 °F) with door openings, by testing at 90 °F without door openings.
>
> Except for operating characteristics that are affected by ambient temperature (for example, compressor percent run time), the unit, when tested under this standard, shall operate equivalent to the unit in typical room conditions. The energy used by the unit shall be calculated when a calculation is provided by the standard.
>
> Energy consuming components that operate in typical room conditions (including as a result of door openings, or a function of humidity), and that are not exempted by this standard, shall operate in an equivalent manner during energy testing under this standard, or be accounted for by all calculations as provided for in the standard.
>
> *Examples:*
>
> 1. Energy saving features that are designed to operate when there are no door openings for long periods of time shall not be functional during the energy test.
>
> 2. The defrost heater should not either function or turn off differently during the

energy test than it would when in typical room conditions.

3. Electric heaters that would normally operate at typical room conditions with door openings should also operate during the energy test.

4. Energy used during adaptive defrost shall continue to be tested and adjusted per the calculation provided for in this standard.

(HRF–1–2007, section 1.2)

HRF–1–2008 incorporates this language and ENERGY STAR adopted it as part of its Program Requirements that took effect in April 2008. (*see* "ENERGY STAR Program Eligibility Criteria for Residential Refrigerators and/or Freezers", section 4 (August 3, 2007)).

DOE proposes to use similar language in 10 CFR 430.23(a) to address the testing of refrigerators and refrigerator-freezers, and 10 CFR 430.23(b) to address the testing of freezers. The new text would read as follows:

The energy test procedure is designed to provide a measurement consistent with representative average consumer use of the product, even if the test conditions and/or procedures may not themselves all be representative of average consumer use (*e.g,* 90 °F ambient conditions, no door openings, use of temperature settings unsafe for food preservation, *etc.*). If (1) a product contains energy consuming components that operate differently during the prescribed testing than they would during representative average consumer use and (2) applying the prescribed test to that product would evaluate it in a manner that is unrepresentative of its true energy consumption (thereby providing materially inaccurate comparative data), the prescribed procedure may not be used. Examples of products that cannot be tested using the prescribed test procedure include those products that can exhibit operating parameters (*e.g,* duty cycle or input wattage) for any energy using component that are not smoothly varying functions of operating conditions or control inputs—such as when a component is automatically shut off when test conditions or test settings are reached. A manufacturer wishing to test such a product must obtain a waiver in accordance with the relevant provisions of 10 CFR 430.

DOE's proposal reflects the statutory requirement, and the Department's longstanding view, that the overall objective of the test procedure is to measure the product's energy consumption during a representative average use cycle or period of use. 42 U.S.C. 6293(b)(3). Further, the test procedure requires specific conditions during testing that are designed to ensure repeatability while avoiding excessive testing burdens. Although certain test conditions specified in the test procedure may deviate from representative use, such deviations are carefully designed and circumscribed in order to attain an overall calculated measurement of the energy consumption during representative use. Thus, it is—and has always been—DOE's view that products should not be designed such that the energy consumption drops during test condition settings in ways that would bias the overall measurement to make it unrepresentative of average consumer use. While DOE may consider imposing design requirements to prohibit certain control schemes, the agency believes that addressing this issue through the applicable test procedure and related requirements is appropriate at this time. Accordingly, DOE's proposed language both (1) makes explicit in the regulatory text the Department's long held interpretation that the purpose of the test procedure is to measure representative use and (2) proposes a specific mechanism—the waiver process—as a mandatory requirement for all products for which the test procedure would not properly capture the energy consumption during representative use.

DOE seeks comment on this proposed language to address products equipped with controls or other features that modify the operation of energy using components during testing. The language does not identify specific product characteristics that could make the test procedure unsuitable for testing certain products (*e.g,* modification of operation based on ambient temperature) but rather describes such characteristics generally, in order to assure that the language can apply to any potential features that would yield measurements unrepresentative of the product's energy consumption during a representative use cycle. While the proposed language does not delineate what constitutes representative average consumer use, in DOE's view, this use would include a variety of factors, including ranges of ambient temperature and humidity, multiple door openings of a variety of durations, food product loading, and ice production, among others. DOE seeks comment on this issue and invites commenters to submit any data that would help define the representative average use setting for each of these parameters and seeks comment and data on this issue. DOE also seeks comment on whether more specificity is needed to define (1) the types of product characteristics that would make the test procedure unsuitable to use and (2) the concept of representative average use.

2. Product Clearances to Walls During Testing

Wall clearance is a necessary element to refrigerator and refrigerator-freezer energy efficiency testing because the restriction of airflow due to close proximity to the wall can affect the cooling performance of the condenser. The condenser removes heat from the refrigeration system to the ambient air. In this regard, the current procedure references the steps outlined in HRF–1–1979, which provides that "[t]he space between the back [of the cabinet] and the wall shall be in accordance with the manufacturer's instructions or as determined by mechanical stops on the back of the cabinet." (HRF–1–1979, section 7.4.2).

The National Institute of Standards and Technology (NIST) examined the repeatability of energy testing based on the current DOE procedure and observed that the procedure does not provide clear guidance regarding the required clearance between the rear of a test sample cabinet and the wall of the test chamber or another simulated wall during testing. (Yashar, D.A. *Repeatability of Energy Consumption Test Results for Compact Refrigerators,* September 2000. U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD. NISTIR.6560, available at *http://www.fire.nist.gov/bfrlpubs/build00/PDF/b00055.pdf*). The alternative instruction provided by the current procedure—*i.e.* "as determined by mechanical stops on the back of the cabinet"—implies that a minimum distance from the wall applies. HRF–1–2008 provides greater specificity by providing that "the space between the back and the test room wall or simulated wall shall be the minimum distance in accordance with the manufacturer's instructions or as determined by mechanical stops on the back of the cabinet." (HRF–1–2008, section 5.5.2).

Refining this requirement is particularly important for products equipped with static condensers, which rely on free convection (*i.e.* heat transfer by air movement induced by the buoyancy effects of temperature differences rather than by fans) to cool the condenser. Static condensers are generally mounted on the back of the refrigerator or refrigerator-freezer. Manufacturers of most full-size refrigerators and refrigerator-freezers have replaced static condensers with forced-convection condensers (fan-cooled condensers), which are generally mounted at the base of the refrigerator near the compressor.

However, many manufacturers of compact refrigerators and freezers still use static condensers. Compact refrigerators are defined as refrigerators and freezers "with total volume less than 7.75 cubic feet * * * and 36 inches * * * or less in height." 10 CFR

part 430.2. While the performance of refrigeration products with static condensers tends to be sensitive to rear clearance, the performance of products with forced-convection condensers tends to be less sensitive to this factor. DOE believes that most refrigerators are installed with the back of the refrigerator positioned with at the minimum distance from the wall as specified in the manufacturer's instructions. The limited potential for increasing exterior dimensions is often cited by the industry as a reason why increasing insulation thickness is not a viable design option to improve efficiency for these products. DOE noted this limitation in its technical support document that accompanied the 1997 final rule. *See* 62 FR 23102 (April 28, 1997) (noting that "[s]ince kitchen dimensions and designed spaces for refrigerator-freezers are limited, there are restrictions on increasing the exterior size of the product"). (U.S. Department of Energy-Office of Codes and Standards, Technical Support Document: Energy Efficiency Standards for Consumer Products: Refrigerators, Refrigerator-Freezers, and Freezers, DOE/EE–0064, at 3–6 (July 1995)). If there were any significant space between the rear wall of the cabinet and the kitchen wall, this limitation would not be present. Accordingly, positioning a refrigerator or refrigerator-freezer more than the minimum distance from the wall may not produce repeatable or representative performance results during the representative average use cycle or period.

DOE proposes to include in the test procedures of Appendices A1, B1, A, and B, the following language, which more thoroughly addresses clearance to the cabinet walls:

> 2.9 The space between the back of the cabinet and the test room wall or simulated wall shall be the minimum distance in accordance with the manufacturer's instructions. If the instructions do not specify a minimum distance, the cabinet shall be located such that the rear of the cabinet touches the test room wall or simulated wall. The test room wall facing the rear of the cabinet or the simulated wall shall be flat within ¼ inch, and vertical to within 1 degree. The cabinet shall be leveled to within 1 degree of true level, and positioned with its rear wall parallel to the test chamber wall or simulated wall immediately behind the cabinet. Any simulated wall shall be solid and shall extend vertically from the floor to above the height of the cabinet and horizontally beyond both sides of the cabinet.

The additional specifications in this proposed language, including touching the rear wall, flatness and vertical orientation of the wall behind the product, use of a solid wall (*i.e.* rather than a perforated wall or screen), size of the simulated wall, and product orientation to be level and parallel with the wall would collectively help ensure the consistent application of simulated walls in energy testing. DOE believes that these additional requirements are consistent with the current test procedures, as well as the clearance requirements found in HRF–1–1979 and HRF–1–2008, but have the added advantage of providing greater assurance that the intended product installation set-up is used for testing. DOE seeks comment on this approach.

3. Alternative Compartment Temperature Sensor Locations

The current test procedures indicate that temperature sensor locations shall be as indicated in HRF–1–1979, Figures 7.1 and 7.2. (see for example Appendix A1, section 5.1). The test procedure indicates what a manufacturer would do in case the cabinet layout is not consistent with these figures:

> If the interior arrangements of the cabinet do not conform with those shown in Figure 7.1 and 7.2 of HRF–1–1979, measurements shall be taken at selected locations chosen to represent approximately the entire refrigerated compartment. The locations selected shall be a matter of record.

Appendix A1, section 5.1

In order to provide clearer instructions, and to avoid the potential for significant deviation from the standard temperature sensor locations, DOE proposes to modify this requirement, allowing manufacturer selection of new locations only for small deviations from the standard locations, and otherwise requiring a waiver to allow for the development of a new diagram addressing the new compartment configuration. DOE proposes the following amended text for section 5.1:

> If the interior arrangements of the cabinet do not conform with those shown in Figure 7.1 and 7.2 of HRF–1–1979, the product may be tested by relocating the temperature sensors from the locations specified in the Figures by no more than 2 inches to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 430.62(d). For those products equipped with a cabinet that does not conform with Figures 7.1 or 7.2 and cannot be tested in the manner described above, the manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product.

DOE expects that the processing of several such waivers and subsequent development and incorporation into the test procedures of new figures describing the test sensor location requirements for modified cabinet styles will help to improve energy testing consistency. DOE proposes to make these changes in Appendices A1 and B1, and to include these requirements in Appendices A and B. DOE seeks comment on the frequency of temperature sensor location revisions from the specifications of the figures of HRF–1–1979, and on whether the exception allowing for minor relocation of sensors is sufficient to limit to a reasonable level the potential number of waivers associated with the proposed requirement.

In order to ensure that manufacturers make DOE aware of small changes in temperature sensor locations to avoid interference with internal hardware, DOE further proposes to include a requirement that manufacturers report that such a change has been made as part of the certification reporting requirements. This additional proposal is discussed in more detail in section III.D.14.

4. Median Temperature Settings for Electronic Control Products

The procedure related to temperature control settings is detailed in section 3 of Appendix A1. The procedure specifies how to set thermostatic controls for the freezer and fresh food compartments of refrigerators and refrigerator-freezers to permit testing that yields results that are interpolated based on compartment temperatures to represent the energy use of these products when operated with the compartment temperatures set at the specified standardized temperatures. Interpolation in this context means calculating the energy use associated with a standardized compartment temperature using two tests. In one test, the compartment temperature is lower than the standardized temperature. In the other test, the compartment temperature is higher than the standardized temperature. This approach is used so that the test measurement can be based on the standardized temperature without requiring the numerous trial and error attempts it generally takes to exactly match this temperature during testing.

Most refrigeration products have user-operable temperature controls, for which the procedures of section 3.2 apply. While section 3.2 provides a number of alternative control setting options, the specific provisions of section 3.2.1 are most often applied because the provisions of sections 3.2.2 and 3.2.3 have special conditions that typically do not apply, such as the

inability to achieve the standardized temperature in the compartment. Section 3.2.1 currently specifies the adjustment of settings as follows:

> A first test shall be performed with all compartment temperature controls set at their median position midway between their warmest and coldest settings. Knob detents shall be mechanically defeated if necessary to attain a median setting. A second test shall be performed with all controls set at either their warmest or their coldest setting (not electrically or mechanically bypassed), whichever is appropriate, to attempt to achieve compartment temperatures measured during the two tests which bound (*i.e.,* one is above and one is below) the standardized temperature for the type of product being tested. (10 CFR part 430, subpart B, Appendix A1, section 3.2.1)

DOE is aware of some issues associated with this procedure. First, the section describes the defeating of mechanical detents of controls that do not allow controls to be set in the median position. Many current products have electronic controls, which generally have setpoints indicating specific control temperatures. For these controls, an average of the coldest and warmest temperature settings is generally used as the median. However, in some cases there is no temperature setting exactly equal to this average, and the controls cannot be mechanically defeated as described in the procedure. To address this situation, DOE proposes to modify the test procedure language to specify that products equipped with such electronic controls be tested using one of the following three options: (1) Use of a setting equal to the average of the coldest and warmest settings, (2) use of the setting that is closest to this average, or (3) if there are two settings whose difference with the average is the same, use of the higher of these two such settings. This modification is being proposed for Appendices A1 and B1, and they would be retained for Appendices A and B.

Additional issues and proposed amendments addressing them for Appendices A and B are discussed in section III.E.4.

5. Test Procedures for Convertible Compartments and Special Compartments

Manufacturers recently introduced refrigerator-freezers with compartments that consumers can convert from fresh food to freezer use and vice versa. Under the current DOE test procedure, which references section 7.4.2 of HRF–1–1979, "compartments which are convertible from refrigerator to freezer are operated in the highest energy usage position." (This section of HRF–1–1979 is referenced in Appendix A1, section 2.2.) DOE believes that the highest energy use position would most likely be the freezer mode since additional energy is required to maintain the colder temperatures required for freezer use when compared to fresh food compartment use. However, DOE recognizes that the requirement does not clarify whether such a compartment is to be controlled as a freezer compartment, or whether the controls are to be set in the absolute highest energy position.

To ascertain how manufacturers might be treating these compartments during testing, DOE examined data reported to the ENERGY STAR program, which are available at *http://www.energystar.gov/index.cfm?fuseaction=refrig.display_products_excel.* Based on DOE's analysis of these data, the entries suggest that some manufacturers may have rated their own products based on the operation of these convertible compartments as fresh food compartments. DOE came to this conclusion after noticing that the calculated adjusted volume matches the reported adjusted volumes when the convertible compartment is treated as a fresh food compartment. Accordingly, to ensure manufacturer clarity, DOE proposes including the following language in section 2 of Appendices A1 and A: "Compartments that are convertible (*e.g.,* from fresh food to freezer) shall be operated in [their] highest energy use position."

A related situation applies to special compartments that are not convertible from fresh food to freezer. The procedure for such compartments is also described in HRF–1–1979:

> Other temperature controllable compartments (such as crispers convertible to meat keepers and temperature adjustable meat keepers) are considered special compartments and are tested with controls set to provide the coldest temperature. (HRF–1–1979 section 7.4.2)

To simplify the requirements of this provision, DOE proposes to add similar language as discussed above into section 2 of Appendices A and A1: "Other temperature controllable compartments (such as crispers convertible to meat keepers), with the exception of butter conditioners, shall also be tested with controls set in the highest energy use position." DOE believes that this language would retain the purpose contained in the original provisions (*i.e.* to maximize energy usage during energy efficiency testing) while simplifying the language of the procedure.

DOE seeks comment on this proposed change to its procedure.

6. Establishing a Temperature-Averaging Procedure for Auxiliary Compartments

The current DOE test procedure defines a refrigerator-freezer as "a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food at temperatures above 32 °F and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8 °F." 10 CFR 430.2. Hence, a refrigerator-freezer includes at least one fresh food compartment and at least one freezer compartment. The definition does not specify the characteristics of any additional compartments.

Some refrigeration products have an additional freezer compartment or an additional fresh food compartment, or both, and some have enclosed compartments within the primary compartments that have separate temperature controls and may represent a substantial fraction of the primary compartment volume. DOE notes that, with respect to the latter group of products, it is not yet proposing a value of this fraction (*i.e.* such as 25% or 35%). However, this concept is necessary in order to distinguish such auxiliary compartments from the "special compartments" discussed in section III.D.5. For the purposes of this discussion, auxiliary compartments are additional compartments in a refrigerator or refrigerator-freezer that are large enough that treatment as special compartments is not appropriate (generally, 2 cubic feet or greater).[1]

As discussed earlier in Section III.D.5, products with additional convertible compartments are examples of refrigerator-freezers equipped with more than two compartments. In such cases, the convertible compartment could be considered an auxiliary compartment.

While the special compartments discussed in section III.D.5 would be tested with their controls set to the highest energy use position under the proposed test procedure modification, the compartments addressed in this section are relatively large (*i.e.* 2 cubic feet or larger) and represent instances in which employing the highest energy use position would be inappropriate. The requirements for setting such a compartment at the absolute highest energy use position are inappropriate

[1] Auxiliary compartments could be entirely separate from the main two compartments of a typical refrigerator-freezer (the freezer compartment and the fresh food compartment), or they could be substantial-volume, separately-controllable compartments located within main compartments. In the latter case, they are referred to as "sub-compartments" for the purposes of this discussion.

because (1) such a compartment would likely be used for general food storage rather than for a limited special purpose and (2) the energy use impact during testing when the controls are set for the absolute highest energy use position would be very significant and would not necessarily be consistent with consumer use.

Both HRF–1–1979 and HRF–1–2008 include definitions and special test procedures for special compartments. However, neither the current test procedure (*i.e.* setting them to their coldest temperature) nor the proposed one (*i.e.* setting them in the highest energy use position) would necessarily be consistent with the required representative average use cycles for compartments representing a substantial fraction of the product's total refrigerated volume. DOE is not aware of many products currently being sold in the U.S. market that have auxiliary compartments. This section discusses issues associated with testing refrigerator-freezers with all such auxiliary compartments.

DOE notes that a large drawer without separate temperature control that is located within a compartment would not be considered a sub-compartment for the purpose of this discussion. Such a drawer would be part of the compartment in which it is housed. In contrast, for the purposes of this discussion, a larger compartment with a separate door *without* separate temperature control would be considered an auxiliary compartment, since it is not part of any other compartment. Further, if one or more drawers or doors that open to the exterior serve a space inside a refrigeration product that is a single compartment, the status as a single compartment is not affected by the presence of the additional drawer(s) or door(s).

While there is no size limit for classification as a special compartment under the current DOE test procedure, and DOE is not currently proposing such a limit, DOE seeks comment on whether such a size limit should be imposed, and what the size limit should be.

As discussed in section III.D.5, the DOE test procedures require that a convertible auxiliary compartment must be tested in the "highest energy usage position." However, the current test procedures do not state whether the temperature for the compartment must be set at a level to ensure energy use is at its absolute maximum, or whether the temperature must be the standardized test temperature for the higher energy use compartment type (5 °F for a freezer compartment and 45 °F for a fresh food compartment for the current DOE test procedures). DOE proposes that a convertible auxiliary compartment with separate exterior doors be tested as a freezer compartment or fresh food compartment, depending on which of these represents the highest energy usage position. For these compartments, and for nonconvertible auxiliary compartments with separate exterior doors whose operating temperature range specifies their status as freezer or fresh food compartments, DOE proposes that these energy measurements be determined based on the compartment's standardized temperature.

In contrast, DOE proposes that sub-compartments (*i.e.,* auxiliary compartments located entirely within main compartments) be tested with their settings in the absolute highest energy use position. Although the discussion of this section is intended to address large sub-compartments, the common sub-compartments with separate temperature controls found in U.S. refrigerator-freezer products usually occupy a relatively small portion of the fresh food compartment. Examples include ice compartments, meat drawers, deli drawers, and butter conditioning compartments. Hence, DOE believes that the proposed procedures for special compartments described in section III.D.5 (*i.e.* that the consumer-adjustable setting be in its highest energy-use position) are appropriate for these compartments.

In contrast, auxiliary compartments that have their own external doors often have large volumes, which are comparable to the volumes of other compartments associated with the products. An example of such a product is the Samsung RM257ACRS, which has an 11.8 cubic foot fresh food compartment, a 7.0 cubic foot freezer compartment, and two convertible compartments of volumes 3.5 and 2.3 cubic feet.

Given that auxiliary compartments with external doors would be tested as either freezer or fresh food compartments, requirements must be established for (1) temperature settings during testing, (2) measurement of auxiliary compartment temperature, and (3) incorporation of the auxiliary compartment temperature in the calculation of energy consumption. To address these issues, DOE proposes the following changes:

(1) Temperature settings, generally—Consistent with current temperature setting requirements, the temperature settings for auxiliary compartments with external doors that have individual temperature control capability would be the same median, cold, or warm setting required for all compartments when performing testing as described in section III.D.4.

(2) Auxiliary compartment temperature measurements—Measurement of compartment temperature during testing is done using temperature sensors. The placement of temperature sensors (typically thermocouples) is specified in HRF–1–1979 in section 7.4.3.2 and Figure 7.1 for fresh food compartments and in section 7.4.3.3 and Figure 7.2 for freezer compartments. The DOE test procedures incorporate by reference these sections of HRF–1–1979. They provide further instructions on determination of compartment temperature, stating that the "measured temperature of a compartment is to be the average of all sensor temperature readings taken in that compartment at a particular time." (10 CFR part 430, subpart B, Appendix A1, section 5.1.1), and the "compartment temperature for each test period shall be an average of the measured temperatures taken in a compartment during a complete cycle or several complete cycles of the compressor motor (one compressor cycle is one complete motor 'on' and one complete motor 'off' period)." Id. at section 5.1.2. The same procedures for measuring the compartment temperature during testing would be used for auxiliary compartments with external doors.

(3) Incorporation of auxiliary compartment temperature measurements in the test procedure calculations—Calculation of freezer temperature for a product with more than one freezer compartment (including one or more auxiliary freezer compartments with external doors) would be a weighted average of the compartment temperatures measured within each freezer compartment. The weighting factors for this average would be the calculated compartment volumes. Likewise, calculation of fresh food temperature for a product with more than one fresh food compartment (including one or more auxiliary fresh food compartments with external doors) would be a volume-weighted average of the measured compartment temperatures. These freezer and fresh food temperatures would be used both in the determination of the appropriate temperature settings for subsequent testing, and in the energy use calculation. The calculation of daily energy consumption, described for refrigerators or refrigerator-freezers in section 6.2.2 of Appendix A1, uses the freezer or fresh food compartment temperature in the equation. This

approach would be adopted for auxiliary compartments using the volume-weighted average temperatures.

DOE proposes these amendments to address auxiliary compartments with external doors in Appendices A1 and A. DOE proposes similar amendments to address auxiliary compartments of freezers in Appendices B1 and B. DOE further proposes a definition for "separate auxiliary compartments" to refer to these auxiliary compartments with external doors that would be treated in the test procedures as described in this section. This definition would read as follows:

"Separate auxiliary compartment" means a freezer compartment or a fresh food compartment of a refrigerator or refrigerator-freezer having more than two compartments that is not the first freezer compartment or the first fresh food compartment. Access to a separate auxiliary compartment is through a separate exterior door or doors rather than through the door or doors of another compartment. Separate auxiliary compartments may be convertible (*e.g.,* from fresh food to freezer).

DOE seeks comment on this proposed approach.

7. Modified Definition for Anti-Sweat Heater

The DOE test procedure for refrigerators and refrigerator-freezers defines an "anti-sweat heater" as "a device incorporated into the design of a refrigerator or refrigerator-freezer to prevent the accumulation of moisture on exterior surfaces of the cabinet under conditions of high ambient humidity." 10 CFR part 430, subpart B, appendix A1, section 1.3. (This accumulated moisture is commonly referred to as "sweat", and the process of accumulation of such moisture is called "sweating".) Similarly, the DOE test procedure for freezers defines an "anti-sweat heater" as "a device incorporated into the design of a freezer to prevent the accumulation of moisture on exterior surfaces of the cabinet under conditions of high ambient humidity." 10 CFR part 430, subpart B, Appendix B1, section 1.2. Some refrigerator-freezers also use anti-sweat heaters to prevent moisture accumulation on internal surfaces of the cabinet. In particular, manufacturers of French door refrigerator-freezers with through the door (TTD) ice service have used anti-sweat heaters to prevent accumulation of moisture inside the fresh food compartment near the air duct that carries refrigerated air to the ice compartment.

In DOE's view, to obtain consistency and an accurate measurement of all energy consuming components, the anti-sweat heater regulations should apply to any anti-sweat heater regardless of the heater location. To ensure that this result occurs, DOE proposes to modify the definitions of anti-sweat heater for both the refrigerator and refrigerator-freezer test procedures and for the freezer test procedures to apply to both interior and exterior surfaces. DOE proposes to make these changes in Appendices A1 and B1, and to include these modified definitions in Appendices A and B.

This proposed modification does not change the test procedure. Rather, it clarifies that interior heaters used to prevent sweating are to be treated as anti-sweat heaters for purposes of calculating energy usage under the procedure.

DOE seeks comment on this proposed clarification.

Additionally, in DOE's view, the current and proposed definitions of an anti-sweat heater encompass devices that prevent moisture accumulation. However, DOE is considering modifying the anti-sweat heater definition to indicate that a heater that prevents the accumulation of moisture, irrespective of whether that heater is designated as an anti-sweat heater, should be defined as an anti-sweat heater. DOE is interested in whether additional specificity is required to bring further clarity to this concept, and seeks public comment.

8. Testing With the Anti-Sweat Heater Switch Turned Off

The energy conservation standards for refrigeration products are based on annual energy use calculated for these products. The annual energy use is calculated based on a "standard cycle," which is defined as "the cycle type in which the anti-sweat heater control, when provided, is set in the highest energy consuming position." This term is applied throughout the regulatory provisions governing refrigeration products. *See, e.g,* 10 CFR 430.23(a)(5) and (b)(5) (applying the term "standard cycle"), 10 CFR part 430, subpart B, Appendix A1, section 1.7 (defining "standard cycle" for refrigerators and refrigerator-freezers), and 10 CFR part 430, subpart B, Appendix B1, section 1.5 (defining "standard cycle" for freezers).

In contrast, the annual operating cost, which serves as the basis for the figures reported on the Federal Trade Commission's EnergyGuide label, can be calculated based on the average of energy consumption test results using the standard cycle and a cycle with the anti-sweat heater switch positioned as it is when shipped from the factory. See 10 CFR 430.23(a)(2) and (b)(2). DOE understands that most manufacturers test refrigeration products equipped with anti-sweat heater switches in this fashion, and use the same results for reporting both energy use and annual operating cost.

DOE added the energy use calculation requirements to the test procedure on February 7, 1989. 54 FR 6062. At the time of the final rule's publication, the annual operating cost calculation had already been established in the test procedure. The final rule, however, did not discuss the different treatment between the calculation for energy use and the calculation of annual operating cost.

It is unclear to DOE whether a need exists for the distinction between the annual operating cost and the energy use calculations. Accordingly, DOE is proposing to modify the calculation for annual energy use to ensure consistency with the annual operating cost calculation. These changes would be implemented by making changes to 10 CFR 430.23(a) and 10 CFR 430.23(b).

This test procedure modification would not affect the way manufacturers test products to establish their ratings or alter the measured energy use of these products.

9. Incorporation of Test Procedures for Products With Variable Anti-Sweat Heating Control Waivers

On February 27, 2008, DOE published a decision and order granting GE with a waiver from the DOE test procedure ("GE waiver") to allow the company to use a modified test procedure for a line of appliances that use ambient condition sensors to adjust the wattage of anti-sweat heaters. 73 FR 10425. These sensors use the detected humidity levels to adjust anti-sweat heater operation to prevent condensation. DOE granted a similar waiver to Whirlpool Corporation on May 5, 2009. 74 FR 20695. DOE published a petition for a third such waiver from Electrolux Home Products, Inc. (Electrolux) and granted the application for an interim waiver on June 4, 2009. 74 FR 26853. This waiver was granted on December 15, 2009. 74 FR 66338. Electrolux also submitted a petition to extend the initial waiver to additional products—DOE published this petition and granted the associated application for an interim waiver on December 15, 2009. 74 FR 66344. Samsung also petitioned DOE for a waiver for this type of control for anti-sweat heaters. The Samsung petition was published and the associated application for interim waiver granted on December 15, 2009. 74 FR 66340.

Because ambient humidity of the test chamber is not specified in the DOE test procedures, the current test procedure is unable to accurately determine the annual energy use contribution of anti-sweat heaters. The test procedure allowed under the GE waiver involves (1) conducting energy testing with the anti-sweat heater switch in the "off" position, and (2) adding a correction factor to account for the additional energy use associated with the anti-sweat heater for a standard cycle (*i.e.,* a cycle with the anti-sweat heater switch in the "on" position). 73 FR 10427. While the test procedure allowed under the GE waiver assumes that the anti-sweat heater operates on a switch that can turn off the heater, this feature would not necessarily be present on all products equipped with variable anti-sweat heater control systems.

The test procedure allowed under the GE waiver specifies calculation of the correction factor as follows:

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where: Anti-sweat Heater Power
= A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)
+ A9 * (Heater Watts at 85%RH)
+ A10 * (Heater Watts at 95%RH)

Where A1–A10 are from the following table:
A1 = 0.034
A2 = 0.211
A3 = 0.204
A4 = 0.166
A5 = 0.126
A6 = 0.119
A7 = 0.069
A8 = 0.047
A9 = 0.008
A10 = 0.015

73 FR 10427

The System-Loss Factor noted in the above calculation accounts for additional energy use (a) of the refrigeration system to overcome the increased cabinet load imposed by the anti-sweat heater, and (b) of the controls associated with the anti-sweat heater. 73 FR 10427. The GE waiver specifies a System-Loss Factor of 1.3, based on experience-related data developed by GE. Factors A1 through A10 represent the national average frequency of occurrence for various ambient relative humidity ranges that a refrigerator is likely to experience in a typical consumer household. GE determined these factors based on 30 years of weather data for 50 major population centers within the United States. 73 FR 10427. The GE waiver defines the Heater Watts parameter of Equation 1 as "the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F." 73 FR 10427.

However, the alternate test procedure permitted under the GE waiver does not state how the Heater Watts parameter is determined during an energy test conducted under the waiver. It also does not disclose the associated number of heater-watts for each product equipped with variable anti-sweat control features. Hence, it would be impossible to independently verify published energy consumption measured under the GE, Whirlpool, Electrolux, or Samsung waivers. To address these deficiencies, DOE is proposing to incorporate a modified version of the GE waiver procedure into Appendices A and A1.

Proposed Amendment

DOE proposes amending its test procedures to require measurements of variable anti-sweat heater energy contribution under various specific ambient air conditions to permit laboratory verification of the resulting energy consumption estimates. DOE also proposes using the relative humidity factors A1 through A10 established in the GE waiver. The proposed changes would be implemented by modifications in various sections of Appendix A1, which would also be implemented in Appendix A. These humidity factors represent the national average frequency of the relative humidity levels for refrigeration product ambient conditions. While field test data corroborating the methodology for determining typical consumer household humidity levels were not provided as part of the waiver petition, DOE is unaware of more accurate or comprehensive information to better represent field conditions.

Although the GE waiver includes a calculation involving ten relative humidities, testing to determine performance of variable anti-sweat heater control systems would not require ten separate measurements. The proposed approach is based on the fact that the rate of heat energy input supplied by the electric anti-sweat heaters required to prevent condensation at a fixed ambient temperature and compartment temperature should vary linearly with dew point temperature (*i.e.,* the temperature of a given mixture of dry air and water vapor at 100% relative humidity). This means that the wattage increment associated with the heater control system needs to be determined for only two humidity conditions. DOE defines this type of anti-sweat heater control as "ideal".

Based on DOE's analysis, at a fixed ambient air dry-bulb temperature such as the 72 °F ambient specified in the GE waiver, ideal anti-sweat heater power varies linearly as a function of dew point temperature, increasing from zero power at some dew point temperature lower than the ambient dry bulb temperature (*i.e.,* at low relative humidity) to a maximum requirement at a dew point temperature equal to the ambient dry bulb temperature (*i.e.,* at 100% relative humidity). DOE conducted this analysis for a surface that (1) loses heat to the refrigerator interior at a rate proportional to the difference in temperature between the surface and the interior, (2) gains heat from the ambient air at a rate proportional to the difference in temperature between the ambient air and the surface, and (3) gains a controlled amount of heat from the anti-sweat heater to maintain the surface at a fixed small temperature difference (such as 1 °F) above the dew-point temperature of the ambient air.

One can establish correlations for the ideal heater wattage once the heat-flow characteristics from the heated surfaces to the refrigerator interior and the ambient air are understood. The linear nature of these correlations with respect to ambient dew point suggests that tests conducted at a limited number of ambient humidity conditions could provide sufficient information about the operating characteristics of a variable anti-sweat heating system. Based on DOE's analysis, for operation in a normal ambient near 72 °F, the freezer compartment of a typical refrigerator-freezer should require no anti-sweat heating at relative humidities below roughly 50 percent and the fresh food compartment of a typical refrigerator-freezer should require no anti-sweat heating at relative humidities below roughly 65 percent. However, the actual relative humidity at which no anti-sweat heat is needed would vary among products and even at different surfaces of the same product, depending on design details.

DOE proposes to amend the DOE test procedures to determine the incremental energy contribution of the variable anti-sweat heater in the manner described below.

a. DOE proposes specifying that tests be conducted in a chamber with both temperature and humidity control to

verify the behavior of the variable anti-sweat heater control. Three tests would be conducted, as described below.

i. *Ambient Conditions:* The tests would be conducted in a chamber controlled to 72 ± 1 °F dry bulb temperature, at three different relative humidities, 95 ± 2 percent, 65 ± 2 percent, and 25 ± 10 percent. DOE proposes wide tolerances in the relative humidity for the 25 percent relative humidity test because it is expected that the anti-sweat heater would be turned off throughout this range of conditions, thus obviating the need for tight control. The 25 percent relative humidity test would determine energy use of the refrigerator-freezer with the anti-sweat heaters turned off in the 72 °F dry bulb condition specified for these tests. The difference in energy use measured during this test and energy use measured during the tests conducted at 65 percent and 95 percent relative humidities would be the energy use contribution of the anti-sweat heaters at the higher humidities.

ii. *Cabinet Temperatures:* Appendix A1, as amended, would specify cabinet temperatures of 5 ± 2 °F in the freezer compartment and 38 ± 2 °F in the fresh food compartment for the variable anti-sweat heater tests. Appendix A would specify cabinet temperatures of 0 °F ± 2 °F in the freezer compartment and 39 °F ± 2 °F in the fresh food compartment, consistent with the new compartment temperatures prescribed in HRF–1–2008. These modified cabinet temperatures would be more consistent with the modified standardized cabinet temperatures used for all of the testing conducted under Appendix A.

iii. *Test Period:* Each test would be similar to an energy test for a refrigerator without automatic defrost (as described in section 4.1.1 of 10 CFR part 430 subpart B Appendix A1), including compressor cycling but no defrost cycles.

iv. *Stabilization:* The test would require waiting to achieve steady state conditions as the test starts. However, for each test that is conducted immediately following another test in which the ambient dry bulb temperature is maintained between tests, the standard stabilization period may be waived, and the test can proceed two hours after the required ambient humidity conditions have been established.

b. The energy use in kilowatt-hours per day for the 25-percent relative humidity test would be subtracted from the energy use per day for the 95-percent and 65-percent relative humidity tests to determine energy use contributions of the anti-sweat heaters at 95-percent and 65-percent relative humidities.

c. DOE proposes calculating the anti-sweat heater energy contributions for the same ten relative humidities specified in the GE waiver based on the measured energy use contributions of the variable anti-sweat heaters at 95-percent and 65-percent relative humidity, assuming that the anti-sweat heater energy contribution varies linearly with dew point, but with a minimum energy contribution of zero kilowatt-hours (*i.e.,* the anti-sweat heater cannot have negative energy use, which would represent electric energy generation). The correction factor would be calculated using the ten RH factors (A1 through A10), but without using the system adjustment factor (1.3 in the GE waiver) and without converting from watts to kilowatt-hours.

d. The correction factor would be added to the energy use measured for a normal energy test as conducted in 90 °F ambient temperature.

e. For a product with an anti-sweat heater switch, DOE proposes to require that all tests be conducted with the switch in the on position, in order to ensure proper measurement of the energy use associated with the ambient sensing functions of the variable anti-sweat heating control, and to reduce the possibility of circumvention associated with the switch—*i.e.* using this switch to control heaters or components other than the anti-sweat heater. In order to ensure that the anti-sweat heater itself is not energized during the normal energy test conducted in 90 °F ambient conditions, this energy test would be conducted in a chamber with sufficiently low humidity to prevent activation of the heater. DOE proposes adding the following language to Appendix A1, section 2.1: "If the product being tested has variable anti-sweat heater control, the ambient relative humidity shall be no more than 35%."

f. DOE proposes eliminating the averaging of tests with the anti-sweat heater switch on and off for products with variable anti-sweat heater control. The GE waiver specifies that the correction factor for the energy use associated with the variable anti-sweat heaters would be applied to the standard cycle. 73 FR 10427. Under the current test procedure, the standard cycle is a cycle with the anti-sweat heater switch turned on. (10 CFR part 430, subpart B, appendix A1, section 1.7). The calculation of annual operating cost for a product with an anti-sweat heater switch is based on an average of a test with (1) the switch set in its position just prior to shipping from the factory (typically off) and (2) a test of the standard cycle. 10 CFR 430.23(a)(2).

However, this approach of averaging of the standard cycle and the cycle for a test with the anti-sweat heater switch turned off is inappropriate for products with variable anti-sweat heater control because the position of the switch would impact the operation of the anti-sweat heaters only during times when ambient conditions are sufficiently humid to trigger the operation of the anti-sweat heater. For this reason, it is unlikely that the switch would be moved to the off position during times when it could save energy. Hence, it is unlikely that the anti-sweat heater switch could generate any significant energy savings in addition to the savings provided by the variable control. Accordingly, DOE proposes to eliminate the averaging of tests with the anti-sweat heater switch turned on and with the switch turned off for products equipped with variable anti-sweat heating.

The above proposed modifications to the test procedure to address variable anti-sweat heater control would be made in both Appendices A1 and A. DOE is proposing at this time to implement the variable anti-sweat heater test only for refrigerators and refrigerator-freezers because of the limited use of electric anti-sweat heaters in freezers. DOE seeks comments as to whether a similar requirement in Appendices B1 and B should also apply to freezers.

DOE seeks comments regarding the proposed test procedures for measurement of energy use of products with variable anti-sweat heater control.

10. Modification of Long-Time and Variable Defrost Test Method To Capture Precooling Energy

DOE is proposing to modify the test method for products with long-time or variable defrost to capture precooling energy. Precooling involves cooling the compartment(s) of a refrigerator-freezer to temperatures significantly lower than the user-selected temperature settings prior to an automatic defrost cycle. Before DOE established test procedures for long-time defrost (defrost control in which compressor run time between defrosts exceeds 14 hours) and variable defrost (defrost control in which the time interval between defrosts is adjusted based on the need, *i.e.* on the amount of moisture collecting on the evaporator as frost), the DOE test procedures had captured energy use associated with defrost by specifying that duration of an energy test be "from one point during a defrost period to the same point during the next defrost

period." 10 CFR part 430, subpart B, Appendix A1, section 4.1.2. In 1982, DOE amended the test procedures to include the alternative procedure for long-time defrost (section 4.1.2.1 of Appendix A1) to accommodate long periods of time between defrosts (*i.e.* significantly greater than 24 hours of test time) without making the energy test period unduly burdensome. 47 FR 34517 (August 10, 1982).

The current long-time defrost test consists of two parts. The first part measures the steady cycling energy use of the refrigerator-freezer with no contribution from the defrost cycle. The second part measures all of the energy use contribution associated with the defrost cycle. The equation for total energy use for a 24-hour period combines these two energy use contributions and weights the measurement of the second part of the test based on the reciprocal of compressor run time between defrosts. 10 CFR part 430, subpart B, Appendix A1, section 5.2.1.2.

The variable defrost test, introduced in 1989, accommodates even longer times between defrosts compared to the time periods in the long-time defrost test. (*See* 54 FR 36238 discussing calculated values of CT (hours of compressor run time between defrosts to be used in the equation for energy consumption) with values ranging from 28.96 to 45 hours, as compared to approximately 14 hours for long-time defrost). The current DOE test procedures provide an optional step (Part 3) to measure the mean time between defrosts based on "typical" ambient and door-opening conditions. This optional step would be used in cases where a manufacturer chooses to measure the mean time between defrosts rather than using the default value prescribed by the test procedure. 10 CFR part 430, subpart B, Appendix A1.

When DOE first introduced the test method for long-time defrost in 1982, few refrigerator-freezers, if any, employed electronic controls. Instead, refrigerator-freezers controlled defrost using mechanical defrost controllers. Because of their simpler nature, mechanical defrost controllers are incapable of performing any of the more complex control functions handled by models equipped with electronic controls.

On August 3, 2001, DOE granted an interim test procedure waiver to Electrolux Home Products (Electrolux) for products that use a sophisticated control algorithm. 66 FR 40689. The associated test procedure modification was incorporated into the DOE test procedure on March 7, 2003. 68 FR 10957. The modified procedure allows a delay between the end of the last compressor on-cycle and the start of the defrost cycle. This delay saves energy by allowing the evaporator to warm naturally after the compressor turns off. 66 FR 40690. The modified test method only applies to products using long-time or variable defrost. If such a control strategy were applied to a product not equipped with long-time or variable defrost, the product would be tested in accordance with Appendix A1, section 4.1.2, which specifies a test period "from one point during a defrost period to the same point during the next defrost period." Such a test would measure the reduction in energy use from the natural warming of the evaporator, making this modified procedure unnecessary.

Precooling before defrost also requires a more sophisticated control system than a defrost timer. A precooling control system initiates an extra long compressor run (*i.e.* a compressor on-cycle that continues for at least 10% of the length of a typical compressor on-cycle after the compartment temperature has dropped down to the temperature at which the compressor typically turns off during steady state cycling operation between defrosts) before the defrost cycle to reduce the temperature of the cabinet or one of its compartments significantly more than would occur during a normal compressor cycle. Precooling before defrost may prevent unacceptable increases in freezer compartment temperature during the defrost cycle. Precooling will also reduce the recovery time after a defrost cycle, which could reduce the measured energy use of the recovery portion of the defrost cycle. However, the long time automatic defrost test procedure does not consider the energy use of compressor operation to provide precooling, since the second part of the test starts after compressor operation has stopped but prior to the initiation of a defrost cycle. The measured energy use of a refrigerator-freezer or freezer using precooling before the defrost cycle may underrepresent the product's actual energy consumption.

DOE intends for its test procedures to capture all of the energy use associated with defrost and to provide results that accurately represent the energy use of the product by consumers. In light of this intent and the recognized limitations present in the current procedure, DOE proposes modifying the test method for long-time defrost in a manner consistent with what Fisher Paykel suggested in its comment to the Electrolux petition for waiver mentioned above. 68 FR 10958. Fisher Paykel proposed amending the third sentence of section 4.1.2.1 of the test procedure to read as follows: "The second part would start at the last compressor off [-cycle] that is part of steady-state operation (or at a point still within stable operation if there are no temperature swings) before a defrost is initiated * * *." 68 FR 10958. Currently, section 4.1.2.1 calls for the second part of the test to start either when the defrost heater is energized or at the end of the last compressor on-cycle prior to defrost. If this last compressor on-cycle is an extended run for precooling, its energy use impact will be captured neither in the first part nor the second part of the test. Amending the test procedure as described would enable the test to capture such an increase in compressor run time needed to accomplish precooling before the defrost cycle occurs.

The language suggested by Fisher-Paykel addressing the "no temperature swings" scenario apparently referred to systems with variable-speed compressors that modulate capacity over a wide range such that the compressor operates at a low speed but does not turn off during steady-state operation between defrosts. DOE is aware that such products have been commercialized. However, DOE believes that the instructions suggested by Fisher Paykel for this type of operation are not sufficiently clear to ensure consistent application of the test procedure because such stable operation has not been defined. DOE proposes to clarify that the second part of the test would start when the compartment temperatures are within their measured ranges during steady state operation or within 0.5 °F of their average temperature during steady state operation if this range is 1 °F or less when testing products that do not experience compressor off cycles during steady-state operation between defrosts. Language addressing the end of the second part of the test for products for which there is no compressor off-cycle between defrosts is not needed, because this possibility is already addressed by the maximum time for the test of 4 hours after the defrost heater is first energized.

Accordingly, DOE proposes modifying the description of the long time automatic defrost test procedure found in section 4.1.2.1 as follows for Appendices A1, A, B1, and B:

4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is the same as the test for a unit

having no defrost provisions (section 4.1.1). The second part starts when the compressor turns off at the end of a period of steady-state cycling operation just before initiation of the defrost control sequence. If the compressor does not cycle during steady-state operation between defrosts, the second part starts at a time when the compartment temperatures are within their ranges measured during steady state operation, or within 0.5 °F of the average during steady state operation for a compartment with a temperature range during steady state operation no greater than 1 °F. This control sequence may include additional compressor operation prior to energizing the defrost heater. The second part terminates when the compressor turns on the second time after the defrost control sequence or 4 hours after the defrost heater is energized, whichever occurs first. See Figure 1.

In conjunction with these changes, DOE proposes modifying the current illustration in Appendix A1, which shows how to measure long-time defrost and would be modified to reflect the proposed language discussed above. DOE also proposes adding a second illustration showing the appropriate measurement technique when there is precooling. These amendments are proposed for both Appendices A1 and A.

DOE anticipates that these proposed modifications could affect the energy use measurement for those products that employ precooling. However, these products represent a minority of the products available on the market. Adjustment of energy use standards to address the small increase in the measurement for these products would be a relaxation of energy use standards for all other products. If an adjustment were made to accommodate the minority of products with precooling, the energy use of a given product class would be increased. This would represent an increase in allowable energy use for the majority of products of the class for which the new test would make no change in measured energy use.

DOE is aware that sophisticated control systems could be used to reduce the energy use measured in the second part of the test through the use of partial temperature recovery after the defrost, followed later by a full recovery. This control scheme cuts short the first on-cycle of the compressor after the defrost heater has been energized, before cabinet temperatures recover fully. The second part of the test then stops when the compressor starts operating a second time. The second compressor on-cycle is allowed to run long enough for full cabinet temperature recovery, but this additional energy use is not captured in the test. A number of options could be considered to address this issue including, but not limited to, the following: (1) Requiring the recovery to continue until the average freezer temperature is within a specified temperature difference of the average lowest temperature attained during steady-state cycling operation, (2) requiring that the test continue for a specified extended time period after completion of defrost, and (3) requiring that the average temperature of the compartment during the second part of the test be incorporated into the freezer temperature calculation. DOE requests comments on whether consideration should be given to further modification of the test to avoid partial recovery and, if so, what type of changes would be appropriate.

11. Establishing Test Procedures for Multiple Defrost Cycle Types

DOE is aware of products that use more than one control sequence for defrost cycles. Examples include products with refrigeration systems equipped with a single compressor and two evaporators, in which the evaporators have different defrost frequencies. Each defrost cycle type may have a different control sequence. For example, one defrost cycle type may involve defrosting the freezer evaporator while another may involve defrosting the fresh food evaporator. Alternatively, one defrost cycle type may involve defrosting both evaporators, while another may involve defrosting the fresh food evaporator, which may require more frequent defrost cycles. The current test procedures do not address products that employ these types of defrost cycles. DOE proposes to remedy this omission by defining the term "defrost cycle type" as follows.

"Defrost cycle type" means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the sequence of control for defrost such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type.

In cases where these systems use automatic defrost control with less than fourteen hours of compressor run time between defrosts for all defrost cycle types, and in which compressor run hours for distinct defrost cycle types are multiples of each other (*e.g.,* the freezer defrost occurs every 12 hours of compressor run time and the fresh food defrost occurs every 6 hours of compressor run time), the automatic defrost test procedure of 10 CFR 430, subpart B, Appendix A1, section 4.1.2 applies. This procedure includes a single test period, which lasts "from one point during a defrost period to the same point during the next defrost period." (10 CFR part 430, subpart B, appendix A1 section 4.1.2). As currently written, the defrost period can be interpreted as being associated with the defrost cycle type with the longest compressor run time between defrosts, which would enable the test procedure to measure all energy use, including the defrost energy use of the product. DOE proposes to amend the language in the current procedure to ensure that the defrost period used during testing is the period associated with the defrost cycle type with the longest time between defrosts.

In particular, DOE proposes to establish a procedure that addresses the energy contribution of each of the defrost cycle types. Appendix A1 currently provides a procedure for long time defrost that allows separate measurement of the energy use associated with the defrost cycle in a second part of the test. 10 CFR part 430, subpart B, Appendix A1, section 4.1.2.1. DOE proposes that this second part of the test be applied separately to each of the defrost cycle types and that the energy use contribution associated with each of these defrost cycle types be included in the energy use calculation. The calculation would be adjusted as appropriate according to the applicable frequency of the cycle types.

DOE proposes to incorporate these changes into Appendix A1 and the new Appendix A. The changes are not considered to be applicable to freezers, making similar changes to Appendices B and B1 unnecessary.

DOE seeks comments on this approach and its related assumptions and analyses.

12. Elimination of Part 3 of the Variable Defrost Test

As described in section III.D.10, language addressing variable defrost was introduced in the test procedures in August 1989. 54 FR 36238. This test procedure amendment established a three-part test for products equipped with variable defrost. Part 1 measures the steady-state energy use between defrosts. Part 2 measures the energy use associated with each defrost cycle. Part 3, which is optional, provides a measurement of the time interval between defrosts. 10 CFR part 430, subpart B, appendix A1, sections 4.1.2.1 and 4.1.2.2 (describing Parts 1 and 2 of the variable defrost test).

Part 3 reads as follows:

4.1.2.3 Variable defrost control optional test. After steady-state conditions with no door openings are achieved in accordance with section 3.3 above, the test is continued

using the above daily door-opening sequence until stabilized operation is achieved. Stabilization is defined as a minimum of three consecutive defrost cycles with times between defrosts that will allow the calculation of a Mean Time Between Defrosts (MTBD1) that satisfies the statistical relationship of 90 percent confidence. The test is repeated on at least one more unit of the model and until the Mean Time Between Defrosts for the multiple unit tests (MTBD2) satisfies the statistical relationship. If the time between defrosts is greater than 96 hours (compressor "on" time) and this defrost period can be repeated on a second unit, the test may be terminated at 96 hours (CT) and the absolute time value used for MTBD for each unit.

10 CRF part 430, subpart B, appendix A1, section 4.1.2.3.

The time required to conduct this part of the test ranges from 1 to 2 weeks, which can double since a second unit must also be tested.[2] DOE had previously estimated that the energy use captured during this part of the test to comprise between 1.5 to 7 percent of a tested unit's total energy consumption. *See* 47 FR 34522 and 54 FR 36238. DOE's testing of refrigeration products to support the energy conservation standard rulemaking involved testing one product using the third part of the test, as described above. Using the optional Part 3, the test yielded a CT value of 20.9 hours, while using the default CT calculation (using the default value 0.2 for F, as specified in Appendix A1 section 5.2.1.3) resulted in a value of 24.0 hours. The energy use calculated using the CT determined by the test differs from the energy use determined using the default value of CT by less than 0.4%.[3] In this case, use of the default results in a lower energy use, but achieving a reduction of 0.4% in the measured energy use would generally not be sufficient to justify running the Part 3 test. Because of the high test burden and the small amount of energy use involved, a manufacturer may decide not to use this optional step. DOE is unaware of any manufacturer that has used the test to rate a refrigeration product.

Manufacturers that choose not to conduct the optional third part of the test instead use a prescribed equation to determine the appropriate time interval between defrosts for use when calculating energy consumption. The equation is described as follows:

$$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$$

CT_L = least or shortest time between defrosts in tenths of an hour (greater than or equal to six but less than or equal to 12 hours)

CT_M = maximum time between defrost cycles in tenths of an hour (greater than CT_L but not more than 96 hours)

10 CFR part 430, subpart B, appendix A1, section 5.2.1.3

In the equation for CT, the value F is the ratio of per day energy consumption in excess of the least energy and the maximum difference in per day energy consumption, and is set equal to 0.2 if the optional part of the test is not conducted to determine CT directly. (Appendix A1, section 5.2.1.3). For example, if using the maximum time between defrosts and the minimum time between defrosts in the equation for defrost contribution to energy use gives results of 0.1 and 0.2 kilowatt-hours per day, a value of CT would be selected so that the defrost energy use contribution is set equal to $0.1 + 0.2 \times (0.2 - 0.1)$, equal to 0.12 kilowatt-hours per day.

Since the alternative energy calculation method can be used, the optional step is not necessary. As mentioned above, DOE is unaware of any manufacturers that use this optional part, which indicates that the industry generally considers the equation for CT described above to be an adequate representation of the performance of variable defrost systems. For this reason, and to simplify the test procedure, DOE proposes to eliminate this optional test. This amendment would be made in both Appendices A1 and B1.

13. Corrections and Other Test Procedure Language Changes

This section discusses two other proposed amendments to the current test procedure.

A: Simplification of Energy Use Equation for Products With Variable Defrost Control

Section 5.2.1.3 of Appendix A1 provides the equation for ET, energy use in kilowatt-hours per day, for refrigerators and refrigerator-freezers with variable defrost:

$$ET = (1440 \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times (12/CT)$$

where 1440 is defined in 5.2.1.1 and EP1, EP2, T1, T2 and 12 are defined in 5.2.1.2.

$$CT = (CTL \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$$

CT_L = least or shortest time between defrosts in tenths of an hour (greater than or equal to six but less than or equal to 12 hours)

CT_M = maximum time between defrost cycles in tenths of an hour (greater than CTL but not more than 96 hours)

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per day energy consumption and is equal to

$F = (1/CT - 1/CT_M)/(1/CT_L - 1/CT_M) = (ET - ET_L)/(ET_M - ET_L)$ or 0.20 in lieu of testing to find CT.

ET_L = least electrical energy used (kilowatt hours)

ET_M = maximum electrical energy used (kilowatt hours)

For variable defrost models with no values for CT_L and CT_M in the algorithm the default values of 12 and 84 shall be used, respectively.

10 CFR part 430, subpart B, Appendix A1, section 5.2.1.3.

Should DOE adopt the changes to the variable defrost control test as discussed in Section III.D.12 above,—*i.e.,* eliminating it—much of the language describing the factor F (*i.e.,* the ratio of daily energy consumption in excess of the difference between the maximum and minimum ("least") daily energy consumption) explained above in section III.D.12) would no longer be necessary and would be dropped. For cases in which the optional Part 3 is not conducted, CT is calculated based on the default value of F, and either the manufacturer-specified or the default values of CT_M and CT_L. If, on the other hand, DOE retains the optional step, the agency believes that the clarifying equations for F, ET_L (least electrical energy used (kilowatt hours)), and ET_M (maximum electrical energy used (kilowatt hours)) are not needed, as described below. For cases in which the optional step is conducted to measure the value of CT (*i.e.,* hours of compressor run time between defrosts to be used in the equation for energy consumption), this value is used directly in the equation for ET. The value of F does not need to be calculated for any of these situations.

Regarding specific issues that DOE is proposing to amend, DOE notes that the values of CT, CT_M, and CT_L should be in units of hours to the nearest tenth of an hour rather than in units of tenths of an hour. Section 5.2.1.2 indicates clearly that CT is in units of hours: "CT = Defrost timer run time in hours required to cause it to go through a complete cycle, to the nearest tenth hour per cycle" (Appendix A1 section 5.2.1.2). DOE proposes to modify Appendix A1 to remove the clarifying equations for F, ET_M, and ET_L, to eliminate reference to the optional third part of the test, and to correct the units in the definitions for CT_M (maximum time between defrosts in hours of compressor run time) and CT_L (lowest

[2] As an example, DOE contracted with a test facility to conduct such a test in October 2008. This test was started on October 10 at 4 p.m. and continued until October 21 at 8 p.m., a total duration of more than 11 days.

[3] The energy use contribution of defrost is inversely proportional to the value of CT, which represents hours of compressor run time between defrosts.

time between defrosts in hours of compressor run time). If the optional part of the test is retained, DOE would propose all of these changes except elimination of the reference to the optional step. DOE is also proposing that parallel changes be made in Appendices B1, A, and B. (In Appendix B1, the change would be made in the current section 5.2.1.3.)

B: Energy Testing and Energy Use Equation for Products With Dual Automatic Defrost

Section 4.1.2.4 of Appendix A1 describes the manner in which to test products equipped with a dual automatic defrost cycle. The section provides:

4.1.2.4 Dual compressor systems with automatic defrost. If the model being tested has separate compressor systems for the refrigerator and freezer sections, each with its own automatic defrost system, then the two part method in 4.1.2.1 shall be used. The second part of the method will be conducted separately for each automatic defrost system. The auxiliary components (fan motors, anti-sweat heaters, etc.) will be identified for each system and the energy consumption measured during each test.

10 CFR part 430, subpart B, Appendix A1, section 4.1.2.4.

The energy use of each compressor system must be measured separately in order to properly measure the energy use associated with each defrost system. Section 4.1.2.4 does not describe all of the key components—*e.g.,* the compressor and the defrost heater are not mentioned—that must have their energy use separately measured. DOE proposes to modify the text to explicitly include the compressor and defrost heater in the list of components associated with each system that must have their energy use separately measured to clarify the required procedure.

Additionally, DOE is proposing to modify the current energy use equation for products equipped with dual automatic defrost cycles. Currently, the energy use equation for products with dual automatic defrost in section 5.2.1.5 of Appendix A1 reads as follows:

$$ET = (1440 \times EP1/T1) + (EP2_F - (EP_F \times T2/T1)) \times 12/CT_F + (EP2_R - (EP_R \times T3/T1)) \times 12/CT_R$$

Where 1440, EP1, T1, EP2, 12, and CT are defined in 5.2.1.2

EP_F = energy expended in kilowatt-hours during the second part of the test for the freezer system by the freezer system.

$EP2_F$ = total energy expended during the second part of the test for the freezer system.

EP_R = energy expended in kilowatt-hours during the second part of the test for the refrigerator system by the refrigerator system.

$EP2_R$ = total energy expended during the second part of the test for the refrigerator system.

T2 and T3 = length of time in minutes of the second test part for the freezer and refrigerator systems respectively.

CT_F = compressor "on" time between freezer defrosts (tenths of an hour).

CT_R = compressor "on" time between refrigerator defrosts (tenths of an hour).

10 CFR part 430, subpart B, Appendix A1, section 5.2.1.5.

DOE proposes correcting several errors in the above definitions. The value EP_F, defined as the energy use of the freezer system during the second part of the test for the freezer system, should instead be defined as the energy use of the freezer system during the *first* part of the test. Similarly, EP_R should be the energy use of the refrigerator system during the first part of the test rather than the second part of the test.

Also, the value $EP2_F$ should be the energy use of the freezer system for the second part of the test for the freezer system, rather than the total energy use for the second part of the test for the freezer system. The total energy would include the fresh food system energy. Calculating defrost contributions for each system requires that the measurements be conducted only for that particular system. Subtracting the total energy use for steady state operation (adjusted for the time period of the defrost part of the test) from the total energy use for the freezer defrost, the fresh food part of these measurements will not necessarily cancel out, because they will not necessarily include a whole number of compressor cycles. The situation created by the current equation's definitions can result in the measurement being erroneously adjusted based on the random nature of when the fresh food compressor cycles on and off, rather than calculated based just on the operation of the freezer system.

Similarly, $EP2_R$ should be the energy use of the refrigerator system during the second part of the test for the refrigerator system. The values CT_F and CT_R should also be denoted in hours to the nearest tenths of an hour.

DOE proposes to amend the test procedure of Appendix A1 to correct these errors. The corrected text would also appear in Appendix A.

14. Including in Certification Reports Basic Information Clarifying Energy Measurements

This section discusses a proposal to include information in certification reports that would clarify how products with advanced controls features (*e.g.,* variable defrost control or variable anti-sweat heater control) or with modifications from standard temperature sensor locations are tested. Section III.D.10 discusses test procedures for products with long-time or variable defrost, section III.D.9 discusses test procedures for products with variable anti-sweat heater control, and section III.D.3 discusses alternative temperature sensor locations. Measurement of energy use of such products cannot be conducted properly without knowledge of specific information regarding these control systems or without knowledge that the temperature sensor locations have been modified from their standard locations. This information impacts how such a product is tested and how its energy use is calculated. In order to allow verification of the energy use ratings for such products by parties other than their manufacturers, DOE proposes that this information be included in certification reports.

The calculation of energy use for products with variable defrost control involves either use of control parameters CT_L and CT_M or a test to determine the appropriate compressor run time between defrosts. (see for example Appendix A1, section 5.2.1.3). Section III.D.12 above proposes elimination of the approach using the test, because DOE believes that this approach is rarely if ever used in rating products. In order to properly measure the defrost portion of the energy use for a product, a test technician must know (1) whether the product has variable defrost control, and (2) the values CT_L and CT_M. DOE proposes that these three sets of data be provided in certification reports for refrigeration products.

The proposed procedure for calculation of energy use for products with variable anti-sweat heater control is described in section III.D.9 above. Proper energy use measurement for such a product according to the proposed procedure requires the disclosure of whether a particular product has this type of control. Hence, DOE proposes that this information be provided in certification reports.

The inclusion of details regarding the relocation of temperature sensor locations in test reports to be maintained by manufacturers is discussed in section III.D.3 above. However, knowledge that such modification has been made to conduct a test would not generally be available unless DOE requested the test records. Hence, DOE proposes that notification be provided in the certification report

for a product if such an adjustment has been made.

These modifications would be introduced into the regulations by modifying 10 CFR 430.62(a)(4)(xii), which requires the reporting of information specific to refrigeration products that must be provided in certification reports. Reporting of the presence of variable defrost or variable anti-sweat heater control would be required for all such products, while reporting of the variable defrost parameters CT_L and CT_M would be required only for products equipped with this type of control. If specific values of these parameters are not used in the control algorithm, the default defrost parameters specified for example in Appendix A1 section 5.2.1.3 would be reported. In the case of products with multiple defrost cycle types (see section III.D.11 above), the defrost cycle parameters for all of the defrost cycle types would be provided.

DOE requests comment on whether this proposal would be sufficient to allow accurate testing, and, if this information is not sufficient, what additional or alternative information should be provided.

E. Amendments To Take Effect Simultaneously With a New Energy Conservation Standard

In addition to the proposed changes discussed above, DOE is considering additional changes to the test procedure that would become effective in conjunction with a final rule amending the energy conservation standards for these products. These proposed changes are discussed below.

1. Incorporating by Reference AHAM Standard HRF–1–2008 for Measuring Energy and Internal Volume of Refrigerating Appliances

The current DOE test procedures for refrigerators and refrigerator-freezers reference sections of AHAM Standard HRF–1–1979. The referenced sections specify the test facility, test sample set-up, measurement procedure, and volume calculation requirements that manufacturers must follow when testing their products. The most recent version of this industry procedure, HRF–1–2008, incorporates many changes, including the specification of new requirements for compartment temperatures and new methods of volume calculation, discussed further in sections III.E.2 and III.E.3 of this notice.

Adopting the provisions in HRF–1–2008 for new compartment temperatures and new volume calculation methods into the DOE test procedures for refrigeration products would alter the measured energy efficiency of these products. These new compartment temperatures are lower for refrigerator-freezers and refrigerators with freezer compartments larger than 0.5 cubic ft. in size. This proposed change would create a greater temperature difference between the exterior and interior of the cabinet during the test, which in turn would increase thermal loads placed on the tested unit. In addition, the refrigeration systems of refrigerator-freezers would operate with a greater temperature lift (*i.e.,* the rise in temperature between the refrigeration system's evaporator, where heat is absorbed, and the system's condenser, where heat is transferred to the ambient air), which would reduce its coefficient of performance (COP, refrigeration provided divided by power input). Both factors would increase the measured energy use for these products, the first by increasing the amount of heat that must be removed by the refrigeration system, and the second by reducing the refrigeration system's effectiveness in removing heat.

The proposed changes in the volume calculation method would change the calculated refrigerated volume and the adjusted volume because both factors depend on the volume measurements.

2. Establishing New Compartment Temperatures

Working Group 12 of Technical Committee 59 of the IEC is developing IEC 62552, a new international test procedure for refrigeration products. DOE understands that one of the chief goals of this effort is to harmonize the energy test procedure for countries that comprise key markets for these products. Among the procedures addressed in IEC 62552 is the treatment of compartment temperatures for refrigeration products.

In developing HRF–1–2008, AHAM incorporated some of the provisions being considered for IEC 62552. Among these provisions, AHAM changed the compartment temperatures for refrigerator and refrigerator-freezer testing. These temperature changes include (1) lowering the standard test temperatures from 5°F to 0°F for the freezer compartment of a refrigerator-freezer and from 45°F to 39°F for the fresh food compartment, (2) raising the standard test temperature from 38°F to 39°F for an all-refrigerator, and (3) lowering the standard test temperature from 45°F to 39°F for the fresh food compartment of a refrigerator having a freezer compartment. (HRF–1–2008, section 5.6.2). AHAM believes the new temperatures more closely represent compartment temperatures typically experienced during normal use of these products. (See AHAM (Framework Comments), No. 11 at p. 2. *See* also Godwin, S.L. *et al.,* "A Comprehensive Evaluation of Temperatures within Home Refrigerators", Food Protection Trends, Vol. 27, No. 3, pp. 168–73, International Association for Food Protection, 2007 (assessing the actual temperatures at which cold foods are stored in homes and noting the need to maintain refrigeration temperatures at 40°F or lower) and Kosa, K. *et al.,* "Consumer Home Refrigeration Practices: Findings from a Consumer Survey", presented at the ADA Food & Nutrition Conference & Expo, Honolulu, Hawaii, (September, 2006) (noting the need to maintain refrigeration temperatures at 40°F or lower and the significant number of surveyed households that did not follow this practice).)

These compartment temperature changes also led AHAM to change the volume adjustment factors, which depend on compartment temperatures. AHAM changed the volume adjustment factor for (1) freezer compartments of refrigerator-freezers from 1.63 to 1.76, (2) freezers from 1.73 to 1.76, and (3) freezer compartments of refrigerators from 1.44 to 1.47. (Compare HRF–1–1979, section 10.4 with HRF–1–2008, section 6.3).

Volume adjustment factors are used in the calculation of adjusted volumes, which are the basis of the energy conservation standard equations for refrigeration products. Adjusted volume is defined for refrigerators and refrigerator-freezers as "the sum of (i) the fresh food compartment volume as defined in HRF–1–1979 in cubic feet, and (ii) the product of an adjustment factor and the net freezer compartment volume as defined in HRF–1–1979, in cubic feet." 10 CFR part 430, subpart B, Appendix A1, section 1.2.

DOE proposes to adopt the new compartment temperatures of HRF–1–2008 and their associated volume adjustment factors in the DOE test procedures. It is doing so to improve the ability of the required procedure to produce measurements that are more representative of field energy use and to help facilitate the international harmonization of appliance test procedures. Reducing the energy test compartment temperatures for refrigerators (excluding all-refrigerators) and refrigerator-freezers will result in higher energy test numbers because of the higher thermal load associated with the increased temperature difference between ambient conditions and the compartments. Chapter 7 of the preliminary Technical Support

Document for the ongoing rulemaking on Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers addressed field energy use for refrigeration products. This analysis was developed using the U.S. DOE's Energy Information Agency's Residential Energy Consumption Survey (RECS) of 2005. For all product classes for which data were available in the RECS database, the field energy use was determined to be greater than the energy use associated with an energy test using the new compartment temperatures that are under consideration in today's proposal. Part of this energy use increase is associated with icemaking, which is not covered by the current energy test procedure. However, DOE's initial analysis shows that the higher energy use measured using the new compartment temperatures provides a more accurate representation of energy use during typical consumer use of refrigeration products. This observation reinforces the position that energy tests conducted using the new compartment temperatures are more representative of field energy use than the temperatures used in the current test procedures.

Under today's proposal, these new compartment temperatures and their associated volume adjustment factors would be incorporated into the proposed Appendices A and B to coincide with the compliance date for any new standards that manufacturers would need to meet in 2014.

3. Establishing New Volume Calculation Method

In HRF–1–2008, AHAM simplified the volume calculation method. (See HRF–1–2008, preface). Specifically, the revised calculation involves far fewer instructions regarding the inclusion or exclusion of various components and regions of the compartments, and provides far fewer diagrams illustrating these varied instructions. AHAM provided DOE with data illustrating the impact that the new volume calculation method would have for certain representative product classes. These data show that calculated compartment volumes change in the range of 1 to 3 percent. ("Impact of HRF–1 Test Procedure Change on Reported Adjusted Volume and Reported Energy Consumption Values", RIN 1904–AB79, Docket No. EERE–2008–BT–STD–0012 (data provided by AHAM for the Rulemaking for Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers)).

DOE proposes to amend the DOE test procedures to adopt the volume calculation procedure used in HRF–1–2008. The new volume calculation method is simpler and leaves less room for subjective interpretation by test technicians in developing a volume estimate when compared to the current method. Adoption of the simplified method is expected to improve the accuracy of volume reporting. Further, since the energy conservation standard is based on the adjusted volume determined from volume measurements, this improved accuracy is also expected to improve compliance with the energy standard.

Questions have surfaced during DOE review of AHAM HRF–1–2008 in regard to requirements for the treatment of icemakers and related hardware for the purposes of volume calculations. HRF–1–2008 does explicitly mention whether automatic icemakers or ice storage bins should be considered part of the internal volume. The key clause of this standard, which specifies components whose volumes are to be included in the volume measurement, reads, "(w)hen the volume is determined, internal fittings such as shelves, removable partitions, containers and interior light housings shall be considered as not being in place." (HRF–1–2008, section 4.2.2).

In contrast, HRF–1–1979 specifically addresses the volume of the icemaker and the ice storage bin:

Volumes to be included. The total refrigerated volume is to include volume occupied by special features, such as baskets, crispers, meat pans, chiller trays, icemakers (including storage bins for automatic icemakers) and water coolers. (HRF–1–1979, section 4.2.1.1(a))

Volumes to be deducted. The total refrigerated volume is not to include volume occupied by fixed projections, such as control knobs, shelf hangers, shelf and pan rails, and thermostat escutcheons, which collectively, exceed a volume of more than 0.05 cubic foot (1.4 liters) per compartment. (Id., section 4.2.1.2(e))

DOE does not intend to change the test procedure for volume calculation to require excluding the volume of the icemaker and the ice storage bin in the volume calculation. Hence, DOE proposes to include the following clarifying language to this effect in section 5.3 of Appendix A:

> In the case of refrigerators or refrigerator-freezers with automatic icemakers, the volume occupied by the automatic icemaker, including its ice storage bin, is to be included in the volume measurement.

DOE proposes a similar amendment to Appendix B, recognizing that freezers may also incorporate automatic icemakers.

As with the proposed incorporation of new compartment temperatures, DOE plans to incorporate the proposed volume calculation changes as part of the procedures that manufacturers would apply when certifying compliance to any standards that apply in 2014. These changes (*i.e.,* temperature and volume measurements) would have a significant impact on the overall standards for refrigeration products and necessitate, in DOE's view, that sufficient time be provided to manufacturers to adjust to these changes. In light of this belief, DOE believes it appropriate to require that manufacturers use these new calculations within the initiation of any required standards for 2014. These amendments would appear in the new Appendices A and B.

4. Control Settings for Refrigerators and Refrigerator-Freezers During Testing

Section III.D.4 above introduces one issue associated with the current test procedure requirements for temperature control settings. Additional issues and proposed amendments to resolve these issues are discussed in this section.

The use of two tests conducted at different temperature control settings is described above in section III.D.4. Appendix A1, section 3.2.1 requires the adjustment of settings in the second test so that the compartment temperatures measured during the two tests bound the standardized temperature for the product under test. The standardized temperatures for the products covered by Appendix A1 are defined in section 3.2: All-refrigerator, 38 °F (3.3 °C) for the fresh food compartment temperature; Refrigerator, 15 °F (−9.4 °C) for the freezer compartment temperature; Refrigerator-freezer, 5 °F (−15 °C) for the freezer compartment temperature. For refrigerators and refrigerator-freezers, the current procedure requires that the settings adjustment for the second test be based only on the freezer temperature measured during the first test, even though the product's energy use would also be impacted by the temperature of the fresh food compartment during the test. Hence, ensuring consistency of the test measurement with the representative use cycle of these products should also require consideration of bounding of the standardized temperature of the fresh food compartment.

DOE understands that manufacturers conduct tests of refrigerator-freezers and of refrigerators that are not all-refrigerators with consideration of the fresh food compartment temperature. The controls are set to their warmest

position(s) for the second test only if during the first test all compartment temperatures are lower than their standardized temperatures. Otherwise, the controls are all set to their coldest position for the second test required under the procedure. The fresh food compartment's standardized temperature under the practice followed by the manufacturers is 45 °F, which is consistent with the temperature used for the energy use calculation (interpolation) based on fresh food compartment temperature of Appendix A1, section 6.2.2.2. DOE understands that manufacturers have adopted this approach to ensure that the energy use calculation provides an interpolation to a setpoint condition for which the temperatures of all compartments are either equal to or lower than the standardized temperatures for the compartments. This practice is most clearly described in the Canadian Standards Association Standard C300–08, "Energy performance and capacity of household refrigerators, refrigerator-freezers, freezers, and wine chillers" (CSA C300–08), section 6.1.3.2.2, which states:

> If the first test produces average compartment temperatures that fall into quadrants B, C, or D of Figure A.1, the second test shall be performed with all controls at their coldest setting(s). If the first test produces average compartment temperatures that fall into quadrant A of Figure A.1, the second test shall be performed with all controls at their warmest setting(s).

CSA C300–08, section 6.1.3.2.2.

In Figure A.1 of C300–08 at least one of the compartment temperatures is above its standardized temperature for quadrants B, C, or D, but only for quadrant A are both compartment temperatures lower than their standardized temperatures.

DOE proposes to modify the energy test procedure to make it consistent with the procedure manufacturers already use to adjust settings. Specifically, by requiring that the second test be conducted with all controls at their warmest settings only if both compartment temperatures during the first test were lower than the standardized temperatures, DOE will help ensure that the required procedure is more rigorous than what is currently in place in its test procedure. It would also create a procedure that is consistent with current industry practices. DOE proposes also to modify the specification of standardized compartment temperatures by adding a standardized compartment temperature for the fresh food compartment of refrigerators and refrigerator-freezers. The standardized fresh food temperature would be specified as 39 °F in Appendix A.

Conducting a Third Test

DOE also notes that the current DOE test procedure specifies that as many as three tests may need to be conducted for calculating energy use. In particular, it specifies when the first two tests are sufficient for calculating energy use and when a third test is required. The current test procedure provides:

> If the compartment temperatures measured during these two tests bound the appropriate standardized temperature, then these test results shall be used to determine energy consumption. If the compartment temperature measured with all controls set at their coldest setting is above the standardized temperature, a third test shall be performed with all controls set at their warmest setting and the result of this test shall be used with the result of the test performed with all controls set at their coldest setting to determine energy consumption. If the compartment temperature measured with all controls set at their warmest setting is below the standardized temperature; and the fresh food compartment temperature is below 45 °F (7.22 °C) in the case of a refrigerator or a refrigerator-freezer, excluding an all-refrigerator, then the result of this test alone will be used to determine energy consumption.

(10 CFR 430, subpart B, Appendix A1, section 3.2.1).

Test Results Not Addressed in the Current Test Procedure

Table 2 below illustrates the logic behind the temperature setting requirements for refrigerator and refrigerator-freezer testing. This logic is based on the current test procedure and incorporates the clarification regarding the treatment of fresh food and freezer compartment temperatures for the first test, as described above. The tests for Cases 2, 5, and 6 in Table 2 are not clearly addressed in the current test procedure—specifically, while the freezer compartment temperature is lower than the setpoint for both tests, the fresh food compartment temperature is higher than 45 °F for at least one of the tests. The current procedure does not explicitly state which set of results are to be used when calculating energy consumption in these cases.

TABLE 2—TEMPERATURE SETTING CHART FOR REFRIGERATORS AND REFRIGERATOR-FREEZERS

First test		Second test		Third test settings	Energy calculation based on	Case No.
Settings	Results	Settings	Results			
Fzr Mid ..... FF Mid	Fzr Low ..... FF Low	Fzr Warm .... FF Warm	Fzr Low ..... FF Low.	None	Second Test Only	1
			Fzr Low ..... FF High.	None	Not Clear: Propose use of First and Second Test ..	2
			Fzr High ..... FF Low.	None	First and Second Test	3
			Fzr High ..... FF High.	None	First and Second Test	4
	Fzr Low	Fzr Cold	Fzr Low	None	Not Clear: Propose requiring a Third test with Warm/Warm settings and use of the Second and Third Tests.	5
	FF High	FF Cold	FF High.			
			Fzr Low ..... FF Low.	None	Not Clear: Propose use of First and Second Test ..	6
	Fzr High ..... FF Low	Fzr Cold ..... FF Cold	Fzr High ..... FF Low	Fzr Warm .... FF Warm.	Second and Third Tests	7
			Fzr Low ..... FF Low.	None	First and Second Tests	8
	Fzr High ..... FF High	Fzr Cold ..... FF Cold	Fzr Low ..... FF Low.	None	First and Second Tests	9
			Fzr Low ..... FF High.	None	First and Second Tests	10

TABLE 2—TEMPERATURE SETTING CHART FOR REFRIGERATORS AND REFRIGERATOR-FREEZERS—Continued

First test		Second test		Third test settings	Energy calculation based on	Case No.
Settings	Results	Settings	Results			
			Fzr High ..... FF Low	Fzr Warm .... FF Warm.	Second and Third Tests	11
			Fzr High ..... FF High	Fzr Warm .... FF Warm.	Second and Third Tests	12

Notes: Fzr = Freezer Compartment, FF = Fresh Food Compartment.

DOE proposes that for cases 2 and 6 that the results of the first and second tests be used for the energy consumption calculation, since this calculation will ensure that all compartment temperatures do not exceed their standardized temperatures at the calculated condition.

Warm Compartments

Similarly, cases 5, 7, 10, 11, and 12 all involve at least one compartment that is warmer than its standardized temperature when all controls are at their coldest setting. These cases represent substandard product performance, but the test procedure allows for the rating of products under some of these scenarios. When one of the warmer compartments is the freezer compartment (as in cases 7, 11, and 12), the current test procedure calls for conducting a third test with all controls set at their warmest setting and using the second and third tests to determine energy use. For case 10, the results for the freezer compartment comply with the requirements of the current test procedure (using the results from the first and second tests to calculate energy use), even though the fresh food compartment temperature is higher than the standardized temperature when the unit is tested at the compartment's coldest setting. As mentioned above, the current test procedure provides no guidance for case 5, where the freezer compartment temperature is below the standardized temperature but the fresh food compartment temperature at its coldest setting is higher than the standardized temperature.

These amendments are proposed for new Appendix A.

Alternative Approach for High Compartment Temperatures

While DOE proposes that a third test be required for case 5, and that the results of the second and third tests be used to calculate energy consumption, the agency is considering an alternative to address the nonstandard performance of all of these test cases in a manner described below. While the current proposal does not incorporate this alternative, DOE seeks comment on whether it should be implemented to discourage designs for which any of the standardized compartment temperatures are not achieved.

The alternative would be to modify the test procedure to prevent the rating of products if any measured compartment temperature exceeds its standardized temperature when all controls are at their coldest settings. If a tested unit's fresh food compartment exceeds its standardized temperature, the product would not meet the refrigerator definition, which specifies the use of "temperatures above 32 °F and below 39 °F". (10 CFR 430.2). Under the proposed definition for a refrigerator-freezer (see section III.B), the product would also fail to meet that product definition. Similarly, if the freezer compartment temperature of a refrigerator-freezer exceeded its standardized temperature, the product would not comply with the current requirement that the freezer compartment "may be adjusted by the user to a temperature of 0 °F or below." (10 CFR 430.2). The maximum temperature for the freezer compartment of a refrigerator is 32 °F, substantially higher than the 15 °F standardized temperature (10 CFR 430.2). Hence, a modification to the test procedure preventing a rating would not directly be supported by the product definition for the case of a refrigerator whose freezer compartment is warmer than the 15°F standardized temperature.

Precedent for disallowing the rating of a product for which a compartment is above its standardized temperature when the product is tested with temperature controls at their coldest settings is found in CSA C300–08:

5.2.7.3 Noncompliance and Product Description

For the standard and alternative testing sequences, the conditions of noncompliance with prescribed thermal performance shall be as follows:

(a) if, with all compartment controls at their coldest settings, the freezer temperature remains above the standard operating temperature specified in Clause 5.2.6.2, the product description shall be revised in accordance with the measured temperature; and

(b) energy consumption shall then be declared in accordance with the revised product description.

CSA C300–08 Section 5.2.7.3

DOE seeks comment on a possible general test procedure requirement that would provide that any product that exhibits such substandard performance would be ineligible of being rated as a product associated with the standardized temperature that was not achieved. DOE further seeks comment on whether such a provision should be considered for current Appendices A1 and B1 as well as proposed new Appendices A and B. Note that the reduction of some of the standardized temperatures upon transition to Appendices A and B would increase the level of performance required for these products.

Alternative Test Methods Involving Just Warm and/or Cold Settings

The DOE test procedure allows two alternative approaches: (1) Using just a test with controls at their warm settings and (2) conducting two tests with controls at their cold settings for one test and at their warm settings for the second test. (*see* Appendix A1 sections 3.2.2 and 3.2.3). For the second of these approaches, the compartment temperature is higher than the standardized temperature at the coldest setting. Depending on the results of these tests, they can be used to determine energy consumption. Except for the fact that a test with median temperature setting has not been conducted as the first test, these cases are equivalent to the cases listed in Table 2. In these cases (cases 1, 6, 7, 11, and 12), the results of the first test are not used in the energy consumption calculation.

General

DOE proposes to add a modified version of Table 2 to the test procedure. The proposed changes would clarify the energy consumption calculation by dictating both the (1) temperature

settings of subsequent tests and (2) test results that would be used when calculating energy consumption. These changes would apply to Appendices A.

DOE also proposes that the equivalent of the logic chart represented by Table 2 be included in the test procedures to describe the temperature settings and tests to use for the energy use calculation for all-refrigerators and freezers. An example of such a chart is shown in Table 3 below. This change would be made in Appendices A and B.

TABLE 3—TEMPERATURE SETTING CHART FOR ALL—REFRIGERATORS AND FREEZERS

First test		Second test		Third test settings	Energy calculation based on:
Settings	Results	Settings	Results		
Mid	Low	Warm	Low	None	Second Test Only.
			High	None	First and Second Tests.
	High	Cold	Low	None	First and Second Tests.
			High	Warm	Second and Third Tests.

DOE seeks comment on these proposed amendments, on whether the circumstances listed in Table 2 and Table 3 adequately address all test result possibilities for their respective products, whether the proposed approaches for the currently unclear cases 2, 5, and 6 as indicated in Table 2 are appropriate, and whether the alternative approach disallowing a rating in the case of warm compartment temperatures should be adopted. DOE also seeks comment as to whether its understanding regarding manufacturer practices with respect to setting adjustments during testing are accurate and, if not, what those practices are and how best to address them within the context of DOE's proposed amendments. Finally, DOE requests comment on whether any of these amendments should be directly applied to Appendices A1 and B1 so that they would take effect prior to the effective date of new energy conservation standards; such comments should indicate whether implementing these changes would make any impact on measured energy use.

5. Icemakers and Icemaking

Nearly all refrigerator-freezers currently sold either have an automatic icemaker or are "icemaker-ready", meaning that they have the necessary water tubing, valve(s), and icemaker mounting hardware already installed to allow quick conversion to icemaking operation if an automatic icemaker is installed at any time after product shipment. Production of ice increases the energy use of a refrigerator-freezer in two ways: (1) Additional refrigeration is required to cool and freeze the incoming water, and (2) some icemaker components (*e.g,* the mold heater, the gear motor) also consume energy.

The current test procedure for refrigerators and refrigerator-freezers does not measure the energy use associated with ice production (HRF–1–1979, section 7.4.2). (This is a separate issue from energy used by heaters as part of the icemaking system, which is addressed in section III.F.1.) Limited information has been publicly available regarding ice production energy use, which depends on the product's efficiency in producing ice and the rate of ice production. Publicly available information on this issue includes the following:

- Measurements of the impact of ice making on energy use in tests which were otherwise consistent with the DOE energy test procedure for four refrigerator-freezers meeting 1993 energy standards show energy use increase of 72 to 121 kWh/year. (Alan Meier and Mark Martinez. 1996. *Energy Use of Icemaking in Domestic Refrigerators.* ASHRAE Transactions: Symposia. AT–96–19–2)
- Similar measurements with a single refrigerator showed energy use increase of 130 to 150 kWh/year. (Haider, Imam; He Feng; and Reinhard Radermacher. *Experimental Results of a Household Automatic Icemaker in a Refrigerator/Freezer.* ASHRAE Transactions: Symposia. SA–96–7–3)
- Energy impact at full production of ice was estimated at 250 kWh per year, average ice production is suggested to be 500 grams (g) per day (roughly one-quarter of full production), and the overall impact is estimated to be about 10% of the rated refrigerator energy use. This is based on testing of refrigerators that likely were compliant with the 1993 energy standards, considering the 1995 date of the report referenced in the article. (Alan Meier, *Energy Use of Ice Making in Domestic Refrigerators, http://eetd.lbl.gov/EA/1995_Ann_Rpt/Buildings/energy.use.of.ice.html*)

DOE conducted testing to determine icemaking energy use. The average energy consumption and ice production rates were measured for extended periods of refrigerator-freezer operation involving multiple icemaking cycles during the steady-state operation of the products between defrost cycles for three refrigerator-freezers. Two of these products were bottom-mount refrigerator-freezers with TTD ice service. The other was a side-mount refrigerator-freezer with TTD ice service. The results of the tests are summarized in Table 1 below. The results show a fairly consistent energy use per pound of ice in the range 175 to 200 Watt-hours.

TABLE 4—REFRIGERATOR ICEMAKING TEST RESULTS

Refrigerator type	Bottom-mount	Bottom-mount	Side-mount
Refrigerated Volume (cubic ft.)	26	25	26
Rated Annual Energy Consumption (kWh)	540	547	728
Test Average Wattage			
With Icemaking	85.1	130.0	98.2
Without Icemaking	75.6	104.5	60.9
Differential	10	25	37
Ice Production Rate (lb/day)	1.35	3.44	4.6
Production Efficiency (Watt-hours/lb)	178	174	193

Assuming a daily ice production rate of 1 pound per day (consistent with the 1995 Meier report), the energy use increase associated with icemaking is in the range of 64 to 73 kWh represents 10% to 15% of the rated energy use of the tested products. While the energy use in kWh is consistent with the 1995 Meier report (one-quarter of 250 kWh, or 63 kWh), the percentage of rated annual energy use is higher. DOE believes this discrepancy is due to the lower annual energy consumption of current products. DOE concludes from these data that icemaking energy use can be a significant portion of overall energy use of refrigerator-freezers.

DOE notes that AHAM has been developing a test procedure for measuring icemaking energy use. Preliminary work on this effort was presented to DOE on November 19, 2009. The handout for this presentation, "AHAM Update to DOE on Status of Ice Maker Energy Test Procedure", November 19, 2009, has been incorporated into the docket for this rulemaking (RIN 1904–AB92, Docket No. EERE–2009–BT–TP–0003). While AHAM has not completed its icemaking test procedure, the presentation provides measurements of icemaking energy use determined using a preliminary test method. The average of these measurements is 128 Watt-hours per pound. The preliminary AHAM procedure specified a daily production rate of 1.8 pounds of ice—thus, the average daily energy use associated with icemaking of these preliminary measurements is 0.23 kWh and the average annual energy use is 84 kWh.

In light of the amount of overall energy use that icemaking appears to require, DOE is considering incorporating a test procedure for measuring icemaking energy use in the energy test for refrigerators, refrigerator-freezers, and freezers. However, as described in the AHAM presentation handout, and as noted in several comments associated with the refrigeration product energy conservation standard rulemaking (*see* for example comments provided by AHAM, No. 34 at p. 2, RIN 1904–AB79, Docket No. EERE–2008–BT–STD–0012), development of an icemaking test procedure is complex and consensus has not been reached that a satisfactory procedure has been developed. Consequently, rather than incorporate a measurement of icemaking energy use into the procedure at this time, DOE proposes to introduce the inclusion of a fixed placeholder value for icemaking energy use into the calculation for the energy use of refrigeration products with automatic icemakers. This approach would satisfy the need for improved accuracy in reporting the representative energy use of products, since the reported energy use would no longer be omitting icemaking energy consumption.

DOE proposes use of the average daily icemaking energy use value reported by AHAM, 0.23 kWh per daily cycle. While there are questions about the suitability of the test method used to determine this value, the data reported by AHAM represents the most thorough and complete test series addressing this issue that is available for consideration. DOE welcomes comment on this approach. Further, DOE will consider updated information, such as revised data based on a more thoroughly developed test.

DOE proposes incorporation of icemaking energy use for products that have automatic icemakers. This includes products either with or without TTD ice service, and could include freezers and refrigerators as well as refrigerator-freezers. While the icemaking energy use of products having automatic icemakers could vary significantly, accurate data that would allow the development of fixed icemaking energy use values that are a function of product class or other product characteristics is not available.

DOE proposes incorporation of the icemaking energy use into the energy use calculation by integrating the icemaking energy use value, designated IET and measured in kWh per cycle, into the equations for energy use per cycle, which would be included in the proposed Appendices A and B in section 6.2. For example, the energy use per cycle for refrigerators or refrigerator-freezers in which the compartment temperatures are lower than the standardized temperatures during the test with control settings in their warmest positions would be determined as follows:

6.2.2.1 If the fresh food compartment temperature is at or below 39 °F (3.9 °C) in both tests and the freezer compartment temperature is at or below 15 °F (− 9.4 °C) in both tests of a refrigerator or at or below 0 °F (− 17.8 °C) in both tests of a refrigerator-freezer, the per-cycle energy consumption shall be:

$$E = ET1 + IET$$

Where:

ET is defined in 5.2.1;

IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with an automatic icemaker and otherwise equals 0 (zero); and number 1 indicates the test period during which the highest freezer compartment temperature was measured.

These amendments would be incorporated in the proposed new Appendices A and B.

DOE may consider modifying the test procedure requirements associated with icemaking energy use to incorporate testing to determine the icemaking energy use of particular products. If a suitable test procedure for this purpose can be developed in time for incorporation in the final rule for this rulemaking, DOE will consider adopting such an amendment. However, such a step will involve issuance of a supplementary NOPR (SNOPR) prior to the final rule. Stakeholders are invited to provide comments including recommendations for the test procedure if DOE were to propose an SNOPR. DOE expects to consider the following factors in developing a proposal for test measurement of icemaking energy use:

(1) Applicability of the test procedure for all types of automatic ice makers;

(2) Submitted test data demonstrating accuracy and repeatability of the procedure;

(3) Proposal of an ice production rate in pounds per day (or per year) so that daily or annual icemaking energy use can be calculated and data supporting the production rate; and

(4) The degree of consensus among industry representatives that the test is viable and that burden is not excessive.

One issue that has come to DOE's attention during consideration of a test for icemaking energy use is the possible impact on energy use measurements of the presence of ice in the ice bin. (*See,* for example, comment 9 from the July 14, 2009 HRF–1 Task Force meeting, included in information provided by AHAM, No. 34 at p. 2, RIN 1904–AB79, Docket No. EERE–2008–BT–STD–0012). The current test procedure does not clarify whether ice may be in the bin during the energy test. Appendix A1 section 2.2 references sections 7.2 through section 7.4.3.3 of HRF–1–1979. (Appendix A1 section 2.2). Section 7.4.2 of HRF–1–1979 states, "[i]ce bins of automatic ice makers are to be full of frozen food packages;" (HRF–1–1979 section 7.4.2). However, Appendix A1 section 2.3 states, "For automatic defrost refrigerator-freezers, the freezer compartments shall not be loaded with any frozen food packages." (Appendix A1 section 2.3). The test procedures are currently silent regarding the presence of ice in the ice bin during the test. DOE requests comment on whether a requirement regarding presence of ice in the bin should be incorporated into the test procedure. Such a requirement would be implemented by inclusion of appropriate language into the set-up

requirements in sections 2 of Appendices A1, B1, A, and B.

F. Other Issues Under Consideration

1. Electric Heaters

Refrigeration products use electric heaters for a variety of functions. This section identifies some of those functions, discusses established approaches to heater operation during energy testing, and highlights sections of this notice that address modifications to the current test requirements for heaters.

Anti-Sweat Heaters

The DOE test procedures have always incorporated provisions addressing the operation of anti-sweat heaters. These components are defined in both Appendices A1 and B1 (*See* 10 CFR part 430, subpart B, appendix A1, section 1.3 and 10 CFR part 430, subpart B, appendix B1, section 1.2) as devices designed to prevent moisture accumulation on a product's exterior surfaces under conditions of high ambient humidity. For products that have an anti-sweat heater switch that controls operation of anti-sweat heaters, both Appendices A1 and B1 require tests to be conducted with the anti-sweat heater switch in both the on and off positions. (See 10 CFR part 430, subpart B, appendix A1, section 2.2 and 10 CFR part 430, subpart B, appendix B1, section 2.2). The "standard cycle" is defined as a 24-hour cycle of operation of a refrigeration product with the anti-sweat heater switch on. (10 CFR part 430 subpart B appendix A1 section 1.7, 10 CFR part 430, subpart B, appendix B1, section 1.5). Calculation of annual operating cost for refrigerators, refrigerator-freezers, and freezers involves averaging the energy use of a standard cycle and a cycle with the anti-sweat heater switch in its position just prior to shipping from the factory. (10 CFR 430.23(a)(2) and 430.23(b)(2)).

Section III.D.7 of this NOPR discusses a proposed modification to the definition of what constitutes an anti-sweat heater under DOE's regulations. Section III.D.8 addresses a proposed change that would address anti-sweat heater switch positions during testing. Finally, section III.D.9 discusses incorporating procedures for variable anti-sweat heating controls that were most recently addressed by waivers. Any electric heater that falls under the current definition of anti-sweat heater must be tested according to the current test procedures as defined in the current Appendices A1 and B1. Likewise, any electric heater that falls under the proposed definition would be required to be tested according to the proposed test procedures of Appendices A1 and B1 prior to the date that new energy conservation standards take effect. Manufacturers would use proposed Appendices A and B, which incorporate the proposed changes to Appendices A1 and B1, on and after the date that the new standards take effect.

Defrost Heaters

Defrost heaters, including both heaters used to remove frost from evaporators and heaters used to prevent defrost water from refreezing in the drip pan or discharge tubing are addressed by the DOE test procedures. Automatic defrost is defined in Appendices A1 and B1. (*See* 10 CFR part 430, subpart B, appendix A1, section 1.8 and 10 CFR part 430, subpart B, appendix B1, section 1.7). Additional definitions are provided for long-time automatic defrost and variable defrost control. (10 CFR part 430 subpart B appendix A1 section 1, 10 CFR part 430 subpart B appendix B1 section 1). The test procedures were modified on August 31, 1989 to respond to the development of adaptive defrost technology. 54 FR 36238. Section 4 of both Appendices A1 and B1 address the test time period for automatic defrost and its variations (*See* 10 CFR part 430, subpart B, appendix A1, section 4 and 10 CFR part 430, subpart B, appendix B1, section 4). The methods for measuring daily energy use that incorporate the energy use of defrost heaters for different automatic defrost systems are specified in section 5 of both Appendices A1 and B1. (10 CFR part 430, subpart B, appendix A1, section 5 and 10 CFR part 430, subpart B, appendix B1, section 5).

Section III.D.10 of this NOPR discusses DOE's proposed modification of the long time defrost test procedure to address the energy usage of modern defrost control approaches, which are not comprehensively captured by the current procedure. Section III.D.13.B discusses a proposed correction to the procedure for measuring defrost energy use of dual compressor systems with dual defrost. All energy use associated with defrost, including both the energy input for the heater(s) and all of the energy use of the refrigeration system(s) required to remove the defrost heat or to provide precooling to minimize the impact of cabinet warmup during defrost should be captured by the energy test.

Heaters for Temperature Control

Heaters that adjust the temperatures of refrigerated compartments are addressed indirectly through control setting requirements. The current test procedures require compartment temperature settings consistent with the standardized temperatures for these compartments. While compartment temperature control is primarily achieved by compressor cycling and the adjustment of dampers controlling the air flow to different compartments, some products may use electric heaters to enhance temperature control precision. The control setting requirements, among other things, specify the procedures for setting the temperature control of main compartments. (*See* 10 CFR part 430, subpart B, appendix A1, section 3 and 10 CFR part 430, subpart B, appendix B1, section 3). They also include specific procedures for special compartments as defined in HRF–1–1979, section 7.4.2. Section III.D.5 discusses proposed modifications to procedures for special compartments to make the procedures for these compartments consistent with procedures for convertible compartments.

However, in instances where a refrigerator-freezer has more than two compartments, or where manufacturers have incorporated sub-compartments with separate temperature controls, or both, the instructions in the current test procedure for adjusting temperature control settings and for weighted averaging of energy measurements based on measured compartment temperatures are less clear. Section III.D.6 discusses issues associated with these situations and the agency's proposed approaches for addressing both of these circumstances.

Because the purpose of these test procedures is to provide a measurement of energy use (including those of temperature control heaters) that is representative of typical consumer use, DOE recognizes the need to explicitly address the setting of compartment temperatures for more advanced products equipped with more complicated configurations. Refinement of the procedures for setting the temperatures of compartments during testing in the manner proposed in today's notice will improve the consistency of test measurements with representative use cycles of products in the field.

Icemaker Heaters

Manufacturers also use electric heaters in automatic icemakers. For example, many icemakers use mold heaters (or "harvest heaters") to free the ice from the icemaker mold. Some refrigerator-freezers also have heaters integrated with the icemaker fill tubes to ensure that water does not freeze in the

tube transferring water to the icemaker. This topic has been recently addressed in a document issued on the refrigerator rulemaking Web site ("Additional Guidance Regarding Application of Current Procedures for Testing Energy Consumption of Refrigerator-Freezers with Automatic Ice Makers", December 2009, *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/rf_test_procedure_addl_guidance.pdf*).

These views would continue to apply to the newly proposed Appendices A and B.

However, energy used by these heaters during ice production may not be sufficiently captured using the current energy test. Consideration of test procedures for measurement of icemaking energy use is discussed in section III.E.5 of this notice.

Exterior Heaters for Evaporation of Defrost Water

Heaters may be used on the exterior of refrigeration products to evaporate defrost melt water collected in the defrost water pan. The current test procedures provide no specific requirements for these heaters.

These heaters may not operate in the high-ambient closed-door operational conditions found during typical energy testing, since, for example, under such test conditions, no significant amount of defrost water would collect in a defrost water pan. The key sources of such water in normal operating conditions are (1) water vapor that enters with the air during door-openings, and (2) moisture from food products. Since energy testing is conducted with the doors closed and with no food products in the refrigerator, these key sources of moisture are absent and the pans generally remain dry. Hence, the energy test cannot provide measurements consistent with the representative use cycles for products with these components. DOE requests comments on the prevalence of the use of such heaters and their likely energy use. DOE may consider a test procedure amendment requesting manufacturers to petition for a waiver for products having these heaters to modify the test procedure to incorporate a measurement addressing their energy use.

Other Heaters

There may be additional uses for electric resistance heaters in refrigeration products that are not mentioned in this section. DOE requests comment regarding what such uses might be, how they contribute to energy use in normal operating conditions and during testing in accordance with the current DOE energy test, and whether the current procedure with or without the proposed amendments discussed in this notice requires additional modifications to more accurately reflect their energy usage.

2. Rounding Off Energy Test Results

The current energy test procedure for refrigeration products references HRF–1–1979, which specifies the level of precision to apply when measuring electric energy consumption (0.01 kWh) and the accuracy of that measurement (within ± 0.5%). (HRF–1–1979 section 7.3.2). HRF–1–2008 specifies an increased level of precision (0.001 kWh) for digital watt-hour meters, but retains the same requirement of ± 0.5% accuracy for energy measurements (HRF–1–2008, section 5.4.2).

The energy use of refrigeration products covers a broad range. However, a minimally compliant 20-cubic foot refrigerator-freezer with automatic defrost and a top-mounted freezer would have an energy use of roughly 500 kWh. Applying the above requirements, the required accuracy of this measurement is, at best, ± 2.5 kWh (500 kWh × 0.5%).

The DOE regulations currently do not specify the level of precision that refrigeration product manufacturers must follow when reporting the energy use of their products—see, for example, 10 CFR 430.23(a)(5). The above example suggests that a precision level exceeding 1 kilowatt-hour may not be warranted but DOE is interested in receiving comment on this issue. Based on comments received, DOE may consider adopting a more precise level of reported energy usage (*e.g.,* to the tenths or hundredths level) or a level that would require reporting to the nearest kilowatt-hour. Such a requirement would be implemented in 10 CFR 430.23(a)(5), for refrigerators and refrigerator-freezers, and in 10 CFR 430.23(b)(5), for freezers.

DOE recognizes that, if energy use is reported to the nearest kilowatt-hour, the specification of maximum allowable energy use must also be rounded to the nearest kilowatt-hour, to prevent a reporting error. For example, if the energy standard was 500.7 kWh for a product whose energy use measurement was 500.6 kWh, rounding the measurement to 501 kWh might appear to show energy use higher than the maximum allowable under the standard. DOE will consider proposing that the maximum allowable energy use under the energy conservation standard be rounded to the nearest kilowatt-hour or some other fraction as part of the energy conservation standard rulemaking.

DOE requests comment on the achievable accuracy in measurement of refrigeration product energy use, the appropriate level of precision for reporting of energy use and on the need to provide a similar rounding for maximum allowable energy use under the energy conservation standard.

G. Compliance With Other EPCA Requirements

In addition, DOE examined its other obligations under EPCA in developing this particular rulemaking notice. These requirements are addressed in greater detail below.

1. Test Burden

Section 323(b)(3) of EPCA requires that "any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use * * * and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3)) For the reasons that follow, DOE has tentatively concluded that the proposed amendments to DOE test procedures would satisfy this requirement.

The proposed amendments generally incorporate minor adjustments to test sample set-up procedures, the treatment of certain product features such as convertible compartments, compartment temperatures, and volume calculation methods. Most of these proposed amendments would require no changes in the current requirements for equipment and instrumentation for testing or the time required for testing. With respect to the proposed test method for variable anti-sweat heaters, this proposal would specify testing in a humidity-controlled test chamber and require conducting three tests to measure energy use for steady-state cycling operation of a refrigerator-freezer. As a result, this change would require manufacturers of products equipped with variable anti-sweat heater controls to conduct additional testing. DOE estimates that the additional testing is expected to represent roughly a doubling of test time for these products, from roughly 5 days to roughly 10 days, which is consistent with the additional test burden associated with an anti-sweat heater switch, the approach used by some manufacturers to reduce the energy impact of anti-sweat heaters prior to granting of the variable anti-sweat heater control waivers.

Among the options that DOE considered in preparation of today's

notice include: (1) Allowing the test procedure to be conducted exactly as described in the waivers or interim waivers granted to GE, Whirlpool, Electrolux, and Samsung, and (2) harmonizing ambient temperature of the test with the 90 °F generally used for energy testing. After reviewing these options, DOE believes that the additional testing required for variable anti-sweat heaters is the least burdensome approach to determine the energy use of variable anti-sweat heaters while helping to ensure that these components are sufficiently addressed in the agency's test procedure.

At least two reasons support this view. First, manufacturers of refrigerator-freezers generally have test chambers with humidity control that would be appropriate for testing products with variable anti-sweat heaters since manufacturers would need such test chambers in the first instance to verify the effectiveness of anti-sweat and defrost devices in their products. While the additional testing that would be required may double the test time for products with variable anti-sweat heater control, it is unclear that any less-burdensome approaches could reliably verify that the control systems work as described.

Second, relatively few products would require the variable anti-sweat test, which would mean that the overall cost on the industry would be low. (An example of such a product would be a refrigerator-freezer equipped with French doors, for which anti-sweat heating for the seal between the French doors cannot be provided with customary hot-liquid refrigerant heating.) Accordingly, DOE does not anticipate that manufacturers would need to outlay significant capital expenditures for new testing facilities or equipment to comply with the proposed variable anti-sweat test method and has tentatively concluded that the proposed test procedure amendments would not be unduly burdensome to conduct.

As an option to reduce the test burden associated with the variable anti-sweat control test procedure, DOE may consider allowing certification of products having such a feature based on the anti-sweat heater energy use contribution measured for a product with the same variable anti-sweat heating system design. Such an approach would require energy test measurements made in support of certification to be made as currently required for all products. However, the value of the "Correction Factor" representing the energy use contribution of the anti-sweat heaters could be based on measurements conducted for a product with the same variable anti-sweat heating system design. The same system design would include use of the same heater wattages in the same locations of the product, and control using the same algorithms. DOE seeks comment on whether such an approach would be acceptable, and whether the characterization of "same variable anti-sweat heater system design" is appropriate. Further, DOE seeks information justifying this suggested approach for reducing the test burden associated with the proposed variable anti-sweat heater control test procedure, including data demonstrating that it would provide an accurate and repeatable representation of energy use. DOE also seeks information regarding any alternative approach that could be considered to address this test burden issue, with supporting information and data to support such an alternative.

2. Potential Amendments To Include Standby and Off Mode Energy Consumption

EPCA directs DOE to amend test procedures "to include standby mode and off mode energy consumption * * * with such energy consumption integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that—(i) the current test procedures for a covered product already fully account for and incorporate the standby and off mode energy consumption of the covered product * * * " 42 U.S.C. 6295(gg)(2)(A)(i). The DOE test procedures for refrigeration products involve measuring the energy use of these products during extended time periods that include periods when the compressor and other key components are cycled off. All of the energy these products use during the "off cycles" is included in the measurements. The refrigeration product could include any auxiliary features which draw power in a standby or off mode. HRF–1–1979 and HRF–1–2008 provide instructions that certain auxiliary features should be set to the lowest power position during testing. In this lowest power position, any standby or off mode energy use of such auxiliary features would be included in the energy measurement. Hence, no separate changes are needed to account for standby and off mode energy consumption, since the current procedures (and as proposed) address these modes.

IV. Procedural Requirements

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

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 for any rule that by law must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 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 the General Counsel's Web site (*http://www.gc.doe.gov*).

DOE reviewed the test procedures considered in today's notice of proposed rulemaking under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule prescribes test procedures that would be used to test compliance with energy conservation standards for the products that are the subject of this rulemaking.

The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121, which relies on size standards and codes established by the North American Industry Classification System (NAICS). The threshold number for NAICS code 335222, which applies to Household Refrigerator and Home Freezer Manufacturing, is 1,000 employees.

DOE searched the SBA Web site (*http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm*) to identify manufacturers within this NAICS code that produce refrigerators, refrigerator-freezers, and/or freezers. Most of the manufacturers

supplying these products are large multinational corporations with more than 1,000 employees. There are several small businesses involved in the sale of refrigeration products that are listed on the SBA Web site under the NAICS code for this industry. However, DOE believes that only U-Line Corporation of Milwaukee, Wisconsin is a small business that manufactures these products. U-Line primarily manufactures compact refrigerators and related compact products such as wine coolers and icemakers (these icemakers are distinguished from the automatic icemakers installed in many residential refrigeration products in that they are complete icemaking appliances using either typical residential icemaking technology or the clear icemaking technology used extensively in commercial icemakers—they are distinguished from refrigerators in that their sole purpose is production and storage of ice).

DOE has tentatively concluded that the proposed rule would not have a significant impact on small manufacturers under the provisions of the Regulatory Flexibility Act. The proposed rule would amend DOE's energy test procedures for refrigeration products. The amendments do not require use of test facilities or test equipment that differ significantly from the test facilities or test equipment that manufacturers currently use to evaluate the energy efficiency of these products. Further, the amended test procedures would not be significantly more difficult or time-consuming to conduct than current DOE energy test procedures except for the amendments addressing testing of products with variable anti-sweat heating controls. The products that currently have such control, refrigerator-freezers with bottom-mounted freezers and French doors serving the fresh food compartment, are all manufactured by large manufacturers. U-Line, the only small business manufacturer that has been identified, does not manufacture these products.

For these reasons, DOE tentatively concludes and certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This proposed rulemaking will impose no new information collection or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE proposes to amend its test procedure for refrigerators, refrigerator-freezers, and freezers. These amendments would improve the ability of DOE's procedures to more accurately account for the energy consumption of products that incorporate a variety of new technologies that were not contemplated when the current procedure was promulgated. The proposed amendments would also be used to develop and implement future energy conservation standards for refrigeration products. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. The exclusion applies because this rule would establish revisions to existing test procedures that would not affect the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE examined this 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding 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; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) 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 specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) 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 sections 3(a) and 3(b) to determine whether they are met or whether 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, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State,

local, and Tribal governments and the private sector. 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 annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a)–(b)) 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 such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at *http://www.gc.doe.gov*). Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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. OMB's 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 proposed rule under 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 OIRA a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed regulatory action is not a significant regulatory action under Executive Order 12866. It has likewise not been designated as a significant energy action by the Administrator of OIRA. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977 (FEAA). (15 U.S.C. 788) Section 32 essentially provides in part that, where a proposed rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedures addressed by this proposed action incorporate testing methods contained in certain sections of the commercial standards, AHAM Standards HRF–1–1979 and HRF–1–2008. DOE has evaluated these two versions of this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in this standard, before prescribing a final rule.

V. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this NOPR. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or e-mail to Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include in their request a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime

telephone number where they can be reached.

DOE requests persons scheduled to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. Requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate an agency official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements. At the end of all prepared statements on each specific topic, DOE will permit participants to clarify their statements briefly and to comment on statements made by others.

Participants should be prepared to answer DOE's and other participants' questions. DOE representatives may also ask participants about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the transcript are available for purchase from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule before or after the public meeting, but no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Stakeholders should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document that includes all of the information believed to be confidential, and one copy of the document with that information deleted. DOE will determine the confidential status of the information and treat it accordingly.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include the following: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information was previously made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. *Electric Refrigerator Definition:*

DOE requests comment on whether any clarifications are needed regarding the definition for electric refrigerators.

2. *Measured Energy Impacts of Amendments Proposed To Take Effect Prior to the Effective Date of the New Energy Conservation Standards:*

DOE invites comment on whether any of the amendments proposed to take effect prior to the effective date of the new energy conservations standards (scheduled per EPCA to be January 1, 2014), have a significant impact on measured energy use. DOE requests information quantifying these impacts, if any.

3. *Incorporating by Reference AHAM Standard HRF–1–2008:*

DOE invites comment on the approach proposed for incorporating provisions of AHAM Standard HRF–1–2008, including (a) maintaining the reference to AHAM Standard HRF–1–1979 in Appendices A1 and B1, which will continue to be in effect until the new energy conservation standards become mandatory; (b) incorporating directly into Appendices A1 and B1 language from AHAM Standard HRF–1–2008 to clarify test procedures; and (c) changing all references to HRF–1–2008 for Appendices A and B, which will take effect simultaneously with the new energy conservation standards.

4. *Test Sample Preparation:*

DOE invites comments on the proposed clarifications of test procedures for preparing test samples. DOE has proposed allowed and required deviations from set-up according to installation instructions and invites comments on whether additional such deviations should be incorporated into the test procedure.

5. *Test Procedure Waivers for Products for Which Test Measurements Are not Representative:*

DOE seeks comment on the proposed language requiring petition for waivers to address products equipped with controls or other features that modify the operation of energy using components during the energy test. DOE seeks comment on whether more specific definition could or should be provided to define either the product characteristics that would make the test procedure unsuitable for use or to define representative average use.

6. *Temperature Sensor Locations:*

DOE seeks comment regarding frequency of testing using temperature sensor locations not specifically shown in Figures 7.1 and 7.2 of HRF–1–1979. DOE also seeks comment on whether the proposed exception to proposed requirements for waivers associated with non-standard sensor location

arrangements are reasonable for limiting the frequency of such waivers.

7. *Convertible Temperature Compartments and Special Compartments:*

DOE invites comment on the proposed clarifications of test procedures for treatment of convertible-temperature and the proposed amendments to the test procedures for special compartments. DOE also requests comment on whether a size limit should be established for classification of a special compartment, and what a reasonable size limit might be.

8. *Auxiliary Compartments:*

DOE invites comment on the proposed approach to modification of the test procedures to address auxiliary compartments with external doors.

9. *Anti-Sweat Heater Definition:*

DOE invites comment on the proposal to allow the anti-sweat heater definition to include condensation of moisture on all rather than just exterior cabinet surfaces. DOE also seeks comment regarding whether additional clarity beyond the proposed amendments is required.

10. *Elimination of the Optional Third Part of the Test for Refrigerator-Freezers With Variable Defrost:*

DOE invites comment on the proposed elimination of the optional third part of the test for testing refrigerator-freezers with variable defrost. In particular, DOE requests information indicating that the third part of the procedure has been used in recent years for rating a product, and whether it provides a more accurate indication of the frequency of defrosts for such products than the default equation for this parameter.

11. *Test Method for Variable Anti-Sweat Heating Energy Contribution:*

DOE invites comment on the proposal to incorporate into the test procedures a determination of the energy use associated with variable anti-sweat heater controls involving test measurements. DOE also invites comment on whether the variable anti-sweat heater test procedure should also be incorporated into Appendices B and B1 for freezers. Finally, DOE invites comment on the suggested approach for reduction of test burden associated with the proposed test; DOE requests information and data providing justification for adopting this approach.

12. *New Compartment Temperatures:*

DOE invites comment on the establishment of new compartment temperatures for testing of refrigerators and refrigerator-freezers and the new volume adjustment factors for testing refrigeration products.

13. *New Volume Calculation Method:*

DOE invites comment on the establishment of a new volume calculation method. DOE also invites comment on the proposed clarification of the HRF–1–2008 volume calculation method addressing treatment of automatic icemakers and ice storage bins in the volume calculation method. Finally, DOE requests comment on whether this clarification should be applied also to freezers.

14. *Defrost Precooling Energy:*

DOE invites comment on the proposals to include precooling energy in the procedures for testing products with long-time or variable defrost controls. DOE also invites comment regarding whether additional test procedure amendments are appropriate in order to address possible use of partial recovery to reduce energy use of this part of the test.

15. *Multiple Defrost Cycle Types:*

DOE requests comments on the proposed amendments addressing test procedures for products with long-time or variable defrost that incorporate multiple types of defrost cycles.

16. *Wall Clearance:*

DOE invites comment on the proposed procedures regarding clearance between the rear of a tested cabinet and the test chamber or simulated wall.

17. *Combination Wine Storage-Freezer Products:*

DOE invites comment on its proposal to modify the definition of refrigerator-freezer to exclude products which combine a freezer and a wine storage compartment.

18. *Icemaking:*

DOE requests comments on the proposed approach for integrating icemaking energy use into the energy use metrics for refrigeration products. DOE requests recommendations for development of a test method for determination of icemaking energy use, including data to show the viability of recommended approaches. DOE requests comments on whether refrigerators with freezer compartments could include icemakers. Finally, DOE requests any updated data supporting determination of a representative daily ice production factor.

19. *Presence of Ice in the Ice Bin During Testing:*

DOE seeks comment on whether a requirement should be adopted in the test procedure specifying whether ice may be in the ice bin during energy testing.

20. *Temperature Settings:*

DOE requests comment on proposed modifications to the test procedures to clarify requirements for temperature settings, including whether DOE's understanding regarding the approach used by manufacturers is correct, and comment on whether these requirements should be incorporated into Appendices A1 and B1 as well as Appendices A and B. DOE also request comment on whether rating of products should be disallowed in case of tests in which compartment temperatures are higher than their standardized temperatures with temperature controls in their coldest position, and whether such an amendment should be introduced immediately in Appendices A1 and B1, or whether they should be considered only for Appendices A and B.

21. *Electric Heaters:*

DOE requests comment regarding electric heaters: what types exist that are not already discussed in section III.F.1; how do they contribute to energy use in typical consumer use and during the energy test; and whether modifications are needed (and if so what types) to more accurately reflect their energy use impact?

22. *Energy Use Measurement Round-Off:*

DOE requests comment on the achievable accuracy in measurement of refrigeration product energy use and the guidance under consideration to specify reporting of energy use to the nearest kilowatt-hour and on the need to provide a similar rounding for maximum allowable energy use under the energy conservation standard.

23. *Certification Report Amendments:*

DOE requests comments on the proposed additions to certification reports that will clarify the approach used to test the product.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on April 1, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend part 430 of chapter II of title 10, of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by revising the definition for "electric refrigerator-freezer" to read as follows:

§ 430.2 Definitions.

* * * * *

Electric refrigerator-freezer means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food at temperatures above 32 °F and below 39 °F and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8 °F which may be adjusted by the user to a temperature of 0 °F or below. Additional compartments shall be designed for temperature in any range up to 39 °F. The source of refrigeration requires single phase, alternating current electric energy input only.

* * * * *

3. Section 430.3 is amended by redesignating paragraph (g)(1) as (g)(2) and adding new paragraphs (g)(1) and (g)(3), to read as follows:

§ 430.3 Materials incorporated by reference.

(g) * * *

(1) ANSI/AHAM HRF–1–1979, ("HRF–1–1979"), *American National Standard, Household Refrigerators, Combination Refrigerator-Freezers and Household Freezers,* approved May 17, 1979, IBR approved for Appendices A1 and B1 to Subpart B.

* * * * *

(3) AHAM Standard HRF–1–2008, ("HRF–1–2008"), *Association of Home Appliance Manufacturers, Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers,* approved September 13, 2008, as modified by Errata published November 17, 2009, IBR approved for Appendices A and B to Subpart B.

* * * * *

3. Section 430.23 is amended by revising paragraphs (a) and (b) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

(a) *Refrigerators and refrigerator-freezers.* (1) The estimated annual operating cost for electric refrigerators and electric refrigerator-freezers with variable anti-sweat heater control or without an anti-sweat heater switch shall be the product of the following three factors:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) The estimated annual operating cost for electric refrigerators and electric refrigerator-freezers with an anti-sweat heater switch and without variable anti-sweat heater control shall be the product of the following three factors:

(i) The representative average-use cycle of 365 cycles per year;

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(3) The estimated annual operating cost for any other specified cycle type for electric refrigerators and electric refrigerator-freezers shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the specified cycle type, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 to this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(4) The energy factor for electric refrigerators and electric refrigerator-freezers, expressed in cubic feet per kilowatt-hour per cycle, shall be:

(i) For electric refrigerators and electric refrigerator-freezers with variable anti-sweat heater control or without an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to 6.1 of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.1 of Appendix A of this subpart after Appendix A becomes mandatory (*see* the note at the beginning of Appendix A), divided by—

(B) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (*see* the note at the beginning of Appendix A), the resulting quotient then being rounded off to the second decimal place; and

(ii) For electric refrigerators and electric refrigerator-freezers having an anti-sweat heater switch and without variable anti-sweat heater control, the quotient of—

(A) The adjusted total volume in cubic feet, determined according to 6.1 of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.1 of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A), divided by—

(B) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A), the resulting quotient then being rounded off to the second decimal place.

(5) The annual energy use of electric refrigerators and electric refrigerator-

freezers, expressed in kilowatt-hours per year, shall be:

(i) For electric refrigerators and electric refrigerator-freezers with variable anti-sweat heater control or without an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A), and

(ii) For electric refrigerators and electric refrigerator-freezers having an anti-sweat heater switch and without variable anti-sweat heater control, the representative average use cycle of 365 cycles per year times half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A).

(6) Other useful measures of energy consumption for electric refrigerators and electric refrigerator-freezers shall be those measures of energy consumption for electric refrigerators and electric refrigerator-freezers that the Secretary determines are likely to assist consumers in making purchasing decisions which are derived from the application of Appendix A1 of this subpart before Appendix A becomes mandatory Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A).

(7) The estimated regional annual operating cost for externally vented electric refrigerators and externally vented electric refrigerator-freezers with variable anti-sweat heater control or without an anti-sweat heater switch shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year,

(ii) The regional average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.3.7 of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.3.7 of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(8) The estimated regional annual operating cost for externally vented electric refrigerators and externally vented electric refrigerator-freezers with an anti-sweat heater switch and without variable anti-sweat heater control shall be the product of the following three factors:

(i) The representative average-use cycle of 365 cycles per year;

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the regional average per-cycle energy consumption for a test cycle with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.3.7 of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.3.7 of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(9) The estimated regional annual operating cost for any other specified cycle for externally vented electric refrigerators and externally vented electric refrigerator-freezers shall be the product of the following three factors:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The regional average per-cycle energy consumption for the specified cycle, in kilowatt-hours per cycle, determined according to 6.3.7 of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.3.7 of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(10) The energy test procedure is designed to provide a measurement consistent with representative average consumer use of the product, even if the test conditions and/or procedures may not themselves all be representative of average consumer use (*e.g,* 90 °F ambient conditions, no door openings, use of temperature settings unsafe for food preservation, etc.). If a product contains energy consuming components that operate differently during the prescribed testing than they would during representative average consumer use and applying the prescribed test to that product would evaluate it in a manner that is unrepresentative of its true energy consumption (thereby providing materially inaccurate comparative data), the prescribed procedure may not be used. Examples of products that cannot be tested using the prescribed test procedure include those products that can exhibit operating parameters (*e.g,* duty cycle or input wattage) for any energy using component that are not smoothly varying functions of operating conditions or control inputs—such as when a component is automatically shut off when test conditions or test settings are reached. A manufacturer wishing to test such a product must obtain a waiver in accordance with the relevant provisions of 10 CFR 430.

(b) *Freezers.* (1) The estimated annual operating cost for freezers without an anti-sweat heater switch shall be the product of the following three factors:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (*see* the note at the beginning of Appendix B); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) The estimated annual operating cost for freezers with an anti-sweat heater switch shall be the product of the following three factors:

(i) The representative average-use cycle of 365 cycles per year;

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after

Appendix B becomes mandatory (see the note at the beginning of Appendix B); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(3) The estimated annual operating cost for any other specified cycle type for freezers shall be the product of the following three factors:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the specified cycle type, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(4) The energy factor for freezers, expressed in cubic feet per kilowatt-hour per cycle, shall be:

(i) For freezers not having an anti-sweat heater switch, the quotient of—

(A) The adjusted net refrigerated volume in cubic feet, determined according to 6.1 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.1 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B), divided by—

(B) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to or 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B), the resulting quotient then being rounded off to the second decimal place; and

(ii) For freezers having an anti-sweat heater switch, the quotient of—

(A) The adjusted net refrigerated volume in cubic feet, determined according to 6.1 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.1 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B), divided by—

(B) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B), the resulting quotient then being rounded off to the second decimal place.

(5) The annual energy use of all freezers, expressed in kilowatt-hours per year, shall be:

(i) For freezers not having an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B), and

(ii) For freezers having an anti-sweat heater switch, the representative average use cycle of 365 cycles per year times half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B).

(6) Other useful measures of energy consumption for freezers shall be those measures the Secretary determines are likely to assist consumers in making purchasing decisions and are derived from the application of Appendix B1 of this subpart before Appendix B becomes mandatory Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B).

(7) The energy test procedure is designed to provide a measurement consistent with representative average consumer use of the product, even if the test conditions and/or procedures may not themselves all be representative of average consumer use (*e.g,* 90 °F ambient conditions, no door openings, *etc.*). If a product contains energy consuming components that operate differently during the prescribed testing than they would during representative average consumer use and applying the prescribed test to that product would evaluate it in a manner that is unrepresentative of its true energy consumption (thereby providing materially inaccurate comparative data), the prescribed procedure may not be used. Examples of products that cannot be tested using the prescribed test procedure include those products that can exhibit operating parameters (*e.g,* duty cycle or input wattage) for any energy using component that are not smoothly varying functions of operating conditions or control inputs—such as when a component is automatically shut off when test conditions or test settings are reached. A manufacturer wishing to test such a product must obtain a waiver in accordance with the relevant provisions of 10 CFR 430.

* * * * *

4. Add a new Appendix A to subpart B of part 430 to read as follows:

Appendix A to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers

The provisions of Appendix A shall apply to all products manufactured on or after the effective date of any amended standards promulgated by DOE pursuant to Section 325(b)(4) of the Energy Policy and Conservation Act of 1975, as amended by the Energy Independence and Security Act of 2007 (to be codified at 42 U.S.C. 6295(b)(4)).

1. Definitions

Section 3, *Definitions,* of HRF–1–2008 (incorporated by reference; see § 430.3) is applicable to this test procedure.

1.1 "Adjusted total volume" means the sum of:

(i) The fresh food compartment volume as defined in HRF–1–2008 (incorporated by reference; see § 430.3) in cubic feet, and

(ii) The product of an adjustment factor and the net freezer compartment volume as defined in HRF–1–2008 in cubic feet.

1.2 "All-refrigerator" means an electric refrigerator that does not include a compartment for the freezing and long time storage of food at temperatures below 32 °F (0.0 °C). It may include a compartment of 0.50 cubic feet capacity (14.2 liters) or less for the freezing and storage of ice.

1.3 "Anti-sweat heater" means a device incorporated into the design of a refrigerator or refrigerator-freezer to prevent the accumulation of moisture on the exterior or interior surfaces of the cabinet.

1.4 "Anti-sweat heater switch" means a user-controllable switch or user interface which modifies the activation or control of anti-sweat heaters.

1.5 "Automatic defrost" means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of the defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces. Nominal refrigerated

food temperatures are maintained during the operation of the automatic defrost system.

1.6 "Automatic icemaker" means a device, that can be supplied with water without user intervention, either from a pressurized water supply system or by transfer from a water reservoir located inside the cabinet, that automatically produces, harvests, and stores ice in a storage bin, with means to automatically interrupt the harvesting operation when the ice storage bin is filled to a pre-determined level.

1.7 "Cycle" means the period of 24 hours for which the energy use of an electric refrigerator or electric refrigerator-freezer is calculated as though the consumer activated compartment temperature controls were set so that the standardized temperatures (see section 3.2) were maintained.

1.8 "Cycle type" means the set of test conditions having the calculated effect of operating an electric refrigerator or electric refrigerator-freezer for a period of 24 hours, with the consumer activated controls other than those that control compartment temperatures set to establish various operating characteristics.

1.9 "Defrost cycle type" means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the sequence of control for defrost such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type.

1.10 "Externally vented refrigerator or refrigerator-freezer" means an electric refrigerator or electric refrigerator-freezer that has an enclosed condenser or an enclosed condenser/compressor compartment and a set of air ducts for transferring the exterior air from outside the building envelope into, through, and out of the refrigerator or refrigerator-freezer cabinet; is capable of mixing exterior air with the room air before discharging into, through, and out of the condenser or condenser/compressor compartment; includes thermostatically controlled dampers or controls that enable the mixing of the exterior and room air at low outdoor temperatures, and the exclusion of exterior air when the outdoor air temperature is above 80 °F or the room air temperature; and may have a thermostatically actuated exterior air fan.

1.11 "HRF–1–2008" means the Association of Home Appliance Manufacturers standard *Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers* that was approved September 13, 2008. Only sections of HRF–1–2008 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over HRF–1–2008.

1.12 "Long-time automatic defrost" means an automatic defrost system whose successive defrost cycles are separated by 14 hours or more of compressor operating time.

1.13 "Separate auxiliary compartment" means a freezer compartment or a fresh food compartment of a refrigerator or refrigerator-freezer having more than two compartments that is not the first freezer compartment or the first fresh food compartment. Access to a separate auxiliary compartment is through a separate exterior door or doors rather than through the door or doors of another compartment. Separate auxiliary compartments may be convertible (*e.g.,* from fresh food to freezer).

1.14 "Stabilization period" means the total period of time during which steady-state conditions are being attained or evaluated.

1.15 "Standard cycle" means the cycle type in which the anti-sweat heater control, when provided, is set in the highest energy-consuming position.

1.16 "Variable anti-sweat heater control" means an anti-sweat heater control that varies the average power input of the anti-sweat heater(s) based on operating condition variable(s) and/or ambient condition variable(s).

1.17 "Variable defrost control" means a long-time automatic defrost system (except the 14-hour defrost qualification does not apply) in which successive defrost cycles are determined by an operating condition variable or variables other than compressor operating time. This includes any electrical or mechanical device performing this function. Demand defrost is a type of variable defrost control.

2. Test Conditions

2.1 Ambient Temperature and Humidity. The ambient temperature shall be 90.0 ± 1 °F (32.2 ± 0.6 °C) during the stabilization period and the test period. If the product being tested has variable anti-sweat heater control, the ambient relative humidity shall be no more than 35%. For the variable anti-sweat heater test described in section 4.1.3, the ambient temperature shall be 72 ± 1 °F (22.2 ± 0.6 °C) dry bulb. The relative humidities for the three portions of the test shall be 25 ± 10%, 65 ± 2%, and 95 ± 2%.

2.2 Operational Conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–2008, (incorporated by reference; see § 430.3), section 5.3 through section 5.5.5.5 (excluding section 5.5.5.4), except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless the area is obstructed by shields or baffles, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height of 1 foot (30.5 cm) above the unit under test. Defrost controls are to be operative. Other exceptions and clarifications to the cited sections of HRF–1–2008 are noted in sections 2.3 through 2.7, and 5.1 of this test procedure.

2.3 Anti-Sweat Heaters.

(a) User-Controllable Anti-Sweat Heaters. The anti-sweat heater switch is to be on during one test and off during a second test.

(b) Variable Anti-Sweat Heaters. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the test shall be conducted with the anti-sweat heater controls activated to allow the anti-sweat heater to be energized but operating in their minimum energy state corresponding to operation in low humidity conditions, as a result of testing conducted using an ambient relative humidity level as specified in section 2.1. If the product has an anti-sweat heater switch, it shall be switched on. The variable anti-sweat heater test (described in section 4.1.3) shall be conducted to determine the energy consumption of the anti-sweat heater in higher humidity conditions. The standard cycle energy consumption shall be determined using the equation described in section 6.2.3.

2.4 Conditions for Automatic Defrost Refrigerator-Freezers. For automatic defrost refrigerator-freezers, the freezer compartments shall not be loaded with any frozen food packages during testing. Cylindrical metallic masses of dimensions 1.12 ± 0.25 inches (2.9 ± 0.6 cm) in diameter and height shall be attached in good thermal contact with each temperature sensor within the refrigerated compartments. All temperature measuring sensor masses shall be supported by low-thermal-conductivity supports in such a manner to ensure that there will be at least 1 inch (2.5 cm) of air space separating the thermal mass from contact with any interior surface or hardware inside the cabinet. In case of interference with hardware at the sensor locations specified in section 5.1, the sensors shall be placed at the nearest adjacent location such that there will be a 1-inch air space separating the sensor mass from the hardware.

2.5 Conditions for All-Refrigerators. There shall be no load in the freezer compartment during the test.

2.6 The cabinet and its refrigerating mechanism shall be assembled and set up in accordance with the printed consumer instructions supplied with the cabinet. Set-up of the refrigerator or refrigerator-freezer shall not deviate from these instructions, unless explicitly required or allowed by this test procedure. Specific required or allowed deviations from such set-up include the following:

(a) Connection of water lines and installation of water filters are not required;

(b) Clearance requirements from surfaces of the product shall be as described in section 2.8 below;

(c) The electric power supply shall be as described in HRF–1–2008 (incorporated by reference; see § 430.3), section 5.5.1;

(d) Temperature control settings for testing shall be as described in section 3 below. Settings for convertible compartments and other temperature-controllable or special compartments shall be as described in section 2.7 below; and

(e) The product does not need to be anchored or otherwise secured to prevent tipping during energy testing.

For cases in which set-up is not clearly defined by this test procedure, manufacturers must submit a petition for a waiver (see section 7).

2.7 Compartments that are convertible (*e.g.,* from fresh food to freezer) shall be operated in the highest energy use position. For the special case of convertible separate auxiliary compartments, this means that the compartment shall be treated as a freezer compartment or a fresh food compartment,

depending on which of these represents higher energy use. Other compartments with separate temperature control (such as crispers convertible to meat keepers), with the exception of butter conditioners, shall also be tested with controls set in the highest energy use position.

2.8 The space between the back of the cabinet and the test room wall or simulated wall shall be the minimum distance in accordance with the manufacturer's instructions. If the instructions do not specify a minimum distance, the cabinet shall be located such that the rear of the cabinet touches the test room wall or simulated wall. The test room wall facing the rear of the cabinet or the simulated wall shall be flat within ¼ inch, and vertical to within 1 degree. The cabinet shall be leveled to within 1 degree of true level, and positioned with its rear wall parallel to the test chamber wall or simulated wall immediately behind the cabinet. Any simulated wall shall be solid and shall extend vertically from the floor to above the height of the cabinet and horizontally beyond both sides of the cabinet.

2.9 Steady-State Condition. Steady-state conditions exist if the temperature measurements in all measured compartments taken at 4-minute intervals or less during a stabilization period are not changing at a rate greater than 0.042 °F (0.023 °C) per hour as determined by the applicable condition of A or B, described below.

A. The average of the measurements during a 2-hour period if no cycling occurs or during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours is compared to the average over an equivalent time period with 3 hours elapsing between the two measurement periods.

B. If A above cannot be used, the average of the measurements during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours and including the last complete cycle before a defrost period (or if no cycling occurs, the average of the measurements during the last 2 hours before a defrost period) are compared to the same averaging period before the following defrost period.

2.10 Exterior Air for Externally Vented Refrigerator or Refrigerator-Freezer. An exterior air source shall be provided with adjustable temperature and pressure capabilities. The exterior air temperature shall be adjustable from 30 ± 1 °F (1.7 ± 0.6 °C) to 90 ± 1 °F (32.2 ± 0.6 °C).

2.10.1 Air Duct. The exterior air shall pass from the exterior air source to the test unit through an insulated air duct.

2.10.2 Air Temperature Measurement. The air temperature entering the condenser or condenser/compressor compartment shall be maintained to ± 3 °F (1.7 °C) during the stabilization and test periods and shall be measured at the inlet point of the condenser or condenser/compressor compartment ("condenser inlet"). Temperature measurements shall be taken from at least three temperature sensors or one sensor per 4 square inches of the air duct cross-sectional area, whichever is greater, and shall be averaged. For a unit that has a condenser air fan, a minimum of three temperature sensors at the condenser fan discharge shall be required. Temperature sensors shall be arranged to be at the centers of equally divided cross-sectional areas. The exterior air temperature, at its source, shall be measured and maintained to ± 1 °F (0.6 °C) during the test period. The temperature measuring devices shall have an error no greater than ± 0.5 °F (± 0.3 °C). Measurements of the air temperature during the test period shall be taken at regular intervals not to exceed 4 minutes.

2.10.3 Exterior Air Static Pressure. The exterior air static pressure at the inlet point of the unit shall be adjusted to maintain a negative pressure of 0.20″ ± 0.05″ water column (62 Pascals ± 12.5 Pascals) for all air flow rates supplied to the unit. The pressure sensor shall be located on a straight duct with a distance of at least 7.5 times the diameter of the duct upstream and a distance of at least 3 times the diameter of the duct downstream. There shall be four static pressure taps at 90° angles apart. The four pressures shall be averaged by interconnecting the four pressure taps. The air pressure measuring instrument shall have an error no greater than 0.01″ water column (2.5 Pascals).

3. Test Control Settings

3.1 Model with no User Operable Temperature Control. A test shall be performed to measure the compartment temperatures and energy use. A second test shall be performed with the temperature control electrically short circuited to cause the compressor to run continuously.

3.2 Models with User Operable Temperature Control. Testing shall be performed in accordance with one of the following sections using the following standardized temperatures:

All-Refrigerator: 39 °F (3.9 °C) fresh food compartment temperature;

Refrigerator: 15 °F (− 9.4 °C) freezer compartment temperature, 39 °F (3.9 °C) fresh food compartment temperature;

Refrigerator-Freezer: 0 °F (− 17.8 °C) freezer compartment temperature, 39 °F (3.9 °C) fresh food compartment temperature; and

Variable Anti-Sweat Heater Model (Temperatures for variable anti-sweat heater test of section 4.1.3): 0 °F (− 17.8 °C) freezer compartment temperature and 39 ± 2 °F (3.9 ± 1.1 °C) fresh food compartment temperature during steady-state conditions with no door-openings. If both settings cannot be obtained, then test with the fresh food compartment temperature at 39 ± 2 °F (3.9 ± 1.1 °C) and the freezer compartment as close to 0 °F (− 17.8 °C) as possible.

For the purposes of comparing compartment temperatures with standardized temperatures, as described in sections 3.2.1 through 3.2.3, the freezer compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable freezer compartments, and the fresh food compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable fresh food compartments. Applicable compartments for these calculations may include a first freezer compartment, a first fresh food compartment, and any number of separate auxiliary compartments.

3.2.1 A first test shall be performed with all compartment temperature controls set at their median position midway between their warmest and coldest settings. For mechanical control systems, knob detents shall be mechanically defeated if necessary to attain a median setting. For electronic control systems, the test shall be performed with all compartment temperature controls set at the average of the coldest and warmest settings—if there is no setting equal to this average, the setting closest to the average shall be used. If there are two such settings equally close to the average, the higher of these temperature control settings shall be used. A second test shall be performed with all controls set at their warmest setting or all controls set at their coldest setting (not electrically or mechanically bypassed). For all-refrigerators, this setting shall be the appropriate setting that attempts to achieve compartment temperatures measured during the two tests which bound (*i.e.,* one is above and one is below) the standardized temperature for all-refrigerators. For refrigerators and refrigerator-freezers, the second test shall be conducted with all controls at their coldest setting, unless all compartment temperatures measured during the first part of the test are lower than the standardized temperatures, in which case the second test shall be conducted with all controls at their warmest setting. Refer to Table 1 for all-refrigerators or Table 2 for refrigerators with freezer compartments and refrigerator-freezers to determine if a third test is required, and which test results to use in the energy consumption calculation.

TABLE 1—TEMPERATURE SETTINGS FOR ALL—REFRIGERATORS

First test		Second test		Third test settings	Energy calculation based on:
Settings	Results	Settings	Results		
Mid	Low	Warm	Low	None	Second Test Only.
			High	None	First and Second Tests.
	High	Cold	Low	None	First and Second Tests.

TABLE 1—TEMPERATURE SETTINGS FOR ALL—REFRIGERATORS—Continued

First test		Second test		Third test settings	Energy calculation based on:
Settings	Results	Settings	Results		
			High	Warm	Second and Third Tests.

TABLE 2—TEMPERATURE SETTINGS FOR REFRIGERATORS WITH FREEZER COMPARTMENTS AND REFRIGERATOR-FREEZERS

First test		Second test		Third test settings	Energy calculation based on:
Settings	Results	Settings	Results		
Fzr Mid FF Mid	Fzr Low FF Low	Fzr Warm FF Warm	Fzr Low FF Low	None	Second Test Only.
			Fzr Low FF High	None	First and Second Tests.
			Fzr High FF Low	None	First and Second Tests.
			Fzr High FF High	None	First and Second Tests.
	Fzr Low FF High	Fzr Cold FF Cold	Fzr Low FF High	Fzr Warm FF Warm	Second and Third Tests.
			Fzr Low FF Low	None	First and Second Tests.
	Fzr High FF Low	Fzr Cold FF Cold	Fzr High FF Low	Fzr Warm FF Warm	Second and Third Tests.
			Fzr Low FF Low	None	First and Second Tests.
	Fzr High FF High	Fzr Cold FF Cold	Fzr Low FF Low	None	First and Second Tests.
			Fzr Low FF High	None	First and Second Tests.
			Fzr High FF Low	Fzr Warm FF Warm	Second and Third Tests.
			Fzr High FF High	Fzr Warm FF Warm	Second and Third Tests.

Notes: Fzr = Freezer Compartment, FF = Fresh Food Compartment.

3.2.2 Alternatively, a first test may be performed with all temperature controls set at their warmest setting. If all compartment temperatures are below the appropriate standardized temperatures, then the result of this test alone will be used to determine energy consumption. If the above conditions are not met, then the unit shall be tested in accordance with 3.2.1.

3.2.3 Alternatively, a first test may be performed with all temperature controls set at their coldest setting. If (1) for all-refrigerators the compartment temperature is above the appropriate standardized temperature, or (2) for refrigerators and refrigerator-freezers the freezer compartment temperature is above the appropriate standardized temperature, a second test shall be performed with all controls set at their warmest control setting and the results of these two tests shall be used to determine energy consumption. If the above condition is not met, then the unit shall be tested in accordance with 3.2.1.

4. Test Period

4.1 Test Period. Tests shall be performed by establishing the conditions set forth in section 2, and using control settings set forth in section 3.

4.1.1 Nonautomatic Defrost. If the model being tested has no automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be no less than 3 hours in duration. During the test period, the compressor motor shall complete two or more whole compressor cycles. (A compressor cycle is a complete "on" and a complete "off" period of the motor). If no "off" cycling will occur, as determined during the stabilization period, the test period shall be 3 hours. If incomplete cycling occurs (*i.e.* less than two compressor cycles during a 24-hour period), the results of the 24-hour period shall be used.

4.1.2 Automatic Defrost. If the model being tested has an automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be from one point during a defrost period to the same point during the next defrost period. If the model being tested has a long-time automatic defrost system, the alternative provisions of 4.1.2.1 may be used. If the model being tested has a variable defrost control, the provisions of section 4.1.2.2 shall apply. If the model has a dual compressor system with automatic defrost for both systems, the provisions of 4.1.2.3 shall apply. If the model being tested has long-time automatic or variable defrost control involving multiple defrost cycle types, such as for a system with a single compressor with two or more evaporators in which the evaporators are defrosted at different frequencies, the provisions of section 4.1.2.4 shall apply. If the model being tested has multiple defrost cycle types for which compressor run time between defrosts is a fixed time less than 14 hours for all such cycle types, and for which the compressor run time between defrosts for different defrost cycle types are equal to or multiples of each other, the test time period shall be from one point of the defrost cycle type with the longest compressor run time between defrosts to the same point during the next occurrence of this defrost cycle type. For such products, energy consumption shall be calculated as described in section 5.2.1.1.

4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is the same as the test for a unit having no defrost provisions (section 4.1.1). The second part starts when the compressor turns off at the end of a period of steady-state cycling operation just before initiation of the defrost control sequence. If the compressor does not cycle during steady-state operation between defrosts, the second part starts at a

time when the compartment temperatures are within their ranges measured during steady state operation, or within 0.5 °F of the average during steady state operation for a compartment with a temperature range during steady state operation no greater than 1 °F. This control sequence may include additional compressor operation prior to energizing the defrost heater. The second part terminates when the compressor turns on the second time after the defrost control sequence or 4 hours after the defrost heater is energized, whichever occurs first. See Figure 1.

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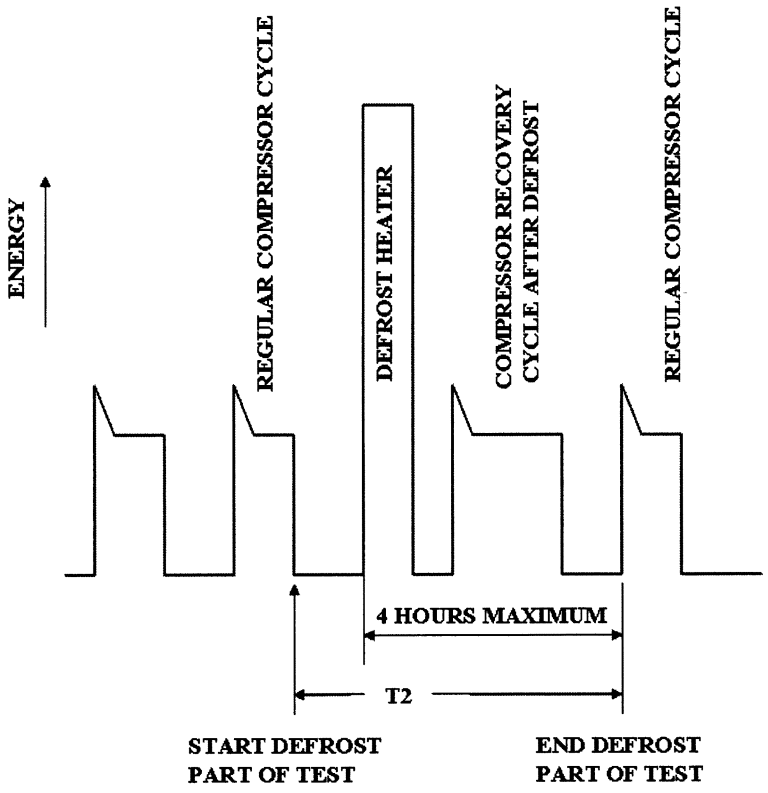
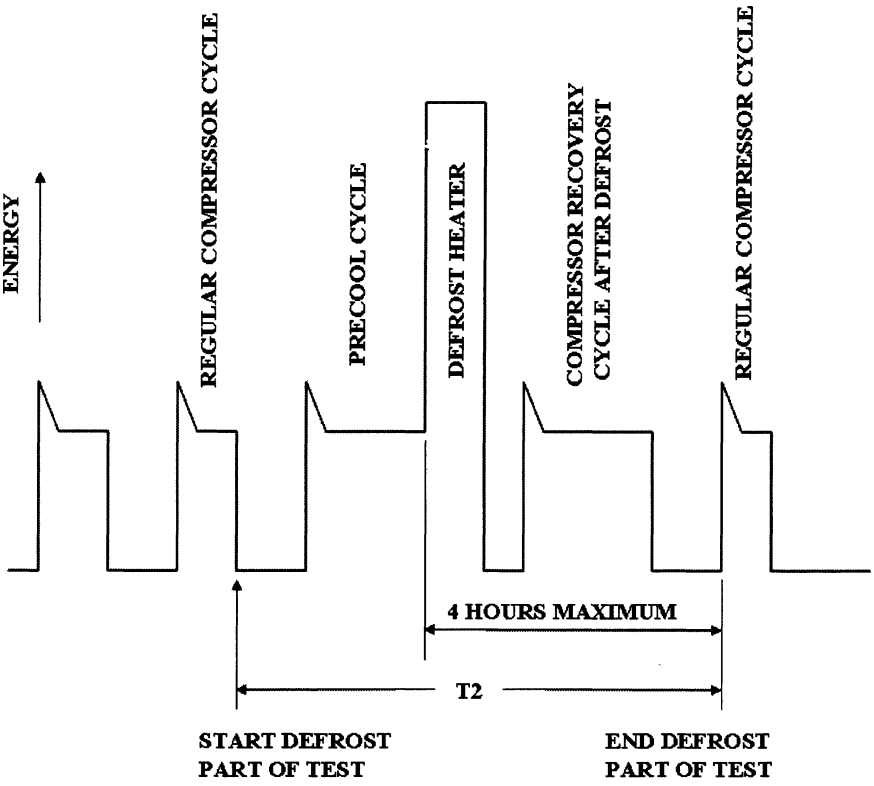
Figure 1

Long-time Automatic Defrost Diagrams



Second Part of Test with Compressor off Prior to Defrost



Second Part of Test with Precool Prior to Defrost

BILLING CODE 6450–01–C

4.1.2.2 Variable Defrost Control. If the model being tested has a variable defrost control system, the test shall consist of the same two parts as the test for long-time automatic defrost (section 4.1.2.1).

4.1.2.3 Dual Compressor Systems with Automatic Defrost. If the model being tested has separate compressor systems for the refrigerator and freezer sections, each with its own automatic defrost system, then the two-part method in 4.1.2.1 shall be used. The second part of the method will be conducted separately for each automatic defrost system. The components (compressor, fan motors, defrost heaters, anti-sweat heaters, etc.) associated with each system will be identified and their energy consumption will be separately measured during each test.

4.1.2.4 Systems with Multiple Defrost Frequencies. This section is applicable to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. The two-part method in 4.1.2.1 shall be used. The second part of the method will be conducted separately for each distinct defrost cycle type.

4.1.3 Variable Anti-Sweat Heater Test. The test shall be conducted three times with the test conditions at three different relative humidities as set forth in section 2 and the test control settings as set forth in section 3. For a product with an anti-sweat heater switch, the tests shall be conducted with the switch in the on position. Each of the three portions of the test shall be conducted in the same manner as for a unit having no automatic defrost (section 4.1.1). If during the time between one of the portions of the test and the next portion the ambient temperature conditions are maintained, the procedure for evaluating steady state (section 2.9) is not required for the second of these two portions of the test. However, in such a case, a control stabilization period of two hours is required after the ambient humidity conditions have reached the required range before start of the test.

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figures 5.1 and 5.2 of HRF–1–2008 (incorporated by reference; see § 430.3) and shall be accurate to within ± 0.5 °F (0.3 °C). No freezer temperature measurements need be taken in an all-refrigerator model.

If the interior arrangements of the cabinet do not conform with those shown in Figure 7.1 and 7.2 of HRF–1–1979, the product may be tested by relocating the temperature sensors from the locations specified in the Figures by no more than 2 inches to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 430.62(d). For those products equipped with a cabinet that does not conform with Figures 7.1 or 7.2 and cannot be tested in the manner described above, the manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product.

5.1.1 Measured Temperature. The measured temperature of a compartment is to be the average of all sensor temperature readings taken in that compartment at a particular point in time. Measurements shall be taken at regular intervals not to exceed 4 minutes.

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken in a compartment during one or more complete compressor cycles. One compressor cycle is one complete motor “on” and one complete motor “off” period. For long-time automatic defrost models, compartment temperatures shall be those measured in the first part of the test period specified in section 4.1.2.1. For models equipped with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.1.2.2.

5.1.2.1 The number of complete compressor cycles over which the measured temperatures in a compartment are to be averaged to determine compartment temperature shall be equal to the number of minutes between measured temperature readings, rounded up to the next whole minute or a number of complete compressor cycles over a time period exceeding 1 hour, whichever is greater. One of the compressor cycles shall be the last complete compressor cycle during the test period.

5.1.2.2 If no compressor cycling occurs, the compartment temperature shall be the

average of the measured temperatures taken during the last 32 minutes of the test period.

5.1.2.3 If incomplete compressor cycling occurs, the compartment temperatures shall be the average of the measured temperatures taken during the last three hours of the last complete compressor "on" period.

5.2 Energy Measurements.

5.2.1 Per-Day Energy Consumption. The energy consumption in kilowatt-hours per day, ET, for each test period shall be the energy expended during the test period as specified in section 4.1 adjusted to a 24-hour period. The adjustment shall be determined as follows.

5.2.1.1 Nonautomatic and Automatic Defrost Models. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = EP \times 1440/T$$

Where:

ET = test cycle energy expended in kilowatt-hours per day;
EP = energy expended in kilowatt-hours during the test period;
T = length of time of the test period in minutes; and
1440 = conversion factor to adjust to a 24-hour period in minutes per day.

5.2.1.2 Long-time Automatic Defrost. If the two-part test method is used, the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times (12/CT)$$

Where:

ET and 1440 are defined in 5.2.1.1;
EP1 = energy expended in kilowatt-hours during the first part of the test;
EP2 = energy expended in kilowatt-hours during the second part of the test;
T1 and T2 = length of time in minutes of the first and second test parts respectively;
CT = defrost timer run time in hours required to cause it to go through a complete cycle, to the nearest tenth hour per cycle; and
12 = factor to adjust for a 50 percent run time of the compressor in hours per day.

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times (12/CT),$$

Where:

1440 is defined in 5.2.1.1 and EP1, EP2, T1, T2, and 12 are defined in 5.2.1.2;
$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$;
CT_L = least or shortest time between defrosts in hours rounded to the nearest tenth of an hour (greater than or equal to 6 but less than or equal to 12 hours);
CT_M = maximum time between defrost cycles in hours rounded to the nearest tenth of an hour (greater than CT_L but not more than 96 hours);
F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20; and
For variable defrost models with no values for CT_L and CT_M in the algorithm, the default values of 12 and 84 shall be used, respectively.

5.2.1.4 Dual Compressor Systems with Dual Automatic Defrost. The two-part test method in section 4.1.2.4 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2_F - (EP_F \times T2/T1)) \times (12/CT_F) + (EP2_R - (EP_R \times T3/T1)) \times (12/CT_R)$$

Where:

1440, EP1, T1, EP2, 12, and CT are defined in 5.2.1.2;
EP_F = freezer system energy in kilowatt-hours expended during the first part of the test;
$EP2_F$ = freezer system energy in kilowatt-hours expended during the second part of the test for the freezer system;
EP_R= refrigerator system energy in kilowatt-hours expended during the first part of the test;
$EP2_R$ = refrigerator system energy in kilowatt-hours expended during the second part of the test for the refrigerator system;
T2 and T3 = length of time in minutes of the second test part for the freezer and refrigerator systems respectively;
CT_F = compressor "on" time between freezer defrosts (in hours to the nearest tenth of an hour); and
CT_R = compressor "on" time between refrigerator defrosts (in hours to the nearest tenth of an hour).

5.2.1.5 Variable Anti-Sweat Heater Test. The energy consumption in kilowatt-hours per day for each of the portions of the test shall be calculated equivalent to:

$$ET_{XX} = EP_{XX} \times 1440/T_{XX}$$

Where:

1440 is defined in 5.2.1.1;
subscript XX = 25, 65, and 95, representing the three relative humidities for which the test is conducted;
ET_{XX} = test cycle energy expended in kilowatt-hours per day;
EP_{XX} = energy expended during the test period in kilowatt-hours; and
T_{XX} = length of time of the test period in minutes.

5.2.1.6 Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + \sum_{i=1}^{D} \left[\left(EP2_i - \left(EP1 \times T2_i/T1 \right) \right) \times \left(12/CT_i \right) \right]$$

Where:

1440 is defined in 5.2.1.1 and EP1, T1, and 12 are defined in 5.2.1.2;
i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;
$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;
$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;
CT_i is the compressor run time between instances of defrost cycle type i, for long time automatic defrost control equal to a fixed time, and for variable defrost control equal to $(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} - CT_{Li}) + CT_{Li})$;
CT_{Li} = least or shortest time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than or equal to 6 but less than or equal to 12 hours);
CT_{Mi} = maximum time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);
F = default defrost energy consumption factor, equal to 0.20.
For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the default values of 12 and 84 shall be used, respectively.
D is the total number of distinct defrost cycle types.

5.3 Volume Measurements. The electric refrigerator or electric refrigerator-freezer total refrigerated volume, VT, shall be measured in accordance with HRF–1–2008, (incorporated by reference; *see* § 430.3), section 3.30 and sections 4.2 through 4.3, and be calculated equivalent to:

$$VT = VF + VFF$$

Where:

VT = total refrigerated volume in cubic feet,
VF = freezer compartment volume in cubic feet, and
VFF = fresh food compartment volume in cubic feet.

In the case of refrigerators or refrigerator-freezers with automatic icemakers, the volume occupied by the automatic icemaker, including its ice storage bin, is to be included in the volume measurement.

5.4 Externally Vented Refrigerator or Refrigerator-Freezer Units. All test measurements for the externally vented refrigerator or refrigerator-freezer shall be made in accordance with the requirements of other sections of this Appendix, except as modified in this section or other sections expressly applicable to externally vented refrigerators or refrigerator-freezers.

5.4.1 Operability of "Thermostatic" and "Mixing of Air" Controls. Before conducting energy consumption tests, the operability of thermostatic controls that permit the mixing of exterior and ambient air when exterior air

temperatures are less than 60 °F (15.6 °C) must be verified. The operability of such controls shall be verified by operating the unit under ambient air temperature of 90 °F (32.2 °C) and exterior air temperature of 45 °F (7.2 °C). If the inlet air entering the condenser or condenser/compressor compartment is maintained at 60 ± 3 °F (15.6 ± 1.7 °C), energy consumption of the unit shall be measured under 5.4.2.2 and 5.4.2.3. If the inlet air entering the condenser or condenser/compressor compartment is not maintained at 60 ± 3 °F (15.6 ± 1.7 °C), energy consumption of the unit shall also be measured under 5.4.2.4.

5.4.2 Energy Consumption Tests.

5.4.2.1 Correction Factor Test. To enable calculation of a correction factor, K, two full cycle tests shall be conducted to measure energy consumption of the unit with air mixing controls disabled and the condenser inlet air temperatures set at 90 °F (32.2 °C) and 80 °F (26.7 °C). Both tests shall be conducted with all compartment temperature controls set at the position midway between their warmest and coldest settings and the anti-sweat heater switch off. Record the energy consumptions ec_{90} and ec_{80}, in kWh/day.

5.4.2.2 Energy Consumption at 90 °F. The unit shall be tested at 90 °F (32.2 °C) exterior air temperature to record the energy consumptions $(e_{90})_i$ in kWh/day. For a given setting of the anti-sweat heater, the value i corresponds to each of the two states of the compartment temperature control positions.

5.4.2.3 Energy Consumption at 60 °F. The unit shall be tested at 60 °F (26.7 °C) exterior air temperature to record the energy consumptions $(e_{60})_i$ in kWh/day. For a given setting of the anti-sweat heater, the value i corresponds to each of the two states of the compartment temperature control positions.

5.4.2.4 Energy Consumption if Mixing Controls do not Operate Properly. If the operability of temperature and mixing controls has not been verified as required under 5.4.1, the unit shall be tested at 50 °F (10.0 °C) and 30 °F (−1.1 °C) exterior air temperatures to record the energy consumptions $(e_{50})_i$ and $(e_{30})_i$. For a given setting of the anti-sweat heater, the value i corresponds to each of the two states of the compartment temperature control positions.

6. Calculation of Derived Results From Test Measurements

6.1 Adjusted Total Volume.

6.1.1 Electric Refrigerators. The adjusted total volume, VA, for electric refrigerators under test shall be defined as:

$$VA = (VF \times CR) + VFF$$

Where:

VA = adjusted total volume in cubic feet;
VF and VFF are defined in 5.3; and
CR = dimensionless adjustment factor of 1.47 for refrigerators other than all-refrigerators, or 1.0 for all-refrigerators.

6.1.2 Electric Refrigerator-Freezers. The adjusted total volume, VA, for electric refrigerator-freezers under test shall be calculated as follows:

$$VA = (VF \times CRF) + VFF$$

Where:

VF and VFF are defined in 5.3 and VA is defined in 6.1.1, and

CRF = dimensionless adjustment factor of 1.76.

6.2 Average Per-Cycle Energy Consumption. For the purposes of calculating per-cycle energy consumption, as described in this section, freezer compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable freezer compartments, and fresh food compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable fresh food compartments. Applicable compartments for these calculations may include a first freezer compartment, a first fresh food compartment, and any number of separate auxiliary compartments.

6.2.1 All-Refrigerator Models. The average per-cycle energy consumption for a cycle type, E, is expressed in kilowatt-hours per cycle to the nearest one hundredth (0.01) kilowatt-hour and shall depend upon the temperature attainable in the fresh food compartment as shown below.

6.2.1.1 If the fresh food compartment temperature is always below 39.0 °F (3.9 °C), the average per-cycle energy consumption shall be equivalent to:

$$E = ET1$$

Where:

ET is defined in 5.2.1; and
number 1 indicates the test period during which the highest fresh food compartment temperature is measured.

6.2.1.2 If one of the fresh food compartment temperatures measured for a test period is greater than 39.0 °F (3.9 °C), the average per-cycle energy consumption shall be equivalent to:

$$E = ET1 + ((ET2 - ET1) \times (39.0 - TR1)/(TR2 - TR1))$$

Where:

ET is defined in 5.2.1;
TR = fresh food compartment temperature determined according to 5.1.2 in degrees F; numbers 1 and 2 indicate measurements taken during the first and second test period as appropriate; and
39.0 = standardized fresh food compartment temperature in degrees F.

6.2.2 Refrigerators and Refrigerator-Freezers. The average per-cycle energy consumption for a cycle type, E, is expressed in kilowatt-hours per-cycle to the nearest one hundredth (0.01) kilowatt-hour and shall be defined in one of the following ways as applicable.

6.2.2.1 If the fresh food compartment temperature is at or below 39 °F (3.9 °C) in both tests and the freezer compartment temperature is at or below 15 °F (−9.4 °C) in both tests of a refrigerator or at or below 0 °F (−17.8 °C) in both tests of a refrigerator-freezer, the per-cycle energy consumption shall be:

$$E = ET1 + IET$$

Where:

ET is defined in 5.2.1;
IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with an automatic icemaker and otherwise equals 0 (zero); and
number 1 indicates the test period during which the highest freezer compartment temperature was measured.

6.2.2.2 If the conditions of 6.2.2.1 do not exist, the per-cycle energy consumption shall be defined by the higher of the two values calculated by the following two formulas:

$$E = ET1 + ((ET2 - ET1) \times (39.0 - TR1)/(TR2 - TR1)) + IET \text{ and}$$
$$E = ET1 + ((ET2 - ET1) \times (k - TF1)/(TF2 - TF1)) + IET$$

Where:

E is defined in 6.2.1.1;
ET is defined in 5.2.1;
IET is defined in 6.2.2.1;
TR and the numbers 1 and 2 are defined in 6.2.1.2;
TF = freezer compartment temperature determined according to 5.1.2 in degrees F;
39.0 is a specified fresh food compartment temperature in degrees F; and
k is a constant 15.0 for refrigerators or 0.0 for refrigerator-freezers, each being standardized freezer compartment temperatures in degrees F.

6.2.3 Variable Anti-Sweat Heater Models. The energy consumption of an electric refrigerator-freezer having a variable anti-sweat heater control, E_{VASH}, expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{VASH} = E + (Correction Factor), where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater in its minimum energy state corresponding to low ambient humidity during the test.

Where:

Correction Factor
= 0.034 * (Energy Difference at 5% Relative Humidity (RH)),
+ 0.211 * (Energy Difference at 15% RH)
+ 0.204 * (Energy Difference at 25% RH)
+ 0.166 * (Energy Difference at 35% RH)
+ 0.126 * (Energy Difference at 45% RH)
+ 0.119 * (Energy Difference at 55% RH)
+ 0.069 * (Energy Difference at 65% RH)
+ 0.047 * (Energy Difference at 75% RH)
+ 0.008 * (Energy Difference at 85% RH)
+ 0.015 * (Energy Difference at 95% RH)

Where:

Energy Difference at 65% RH = $ED_{65} - ET_{65} - ET_{25}$;
Energy Difference at 95% RH = $ED_{95} - ET_{95} - ET_{25}$;
ET_{25}, ET_{65}, and ET_{95} are determined in accordance with section 5.2.1.6; and
Energy Difference ED_{RH} at each other relative humidity RH is the greater of zero or the following:
$ED_{RH} = ED_{65} + (ED_{95} - ED_{65}) \times (DP_{RH} - DP_{65})/(DP_{95} - DP_{65})$,
Where the dew points DP_{RH} at each of the relative humidities RH in the equation are as follows:
$DP_5 = 5.06$;
$DP_{15} = 27.53$;
$DP_{25} = 38.75$;

DP_{35} = 46.43;
DP_{45} = 52.32;
DP_{55} = 57.13;
DP_{65} = 61.20;
DP_{75} = 64.74;
DP_{85} = 67.87;
DP_{95} = 70.69.

6.3 Externally vented refrigerator or refrigerator-freezers. Per-cycle energy consumption measurements for an externally vented refrigerator or refrigerator-freezer shall be calculated in accordance with the requirements of this Appendix, as modified in sections 6.3.1–6.3.7.

6.3.1 Correction Factor. The correction factor, K, shall be calculated as:

$$K = ec_{90}/ec_{80}$$

Where:

ec_{90} and ec_{80} are measured in section 5.4.2.1.

6.3.2 Combining Test Results of Different Settings of Compartment Temperature Controls. For a given setting of the anti-sweat heater, follow the calculation procedures of 6.2 to combine the test results for energy consumption of the unit at different temperature control settings for each condenser inlet air temperature tested under 5.4.2.2, 5.4.2.3, and 5.4.2.4, where applicable, $(e_{90})_i$, $(e_{60})_i$, $(e_{50})_i$, and $(e_{30})_i$. The combined values, ε_{90}, ε_{60}, ε_{50}, and ε_{30}, where applicable, are expressed in kWh/day.

6.3.3 Energy Consumption Corrections. For a given setting of the anti-sweat heater, adjust the energy consumptions ε_{90}, ε_{60}, ε_{50}, and ε_{30} calculated in 6.3.2 by multiplying the correction factor K to obtain the corrected energy consumptions per day in kWh/day:

$$E_{90} = K \times \varepsilon_{90},$$

$$E_{60} = K \times \varepsilon_{60},$$

$$E_{50} = K \times \varepsilon_{50}, \text{ and}$$

$$E_{30} = K \times \varepsilon_{30}$$

Where:

K is determined under section 6.3.1; and ε_{90}, ε_{60}, ε_{50}, and ε_{30} are determined under section 6.3.2.

6.3.4 Energy Profile Equation. For a given setting of the anti-sweat heater, calculate the energy consumption E_X, in kWh/day, at a specific exterior air temperature between 80 °F (26.7 °C) and 60 °F (15.6 °C) using the following equation:

$$E_X = E_{60} + (E_{90} - E_{60}) \times (T_X - 60)/30$$

Where:

T_X is the exterior air temperature in °F;
60 is the exterior air temperature for the test of section 6.4.2.3;
30 is the difference between 90 and 60;
E_{60} and E_{90} are determined in section 6.3.3.

6.3.5 Energy Consumption at 80 °F (26.7 °C), 75 °F (23.9 °C) and 65 °F (18.3 °C). For a given setting of the anti-sweat heater, calculate the energy consumptions at 80 °F (26.7 °C), 75 °F (23.9 °C) and 65 °F (18.3 °C) exterior air temperatures, E_{80}, E_{75} and E_{65}, respectively, in kWh/day, using the equation in 6.3.4.

6.3.6 National Average Per-Cycle Energy Consumption. For a given setting of the anti-sweat heater, calculate the national average energy consumption, E_N, in kWh/day, using one of the following equations:

$$E_N = 0.523 \times E_{60} + 0.165 \times E_{65} + 0.181 \times E_{75} + 0.131 \times E_{80}, \text{ for units not tested under section 5.4.2.4; and}$$

$$E_N = 0.257 \times E_{30} + 0.266 \times E_{50} + 0.165 \times E_{65} + 0.181 \times E_{75} + 0.131 \times E_{80}, \text{ for units tested under section 5.4.2.4}$$

Where:

E_{30}, E_{50}, and E_{60} are defined in 6.3.3;
E_{65}, E_{75}, and E_{80} are defined in 6.3.5; and
the coefficients 0.523, 0.165, 0.181, 0.131, 0.257 and 0.266 are weather-associated weighting factors.

6.3.7 Regional Average Per-Cycle Energy Consumption. If regional average per-cycle energy consumption is required to be calculated for a given setting of the anti-sweat heater, calculate the regional average per-cycle energy consumption, E_R, in kWh/day, for the regions in Figure 2. Use one of the following equations and the coefficients in Table A:

$$E_R = a_1 \times E_{60} + c \times E_{65} + d \times E_{75} + e \times E_{80}, \text{ for a unit that is not required to be tested under section 5.4.2.4; or}$$

$$E_R = a \times E_{30} + b \times E_{50} + c \times E_{65} + d \times E_{75} + e \times E_{80}, \text{ for a unit tested under section 5.4.2.4}$$

Where:

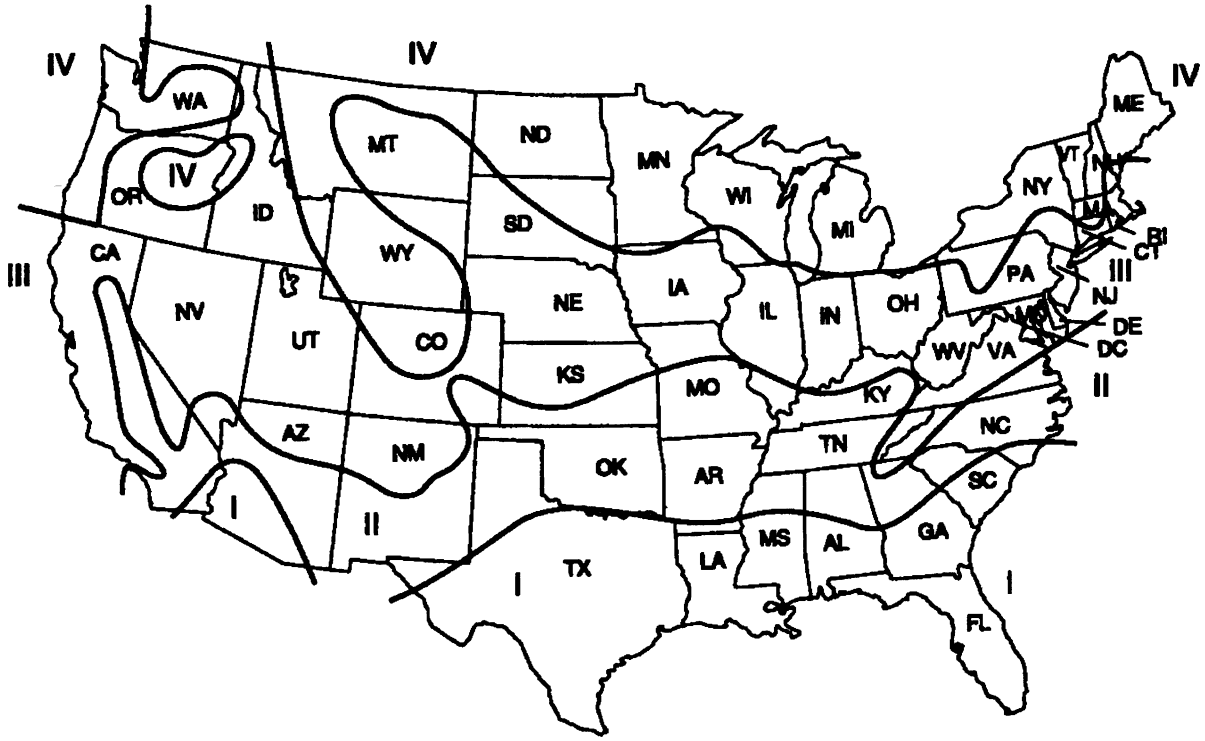
E_{30}, E_{50}, and E_{60} are defined in section 6.3.3;
E_{65}, E_{75}, and E_{80} are defined in section 6.3.5; and
a_1, a, b, c, d, and e are weather-associated weighting factors for the regions, as specified in Table A.

TABLE A—COEFFICIENTS FOR CALCULATING REGIONAL AVERAGE PER-CYCLE ENERGY CONSUMPTION

[Weighting factors]

Regions	a1	a	b	c	d	e
I	0.282	0.039	0.244	0.194	0.326	0.198
II	0.486	0.194	0.293	0.191	0.193	0.129
III	0.584	0.302	0.282	0.178	0.159	0.079
IV	0.664	0.420	0.244	0.161	0.121	0.055

Figure 2. Weather Regions for the United States



7. Test Procedure Waivers

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a refrigerator or refrigerator-freezer, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product. Such instances could, for example, include situations where the test set-up for a particular refrigerator or refrigerator-freezer basic model is not clearly defined by the provisions of section 2. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

6. Appendix A1 to subpart B of part 430 is amended by:

a. Adding an introductory note after the appendix heading;

b. Revising section 1. Definitions;

c. In section 2. Test Conditions, by:

1. Redesignating sections 2.3, 2.4, 2.5, 2.6, 2.6.1, 2.6.2 and 2.6.3 as 2.4, 2.5, 2.9, 2.10, 2.10.1, 2.10.2 and 2.10.3;

2. Revising sections 2.1, 2.2 and redesignated section 2.4;

3. Adding new sections 2.3, and 2.6 through 2.8;

d. In section 3. Test Control Settings, by:

1. Revising sections 3.2 and 3.2.1;

2. Removing section 3.3;

e. In section 4. Test Period, by:

1. Revising sections 4.1.1, 4.1.2, 4.1.2.1, and 4.1.2.2;

2. Removing section 4.1.2.3;

3. Redesignating section 4.1.2.4 as 4.1.2.3 and revising redesignated 4.1.2.3;

2. Revising Figure 1 to section 4;

3. Adding new sections 4.1.2.4 and 4.1.3;

f. In section 5. Test Measurements, by:

1. Revising existing sections 5.1, 5.1.2, 5.1.2.1, 5.1.2.2, 5.1.2.3, and 5.2.1.3;

2. Removing section 5.2.1.4;

3. Redesignating section 5.2.1.5 as 5.2.1.4 and revising redesignated 5.2.1.4;

2. Adding new sections 5.2.1.5 and 5.2.1.6;

g. In section 6. Calculation of Derived Results from Test Measurements, by:

1. Revising Section 6.2;

2. Adding new section 6.2.3;

3. Redesignating Figure 1 in section 6 as Figure 2.

h. Adding a new section 7, Test Procedure Waivers.

The additions and revisions read as follows:

Appendix A1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers

The provisions of Appendix A1 shall apply to all products manufactured prior to the effective date of any amended standards promulgated by DOE pursuant to Section 325(b)(4) of the Energy Policy and Conservation Act of 1975, as amended by the Energy Independence and Security Act of 2007 (to be codified at 42 U.S.C. 6295(b)(4)).

1. Definitions

Section 3, *Definitions,* of HRF–1–1979 (incorporated by reference; see § 430.3) is applicable to this test procedure.

1.1 "Adjusted total volume" means the sum of (i) the fresh food compartment volume as defined in HRF–1–1979 in cubic feet, and (ii) the product of an adjustment factor and the net freezer compartment volume as defined in HRF–1–1979, in cubic feet.

1.2 "All-refrigerator" means an electric refrigerator which does not include a compartment for the freezing and long time

storage of food at temperatures below 32 °F. (0.0 °C.). It may include a compartment of 0.50 cubic feet capacity (14.2 liters) or less for the freezing and storage of ice.

1.3 "Anti-sweat heater" means a device incorporated into the design of a refrigerator or refrigerator-freezer to prevent the accumulation of moisture on exterior or interior surfaces of the cabinet.

1.4 "Anti-sweat heater switch" means a user-controllable switch or user interface which modifies the activation or control of anti-sweat heaters.

1.5 "Automatic defrost" means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of the defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces. Nominal refrigerated food temperatures are maintained during the operation of the automatic defrost system.

1.6 "Automatic icemaker" means a device that can be supplied with water without user intervention, either from a pressurized water supply system or by transfer from a water reservoir located inside the cabinet, that automatically produces, harvests, and stores ice in a storage bin, with means to automatically interrupt the harvesting operation when the ice storage bin is filled to a pre-determined level.

1.7 "Cycle" means the period of 24 hours for which the energy use of an electric refrigerator or electric refrigerator-freezer is calculated as though the consumer activated compartment temperature controls were set so that the standardized temperatures (see section 3.2) were maintained.

1.8 "Cycle type" means the set of test conditions having the calculated effect of operating an electric refrigerator or electric refrigerator-freezer for a period of 24 hours, with the consumer activated controls other than those that control compartment temperatures set to establish various operating characteristics.

1.9 "Defrost cycle type" means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the sequence of control for defrost such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type.

1.10 "Externally vented refrigerator or refrigerator-freezer" means an electric refrigerator or electric refrigerator-freezer that: has an enclosed condenser or an enclosed condenser/compressor compartment and a set of air ducts for transferring the exterior air from outside the building envelope into, through and out of the refrigerator or refrigerator-freezer cabinet; is capable of mixing exterior air with the room air before discharging into, through, and out of the condenser or condenser/compressor compartment; includes thermostatically controlled dampers or controls that enable the mixing of the exterior and room air at low outdoor temperatures, and the exclusion of exterior air when the outdoor air temperature is above 80 °F or the room air temperature; and may have a thermostatically actuated exterior air fan.

1.11 "HRF–1–1979" means the Association of Home Appliance Manufacturers standard for household refrigerators, combination refrigerator-freezers, and household freezers, also approved as an American National Standard as a revision of ANSI B 38.1–1970. Only sections of HRF–1–1979 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over HRF–1–1979.

1.12 "Long-time Automatic Defrost" means an automatic defrost system where successive defrost cycles are separated by 14 hours or more of compressor-operating time.

1.13 "Separate auxiliary compartment" means a freezer compartment or a fresh food compartment of a refrigerator or refrigerator-freezer having more than two compartments that is not the first freezer compartment or the first fresh food compartment. Access to a separate auxiliary compartment is through a separate exterior door or doors rather than through the door or doors of another compartment. Separate auxiliary compartments may be convertible (*e.g.,* from fresh food to freezer).

1.14 "Stabilization Period" means the total period of time during which steady-state conditions are being attained or evaluated.

1.15 "Standard cycle" means the cycle type in which the anti-sweat heater control, when provided, is set in the highest energy consuming position.

1.16 "Variable anti-sweat heater control" means an anti-sweat heater control that varies the average power input of the anti-sweat heater(s) based on operating condition variable(s) and/or ambient condition variable(s).

1.17 "Variable defrost control" means a long-time automatic defrost system (except the 14-hour defrost qualification does not apply) where successive defrost cycles are determined by an operating condition variable or variables other than solely compressor operating time. This includes any electrical or mechanical device. Demand defrost is a type of variable defrost control.

2. Test Conditions

2.1 Ambient Temperature and Humidity. The ambient temperature shall be 90.0 ± 1 °F (32.2 ± 0.6 °C) during the stabilization period and the test period. If the product being tested has variable anti-sweat heater control, the ambient relative humidity shall be no more than 35%. For the variable anti-sweat heater test described in section 4.1.3, the ambient temperature shall be 72 ± 1 °F (22.2 ± 0.6 °C) dry bulb and the relative humidities for the three portions of the test shall be 25 ± 10%, 65 ± 2%, and 95 ± 2%.

2.2 Operational Conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, (incorporated by reference; see § 430.3), section 7.2 through section 7.4.3.3, except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless the area is obstructed by shields or baffles, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height 1 foot (30.5 cm) above the unit under test. Defrost controls are to be operative. Other exceptions and provisions to the cited sections of HRF–1–1979 are noted in sections 2.3 through 2.8, and 5.1 below.

2.3 Anti-Sweat Heaters.

(a) User-Controllable Anti-Sweat Heaters. The anti-sweat heater switch is to be on during one test and off during a second test.

(b) Variable Anti-Sweat Heaters. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the test shall be conducted with the anti-sweat heater controls activated to allow the anti-sweat heater to be energized but operating in their minimum energy state corresponding to operation in low humidity conditions, as a result of testing conducted using an ambient relative humidity level as specified in section 2.1. If the product has an anti-sweat heater switch, it shall be switched on. The variable anti-sweat heater test (described in section 4.1.3) shall be conducted to determine the energy consumption of the anti-sweat heater in higher humidity conditions. The standard cycle energy consumption shall be determined using the equation described in section 6.2.3.

2.4 Conditions for Automatic Defrost Refrigerator-Freezers. For automatic defrost refrigerator-freezers, the freezer compartments shall not be loaded with any frozen food packages during testing. Cylindrical metallic masses of dimensions 1.12 ± 0.25 inches (2.9 ± 0.6 cm) in diameter and height shall be attached in good thermal contact with each temperature sensor within the refrigerated compartments. All temperature measuring sensor masses shall be supported by low-thermal-conductivity supports in such a manner to ensure that there will be at least 1 inch (2.5 cm) of air space separating the thermal mass from contact with any interior surface or hardware inside the cabinet. In case of interference with hardware at the sensor locations specified in section 5.1, the sensors shall be placed at the nearest adjacent location such that there will be a 1-inch air space separating the sensor mass from the hardware.

* * * * *

2.6 The cabinet and its refrigerating mechanism shall be assembled and set up in accordance with the printed consumer instructions supplied with the cabinet. Set-up of the refrigerator or refrigerator-freezer shall not deviate from these instructions, unless explicitly required or allowed by this test procedure. Specific required or allowed deviations from such set-up include the following:

(a) Connection of water lines and installation of water filters are not required;

(b) Clearance requirements from surfaces of the product shall be as described in section 2.8 below;

(c) The electric power supply shall be as described in HRF–1–1979 (incorporated by reference; see § 430.3) section 7.4.1;

(d) Temperature control settings for testing shall be as described in section 3 below. Settings for convertible compartments and other temperature-controllable or special

compartments shall be as described in section 2.7 below; and

(e) The product does not need to be anchored or otherwise secured to prevent tipping during energy testing.

For cases in which set-up is not clearly defined by this test procedure, manufacturers must submit a petition for a waiver (see section 7).

2.7 Compartments that are convertible (*e.g.,* from fresh food to freezer) shall be operated in the highest energy use position. For the special case of convertible separate auxiliary compartments, this means that the compartment shall be treated as a freezer compartment or a fresh food compartment, depending on which of these represents higher energy use. Other compartments with separate temperature control (such as crispers convertible to meat keepers), with the exception of butter conditioners, shall also be tested with controls set in the highest energy use position.

2.8 The space between the back of the cabinet and the test room wall or simulated wall shall be the minimum distance in accordance with the manufacturer's instructions. If the instructions do not specify a minimum distance, the cabinet shall be located such that the rear of the cabinet touches the test room wall or simulated wall. The test room wall facing the rear of the cabinet or the simulated wall shall be flat within ¼ inch, and vertical to within 1 degree. The cabinet shall be leveled to within 1 degree of true level, and positioned with its rear wall parallel to the test chamber wall or simulated wall immediately behind the cabinet. Any simulated wall shall be solid and shall extend vertically from the floor to above the height of the cabinet and horizontally beyond both sides of the cabinet.

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3. Test Control Settings

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3.2 Model with User Operable Temperature Control. Testing shall be performed in accordance with one of the following sections using the standardized temperatures of:

All-Refrigerator: 38 °F (3.3 °C) fresh food compartment temperature;

Refrigerator: 15 °F (−9.4 °C) freezer compartment temperature;

Refrigerator-Freezer: 5 °F (−15 °C) freezer compartment temperature; and

Variable Anti-Sweat Heater Model (Temperatures for the variable anti-sweat heater test of section 4.1.3): 5 °F (−15 °C) freezer compartment temperature and 38 ± 2 °F (3.3 ± 1.1 °F) fresh food compartment temperature during steady-state conditions with no door-openings. If both settings cannot be obtained, then test with the fresh food compartment temperature at 38 ± 2 °F (3.3 ± 1.1 °C) and the freezer compartment as close to 5 °F (-15 °C) as possible.

For the purposes of comparing compartment temperatures with standardized temperatures, as described in sections 3.2.1 through 3.2.3, the freezer compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable freezer compartments, and the fresh food compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable fresh food compartments. Applicable compartments for these calculations may include a first freezer compartment, a first fresh food compartment, and any number of separate auxiliary compartments.

3.2.1 A first test shall be performed with all compartment temperature controls set at their median position midway between their warmest and coldest settings. For mechanical control systems, knob detents shall be mechanically defeated if necessary to attain a median setting. For electronic control systems, the test shall be performed with all compartment temperature controls set at the average of the coldest and warmest settings—if there is no setting equal to this average, the setting closest to the average shall be used. If there are two such settings equally close to the average, the higher of these temperature control settings shall be used. If the compartment temperature measured during the first test is higher than the standardized temperature, the second test shall be conducted with the controls set at the coldest settings. If the compartment temperature measured during the first test is lower than the standardized temperature, the second test shall be conducted with the controls set at the warmest settings. If the compartment temperatures measured during these two tests bound the standardized temperature for the product being tested, then these test results shall be used to determine energy consumption. If the compartment temperature measured with all controls set at their coldest setting is above the standardized temperature, a third test shall be performed with all controls set at their warmest setting and the result of this test shall be used with the result of the test performed with all controls set at their coldest setting to determine energy consumption. If the compartment temperature measured with all controls set at their warmest setting is below the standardized temperature; and the fresh food compartment temperature is below 45 °F (7.22 °C) in the case of a refrigerator or a refrigerator-freezer, excluding an all-refrigerator, then the result of this test alone will be used to determine energy consumption.

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4. Test Period

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4.1.1 Nonautomatic Defrost. If the model being tested has no automatic defrost system, the test time period shall start after steady state conditions have been achieved, and be of not less than three hours in duration. During the test period the compressor motor shall complete two or more whole compressor cycles (a compressor cycle is a complete "on" and a complete "off" period of the motor). If no "off" cycling will occur, as determined during the stabilization period, the test period shall be 3 hours. If incomplete cycling occurs (less than two compressor cycles during a 24-hour period), the results of the 24-hour period shall be used.

4.1.2 Automatic Defrost. If the model being tested has an automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be from one point during a defrost period to the same point during the next defrost period. If the model being tested has a long-time automatic defrost system, the alternative provisions of 4.1.2.1 may be used. If the model being tested has a variable defrost control, the provisions of section 4.1.2.2 shall apply. If the model has a dual compressor system with automatic defrost for both systems, the provisions of 4.1.2.3 shall apply. If the model being tested has long-time automatic or variable defrost control involving multiple defrost cycle types, such as for a system with a single compressor with two or more evaporators in which the evaporators are defrosted at different frequencies, the provisions of section 4.1.2.4 shall apply. If the model being tested has multiple defrost cycle types for which compressor run time between defrosts is a fixed time less than 14 hours for all such cycle types, and for which the compressor run time between defrosts for different defrost cycle types are equal to or multiples of each other, the test time period shall be from one point of the defrost cycle type with the longest compressor run time between defrosts to the same point during the next occurrence of this defrost cycle type. For such products, energy consumption shall be calculated as described in section 5.2.1.1.

4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is the same as the test for a unit having no defrost provisions (section 4.1.1). The second part starts when the compressor turns off at the end of a period of steady-state cycling operation just before initiation of the defrost control sequence. If the compressor does not cycle during steady-state operation between defrosts, the second part starts at a time when the compartment temperatures are within their ranges measured during steady state operation, or within 0.5 °F of the average during steady state operation for a compartment with a temperature range during steady state operation no greater than 1 °F. This control sequence may include additional compressor operation prior to energizing the defrost heater. The second part terminates when the compressor turns on the second time after the defrost control sequence or 4 hours after the defrost heater is energized, whichever occurs first. See Figure 1.

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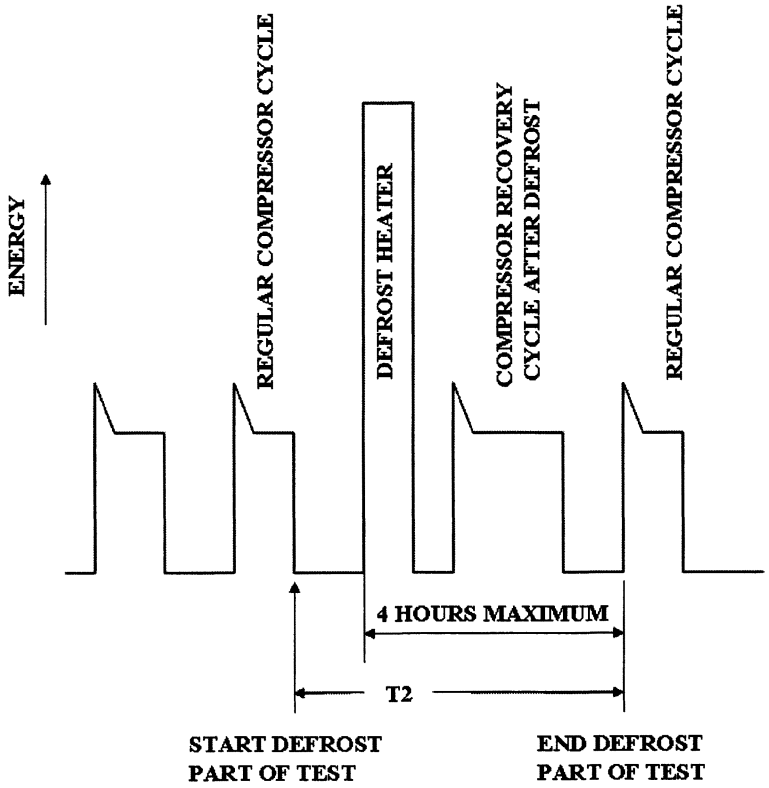
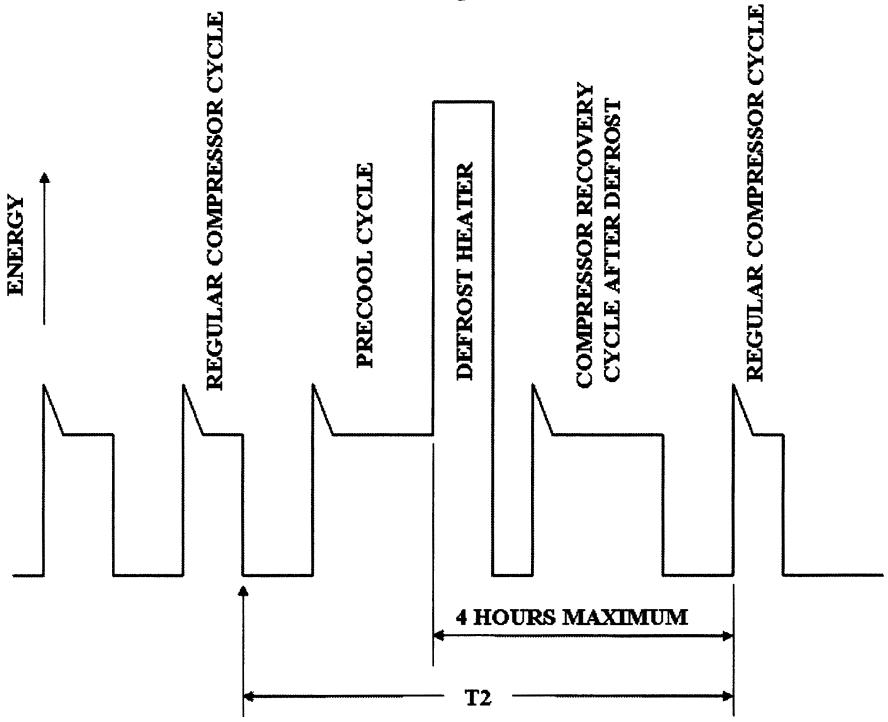
Figure 1
Long-time Automatic Defrost Diagrams



Second Part of Test with Compressor off Prior to Defrost



BILLING CODE 6450–01–C

4.1.2.2 Variable Defrost Control. If the model being tested has a variable defrost control system, the test shall consist of the same two parts as the test for long-time automatic defrost (section 4.1.2.1).

4.1.2.3 Dual Compressor Systems with Automatic Defrost. If the model being tested has separate compressor systems for the refrigerator and freezer sections, each with its own automatic defrost system, then the two-part method in 4.1.2.1 shall be used. The second part of the method will be conducted separately for each automatic defrost system. The components (compressor, fan motors, defrost heaters, anti-sweat heaters, etc.) associated with each system will be identified and their energy consumption will be separately measured during each test.

4.1.2.4 Systems with Multiple Defrost Frequencies. This section is applicable to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. The two-part method in 4.1.2.1 shall be used. The second part of the method will be conducted separately for each distinct defrost cycle type.

4.1.3 Variable Anti-Sweat Heater Test. The test shall be conducted three times with the test conditions at three different relative humidities as set forth in section 2 and the test control settings as set forth in section 3. For a product with an anti-sweat heater switch, the tests shall be conducted with the switch in the on position. Each of the three portions of the test shall be conducted in the same manner as for a unit having no automatic defrost (section 4.1.1). If during the time between one of the portions of the test and the next portion the ambient temperature conditions are maintained, the procedure for evaluating steady state (section 2.9) is not required for the second of these two portions of the test. However, in such a case, a control stabilization period of two hours is required after the ambient humidity conditions have reached the required range before start of the test.

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figures 7.1 and 7.2 of HRF–1–1979 (incorporated by reference; see § 430.3) and shall be accurate to within ±0.5 °F (0.3 °C). No freezer temperature measurements need be taken in an all-refrigerator model.

If the interior arrangements of the cabinet do not conform with those shown in Figure 7.1 and 7.2 of HRF–1–1979, the product may be tested by relocating the temperature sensors from the locations specified in the Figures by no more than 2 inches to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 430.62(d). For those products equipped with a cabinet that does not conform with Figures 7.1 or 7.2 and cannot be tested in the manner described above, the manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product.

* * * * *

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken in a compartment during one or more complete compressor cycles. One compressor cycle is one complete motor "on" and one complete motor "off" period. For long-time automatic defrost models, compartment temperatures shall be those measured in the first part of the test period specified in section 4.1.2.1. For models equipped with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.1.2.2.

5.1.2.1 The number of complete compressor cycles over which the measured temperatures in a compartment are to be averaged to determine compartment temperature shall be equal to the number of minutes between measured temperature readings, rounded up to the next whole minute or a number of complete compressor cycles over a time period exceeding 1 hour, whichever is greater. One of the compressor cycles shall be the last complete compressor cycle during the test period.

5.1.2.2 If no compressor cycling occurs, the compartment temperature shall be the average of the measured temperatures taken during the last 32 minutes of the test period.

5.1.2.3 If incomplete compressor cycling occurs, the compartment temperatures shall be the average of the measured temperatures taken during the last three hours of the last complete compressor "on" period.

* * * * *

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times (12/CT),$$

Where:

1440 is defined in 5.2.1.1 and EP1, EP2, T1, T2, and 12 are defined in 5.2.1.2;

$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$;

CT_L = least or shortest time between defrosts in hours rounded to the nearest tenth of an hour (greater than or equal to 6 but less than or equal to 12 hours);

CT_M = maximum time between defrost cycles in hours rounded to the nearest tenth of an hour (greater than CT_L but not more than 96 hours);

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20;

For variable defrost models with no values for CT_L and CT_M in the algorithm, the default values of 12 and 84 shall be used, respectively.

* * * * *

5.2.1.4 Dual Compressor Systems with Dual Automatic Defrost. The two-part test method in section 4.1.2.4 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2_F - (EP_F \times T2/T1)) \times (12/CT_F) + (EP2_R - (EP_R \times T3/T1)) \times (12/CT_R)$$

Where:

1440, EP1, T1, EP2, 12, and CT are defined in 5.2.1.2;

EP_F = freezer system energy in kilowatt-hours expended during the first part of the test;

$EP2_F$ = freezer system energy in kilowatt-hours expended during the second part of the test for the freezer system;

EP_R= refrigerator system energy in kilowatt-hours expended during the first part of the test;

$EP2_R$ = refrigerator system energy in kilowatt-hours expended during the second part of the test for the refrigerator system;

T2 and T3 = length of time in minutes of the second test part for the freezer and refrigerator systems respectively;

CT_F = compressor "on" time between freezer defrosts (in hours to the nearest tenth of an hour); and

CT_R = compressor "on" time between refrigerator defrosts (in hours to the nearest tenth of an hour).

* * * * *

5.2.1.5 Variable Anti-Sweat Heater Test. The energy consumption in kilowatt-hours per day for each portion of the test shall be calculated equivalent to:

$$ET_{XX} = EP_{XX} \times 1440/T_{XX}$$

Where:

1440 is defined in 5.2.1.1;

subscript XX = 25, 65, and 95, representing the three relative humidities for which the test is conducted;

ET_{XX} = test cycle energy expended in kilowatt-hours per day;

EP_{XX} = energy expended during the test period in kilowatt-hours;

T_{XX} = length of time of the test period in minutes.

5.2.1.6 Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to

$$ET = (1440 \times EP1/T1) + \sum_{i=1}^{D} \left[\left(EP2_i - \left(EP1 \times T2_i/T1 \right) \right) \times \left(12/CT_i \right) \right]$$

Where:

1440 is defined in 5.2.1.1 and EP1 and T1 are defined in 5.2.1.2;

i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

CT_i is the compressor run time between instances of defrost cycle type i, for long time automatic defrost control equal to a fixed time, and for variable defrost control equal to $(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} - CT_{Li}) + CT_{Li})$;

CT_{Li} = least or shortest time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than or equal to 6 but less than or equal to 12 hours);

CT_{Mi} = maximum time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);

F = default defrost energy consumption factor, equal to 0.20 in lieu of testing to find CT_i;

For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the default values of 12 and 84 shall be used, respectively.

D is the total number of distinct defrost cycle types.

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6. Calculation of Derived Results From Test Measurements

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6.2 Average Per-Cycle Energy consumption.

For the purposes of calculating per-cycle energy consumption, as described in this section, the freezer compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable freezer compartments, and the fresh food compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable fresh food compartments. Applicable compartments for these calculations may include a first freezer compartment, a first fresh food compartment, and any number of separate auxiliary compartments.

* * * * *

6.2.3 Variable Anti-Sweat Heater Models. The energy consumption of an electric refrigerator-freezer having a variable anti-sweat heater control, E_{VASH}, expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{VASH} = E + (Correction Factor), where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater in its minimum energy state corresponding to low ambient humidity during the test.

Where Correction Factor:

= 0.034 * (Energy Difference at 5% Relative Humidity (RH)),
+ 0.211 * (Energy Difference at 15% RH)
+ 0.204 * (Energy Difference at 25% RH)
+ 0.166 * (Energy Difference at 35% RH)
+ 0.126 * (Energy Difference at 45% RH)
+ 0.119 * (Energy Difference at 55% RH)
+ 0.069 * (Energy Difference at 65% RH)
+ 0.047 * (Energy Difference at 75% RH)
+ 0.008 * (Energy Difference at 85% RH)
+ 0.015 * (Energy Difference at 95% RH)

Where:

Energy Difference at 65% RH = $ED_{65} = ET_{65} - ET_{25}$;

Energy Difference at 95% RH = $ED_{95} = ET_{95} - ET_{25}$;

ET_{25}, ET_{65}, and ET_{95} are determined in accordance with section 5.2.1.6; and

Energy Difference DE_{RH} at each other relative humidity RH is the greater of zero or the following:

$ED_{RH} = ED_{65} + (ED_{95} - ED_{65}) \times (DP_{RH} - DP_{65})/(DP_{95} - DP_{65})$,

Where the dew points DP_{RH} at each of the relative humidities RH in the equation are as follows:

$DP_5 = 5.06$
$DP_{15} = 27.53$;
$DP_{25} = 38.75$;
$DP_{35} = 46.43$;
$DP_{45} = 52.32$;
$DP_{55} = 57.13$;
$DP_{65} = 61.20$;
$DP_{75} = 64.74$;
$DP_{85} = 67.87$;
$DP_{95} = 70.69$.

* * * * *

7. Test Procedure Waivers

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a refrigerator or refrigerator-freezer, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product. Such instances could, for example, include situations where the test set-up for a particular refrigerator or refrigerator-freezer basic model is not clearly defined by the provisions of section 2. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

7. Add a new Appendix B to subpart B of part 430 to read as follows:

Appendix B to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

The provisions of Appendix B shall apply to all products manufactured on or after the effective date of any amended standards promulgated by DOE pursuant to Section 325(b)(4) of the Energy Policy and Conservation Act of 1975, as amended by the Energy Independence and Security Act of 2007 (to be codified at 42 U.S.C. 6295(b)(4)).

1. Definitions

Section 3, *Definitions,* of HRF–1–2008 (incorporated by reference; see § 430.3) is applicable to this test procedure.

1.1 "Adjusted total volume" means the product of the freezer volume as defined in HRF–1–2008 (incorporated by reference; see § 430.3) in cubic feet times an adjustment factor.

1.2 "Anti-sweat heater" means a device incorporated into the design of a freezer to prevent the accumulation of moisture on exterior or interior surfaces of the cabinet under conditions of high ambient humidity.

1.3 "Anti-sweat heater switch" means a user-controllable switch or user interface which modifies the activation or control of anti-sweat heaters.

1.4 "Automatic defrost" means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces. Nominal refrigerated food temperatures are maintained during the operation of the automatic defrost system.

1.5 "Automatic icemaker" means a device, that can be supplied with water without user intervention, either from a pressurized water supply system or by transfer from a water reservoir located inside the cabinet, that automatically produces, harvests, and stores ice in a storage bin, with means to automatically interrupt the harvesting operation when the ice storage bin is filled to a pre-determined level.

1.6 "Cycle" means the period of 24 hours for which the energy use of a freezer is calculated as though the consumer-activated compartment temperature controls were preset so that the standardized temperatures (see section 3.2) was maintained.

1.7 "Cycle type" means the set of test conditions having the calculated effect of operating a freezer for a period of 24 hours with the consumer-activated controls other than the compartment temperature control set to establish various operating characteristics.

1.8 "HRF–1–2008" means the Association of Home Appliance Manufacturers standard *Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers* that was approved September 13, 2008. Only sections of HRF–1–2008 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over HRF–1–2008.

1.9 "Long-time automatic defrost" means an automatic defrost system where successive defrost cycles are separated by 14 hours or more of compressor operating time.

1.10 "Quick freeze" means an optional feature on freezers that is initiated manually and shut off manually. It bypasses the thermostat control and places the compressor in a steady-state operating condition until it is shut off.

1.11 "Separate auxiliary compartment" means a freezer compartment of a freezer having more than one compartment that is not the first freezer compartment. Access to a separate auxiliary compartment is through a separate exterior door or doors rather than through the door or doors of another compartment.

1.12 "Stabilization period" means the total period of time during which steady-state conditions are being attained or evaluated.

1.13 "Standard cycle" means the cycle type in which the anti-sweat heater switch, when provided, is set in the highest energy-consuming position.

1.14 "Variable defrost control" means a long-time automatic defrost system (except the 14-hour defrost qualification does not apply) where successive defrost cycles are determined by an operating condition variable or variables other than compressor operating time. This includes any electrical or mechanical device performing this function. Demand defrost is a type of variable defrost control.

2. Test Conditions

2.1 Ambient Temperature. The ambient temperature shall be 90.0 ± 1.0 °F (32.2 ± 0.6 °C) during the stabilization period and the test period. The ambient temperature shall be 80 ± 2 °F (26.7 ± 1.1 °C) dry bulb and 67 °F (19.4 °C) wet bulb during the stabilization period and during the test period when the unit is tested in accordance with section 3.3.

2.2 Operational Conditions. The freezer shall be installed and its operating conditions maintained in accordance with HRF–1–2008, (incorporated by reference; see § 430.3), sections 5.3 through section 5.5.5.5 (but excluding sections 5.5.5.2 and 5.5.5.4), except that the vertical ambient gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless the area is obstructed by shields or baffles, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height 1 foot (30.5 cm) above the unit under test. Defrost controls are to be operative and the anti-sweat heater switch is to be "on" during one test and "off" during a second test. The quick freeze option shall be switched off except as specified in section 3.1. Additional clarifications are noted in sections 2.3 through 2.6.

2.3 Conditions for Automatic Defrost Freezers. For automatic defrost freezers, the freezer compartments shall not be loaded with any frozen food packages during testing. Cylindrical metallic masses of dimensions 1.12 ± 0.25 inches (2.9 ± 0.6 cm) in diameter and height shall be attached in good thermal contact with each temperature sensor within the refrigerated compartments. All temperature measuring sensor masses shall be supported by low-thermal-conductivity supports in such a manner to ensure that there will be at least 1 inch (2.5 cm) of air space separating the thermal mass from contact with any interior surface or hardware inside the cabinet. In case of interference with hardware at the sensor locations specified in section 5.1, the sensors shall be placed at the nearest adjacent location such that there will be a 1-inch air space separating the sensor mass from the hardware.

2.4 The cabinet and its refrigerating mechanism shall be assembled and set up in accordance with the printed consumer instructions supplied with the cabinet. Set-up of the freezer shall not deviate from these instructions, unless explicitly required or allowed by this test procedure. Specific required or allowed deviations from such set-up include the following:

(a) Clearance requirements from surfaces of the product shall be as described in section 2.5 below;

(b) The electric power supply shall be as described in HRF–1–2008 (incorporated by reference; see § 430.3) section 5.5.1;

(c) Temperature control settings for testing shall be as described in section 3 below; and

(d) The product does not need to be anchored or otherwise secured to prevent tipping during energy testing.

For cases in which set-up is not clearly defined by this test procedure, manufacturers must submit a petition for a waiver (see section 7).

2.5 The space between the back of the cabinet and the test room wall or simulated wall shall be the minimum distance in accordance with the manufacturer's instructions. If the instructions do not specify a minimum distance, the cabinet shall be located such that the rear of the cabinet touches the test room wall or simulated wall. The test room wall facing the rear of the cabinet or the simulated wall shall be flat within ¼ inch, and vertical to within 1 degree. The cabinet shall be leveled to within 1 degree of true level, and positioned with its rear wall parallel to the test chamber wall or simulated wall immediately behind the cabinet. Any simulated wall shall be solid and shall extend vertically from the floor to above the height of the cabinet and horizontally beyond both sides of the cabinet.

2.6 Steady State Condition. Steady-state conditions exist if the temperature measurements taken at four minute intervals or less during a stabilization period are not changing at a rate greater than 0.042 °F (0.023 °C) per hour as determined by the applicable condition of A or B described below.

A—The average of the measurements during a 2-hour period if no cycling occurs or during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours is compared to the average over an equivalent time period with 3 hours elapsing between the two measurement periods.

B—If A above cannot be used, the average of the measurements during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours and including the last complete cycle before a defrost period (or if no cycling occurs, the average of the measurements during the last 2 hours before a defrost period) are compared to the same averaging period before the following defrost period.

3. Test Control Settings

3.1 Model with No User Operable Temperature Control. A test shall be performed during which the compartment temperature and energy use shall be measured. A second test shall be performed with the temperature control electrically short circuited to cause the compressor to run continuously. If the model has the quick freeze option, this option must be used to bypass the temperature control.

3.2 Model with User Operable Temperature Control. Testing shall be performed in accordance with one of the following sections using the standardized temperature of 0.0 °F (−17.8 °C).

For the purposes of comparing compartment temperatures with standardized temperatures, as described in sections 3.2.1 through 3.2.3, the freezer compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable freezer compartments. Applicable compartments for these calculations may include a first freezer compartment and any number of separate auxiliary freezer compartments.

3.2.1 A first test shall be performed with all temperature controls set at their median position midway between their warmest and coldest settings. For mechanical control systems, knob detents shall be mechanically defeated if necessary to attain a median setting. For electronic control systems, the test shall be performed with all compartment temperature controls set at the average of the coldest and warmest settings—if there is no setting equal to this average, the setting closest to the average shall be used. If there are two such settings equally close to the average, the higher of these temperature control settings shall be used. A second test shall be performed with all controls set at either their warmest or their coldest setting (not electrically or mechanically bypassed), whichever is appropriate, to attempt to achieve compartment temperatures measured during the two tests which bound (*i.e.,* one is above and one is below) the standardized temperature. If the compartment temperatures measured during these two tests bound the standardized temperature, then these test results shall be used to determine energy consumption. If the compartment temperature measured with all controls set at their coldest setting is above the standardized temperature, a third test shall be performed with all controls set at their warmest setting and the result of this test shall be used with the result of the test performed with all controls set at their coldest setting to determine energy consumption. If the compartment temperature measured with all controls set at their warmest setting is below the standardized temperature, then the result of this test alone will be used to determine energy consumption. Also see Table 1 below, which summarizes these requirements.

TABLE 1—TEMPERATURE SETTINGS FOR FREEZERS

First test		Second test		Third test settings	Energy calculation based on:
Settings	Results	Settings	Results		
Mid	Low	Warm	Low	None	Second Test Only.

TABLE 1—TEMPERATURE SETTINGS FOR FREEZERS—Continued

First test		Second test		Third test settings	Energy calculation based on:
Settings	Results	Settings	Results		
			High	None	First and Second Tests.
	High	Cold	Low High	None Warm	First and Second Tests. Second and Third Tests.

3.2.2 Alternatively, a first test may be performed with all temperature controls set at their warmest setting. If the compartment temperature is below the standardized temperature, then the result of this test alone will be used to determine energy consumption. If the above condition is not met, then the unit shall be tested in accordance with section 3.2.1.

3.2.3 Alternatively, a first test may be performed with all temperature controls set at their coldest setting. If the compartment temperature is above the standardized temperature, a second test shall be performed with all controls set at their warmest setting and the results of these two tests shall be used to determine energy consumption. If the above condition is not met, then the unit shall be tested in accordance with section 3.2.1.

4. Test Period

4.1 Test Period. Tests shall be performed by establishing the conditions set forth in section 2 and using control settings as set forth in section 3 above.

4.1.1 Nonautomatic Defrost. If the model being tested has no automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be no less than 3 hours in duration. During the test period, the compressor motor shall complete two or more whole compressor cycles. (A compressor cycle is a complete "on" and a complete "off" period of the motor.) If no "off" cycling will occur, as determined during the stabilization period, the test period shall be 3 hours. If incomplete cycling occurs (less than two compressor cycles during a 24-hour period), the results of the 24-hour period shall be used.

4.1.2 Automatic Defrost. If the model being tested has an automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be from one point during a defrost period to the same point during the next defrost period. If the model being tested has a long-time automatic defrost system, the alternate provisions of 4.1.2.1 may be used. If the model being tested has a variable defrost control, the provisions of 4.1.2.2 shall apply.

4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is the same as the test for a unit having no defrost provisions (section 4.1.1). The second part starts when the compressor turns off at the end of a period of steady-state cycling operation just before initiation of the defrost control sequence. If the compressor does not cycle during steady-state operation between defrosts, the second part starts at a time when the compartment temperatures are within their ranges measured during steady state operation, or within 0.5 °F of the average during steady state operation for a compartment with a temperature range during steady state operation no greater than 1 °F. This control sequence may include additional compressor operation prior to energizing the defrost heater. The second part terminates when the compressor turns on the second time after the defrost control sequence or 4 hours after the defrost heater is energized, whichever occurs first.

4.1.2.2 Variable Defrost Control. If the model being tested has a variable defrost control system, the test shall consist of the same two parts as the test for long-time automatic defrost (section 4.1.2.1).

5. Test Measurements.

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figure 5–2 of HRF–1–2008 (incorporated by reference; see § 430.3) and shall be accurate to within ± 0.5 °F (0.3°C).

If the interior arrangements of the cabinet do not conform with those shown in Figure 7.2 of HRF–1–1979, the product may be tested by relocating the temperature sensors from the locations specified in the Figures by no more than 2 inches to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 430.62(d). For those products equipped with a cabinet that does not conform with Figure 7.2 and cannot be tested in the manner described above, the manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product.

5.1.1 Measured Temperature. The measured temperature is to be the average of all sensor temperature readings taken at a particular point in time. Measurements shall be taken at regular intervals not to exceed 4 minutes.

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken during one or more complete compressor cycles. One compressor cycle is one complete motor "on" and one complete motor "off" period. For long-time automatic defrost models, compartment temperature shall be that measured in the first part of the test period specified in section 4.1.2.1. For models equipped with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.1.2.2.

5.1.2.1 The number of complete compressor cycles over which the measured temperatures in a compartment are to be averaged to determine compartment temperature shall be equal to the number of minutes between measured temperature readings rounded up to the next whole minute or a number of complete compressor cycles over a time period exceeding 1 hour. One of the compressor cycles shall be the last complete compressor cycle during the test period.

5.1.2.2 If no compressor cycling occurs, the compartment temperature shall be the average of the measured temperatures taken during the last 32 minutes of the test period.

5.1.2.3 If incomplete compressor cycling occurs (less than one compressor cycle), the compartment temperature shall be the average of all readings taken during the last 3 hours of the last complete compressor "on" period.

5.2 Energy Measurements:

5.2.1 Per-Day Energy Consumption. The energy consumption in kilowatt-hours per day for each test period shall be the energy expended during the test period as specified in section 4.1 adjusted to a 24-hour period. The adjustment shall be determined as follows:

5.2.1.1 Nonautomatic and Automatic Defrost Models. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (EP \times 1440 \times K)/T$$

Where:

ET = test cycle energy expended in kilowatt-hours per day;
EP = energy expended in kilowatt-hours during the test period;
T = length of time of the test period in minutes;
1440 = conversion factor to adjust to a 24-hour period in minutes per day; and
K = dimensionless correction factor of 0.7 for chest freezers and 0.85 for upright freezers to adjust for average household usage.

5.2.1.2 Long-time Automatic Defrost. If the two part test method is used, the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times K \times EP1/T1) + ((EP2 - (EP1 \times T2/T1)) \times K \times 12/CT)$$

Where:

ET, 1440, and K are defined in section 5.2.1.1;
EP1 = energy expended in kilowatt-hours during the first part of the test;

EP2 = energy expended in kilowatt-hours during the second part of the test;
CT = defrost timer run time in hours required to cause it to go through a complete cycle, to the nearest tenth hour per cycle;
12 = conversion factor to adjust for a 50 percent run time of the compressor in hours per day; and
T1 and T2 = length of time in minutes of the first and second test parts respectively.

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times (12/CT),$$

Where:

ET and 1440 are defined in section 5.2.1.1; EP1, EP2, T1, T2, and 12 are defined in section 5.2.1.2;

$$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$$

Where:

CT_L = least or shortest time between defrosts in hours rounded to the nearest tenth of an hour (greater than or equal to 6 hours but less than or equal to 12 hours);
CT_M = maximum time between defrosts in hours rounded to the nearest tenth of an hour (greater than CT_L but not more than 96 hours);
F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20.
For variable defrost models with no values for CT_L and CT_M in the algorithm, the default values of 12 and 84 shall be used, respectively.

5.3 Volume Measurements. The total refrigerated volume, VT, shall be measured in accordance with HRF–1–2008, (incorporated by reference; see § 430.3), section 3.30 and sections 4.2 through 4.3.

In the case of freezers with automatic icemakers, the volume occupied by the automatic icemaker, including its ice storage bin, is to be included in the volume measurement.

6. Calculation of Derived Results From Test Measurements

6.1 Adjusted Total Volume. The adjusted total volume, VA, for freezers under test shall be defined as:

$$VA = VT \times CF$$

Where:

VA = adjusted total volume in cubic feet;
VT = total refrigerated volume in cubic feet; and
CF = dimensionless correction factor of 1.76.

6.2 Average Per-Cycle Energy Consumption. For the purposes of calculating per-cycle energy consumption, as described in this section, the freezer compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable freezer compartments. Applicable compartments for these calculations may include a first freezer compartment and any number of separate auxiliary freezer compartments.

6.2.1 The average per-cycle energy consumption for a cycle type is expressed in kilowatt-hours per cycle to the nearest one hundredth (0.01) kilowatt-hour and shall depend on the compartment temperature attainable as shown below.

6.2.1.1 If the compartment temperature is always below 0.0 °F (−17.8 °C), the average per-cycle energy consumption shall be equivalent to:

$$E = ET1 + IET$$

Where:

E = total per-cycle energy consumption in kilowatt-hours per day;
ET is defined in 5.2.1;
Number 1 indicates the test period during which the highest compartment temperature is measured; and
IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with an automatic icemaker and otherwise equals 0 (zero).

6.2.1.2 If one of the compartment temperatures measured for a test period is greater than 0.0 °F (17.8 °C), the average per-cycle energy consumption shall be equivalent to:

$$E = ET1 + ((ET2 - ET1) \times (0.0 - TF1)/(TF2 - TF1)) + IET$$

Where:

E and IET are defined in 6.2.1.1 and ET is defined in 5.2.1;
TF = compartment temperature determined according to 5.1.2 in degrees F;
Numbers 1 and 2 indicate measurements taken during the first and second test period as appropriate; and
0.0 = standardized compartment temperature in degrees F.

7. Test Procedure Waivers

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a freezer, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product. Such instances could, for example, include situations where the test set-up for a particular freezer basic model is not clearly defined by the provisions of section 2. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

8. Appendix B1 to subpart B of part 430 is amended by:

a. Adding an introductory note after the appendix heading;

b. In section 1. Definitions, by:

1. Adding an introductory note after the heading;

2. Redesignating section 1.1 as 1.7 and revising redesignated 1.7;

3. Revising section 1.2;

4. Redesignating 1.3 as 1.5 and revising redesignated 1.5;

5. Redesignating section 1.4 as 1.6;

6. Redesignating section 1.5 as 1.12;

7. Redesignating section 1.6 as 1.1;

8. Redesignating section 1.7 as 1.4;

9. Redesignating section 1.9 as 1.11;

10. Redesignating section 1.10 as 1.13;

11. Redesignating section 1.11 as 1.9;

12. Adding new sections 1.3, 1.9, and 1.10;

c. In section 2. Test Conditions, by:

1. Revising section 2.2;

2. Redesignating section 2.3 as 2.6;

3. Adding new sections 2.3 through 2.5;

d. In section 3. Test Control Settings, by:

1. Revising sections 3.1, 3.2, and 3.2.1;

2. Removing section 3.3;

e. In section 4, Test Period by:

1. Revising sections 4.1.2.1 and 4.1.2.2;

2. Removing section 4.1.2.3;

f. In section 5, Test Measurements, by:

1. Revising sections 5.1, 5.1.2, 5.1.2.1, 5.1.2.2, 5.1.2.3, and 5.2.1.3;

2. Removing section 5.2.1.4;

g. In section 6. Calculation of Derived Results From Test Measurements, by revising section 6.2;

h. Adding new section 7, Waivers.

The additions and revisions read as follows:

Appendix B1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

The provisions of Appendix B1 shall apply to all products manufactured prior to the effective date of any amended standards promulgated by DOE pursuant to Section 325(b)(4) of the Energy Policy and Conservation Act of 1975, as amended by the Energy Independence and Security Act of 2007 (to be codified at 42 U.S.C. 6295(b)(4)).

1. Definitions

Section 3, *Definitions,* of HRF–1–1979 (incorporated by reference; see § 430.3) is applicable to this test procedure.

* * * * *

1.2 "Anti-sweat heater" means a device incorporated into the design of a freezer to prevent the accumulation of moisture on exterior or interior surfaces of the cabinet under conditions of high ambient humidity.

1.3 "Anti-sweat heater switch" means a user-controllable switch or user interface which modifies the activation or control of anti-sweat heaters.

* * * * *

1.5 "Cycle" means the period of 24 hours for which the energy use of a freezer is calculated as though the consumer-activated compartment temperature controls were preset so that the standardized temperature (see section 3.2) was maintained.

* * * * *

1.7 "HRF–1–1979" means the Association of Home Appliance Manufacturers standard for household refrigerators, combination refrigerator-freezers, and household freezers, also approved as an American National Standard as a revision of ANSI B 38.1–1970. Only sections of HRF–1–1979 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure

in this appendix takes precedence over HRF–1–1979.

* * * * *

1.10 "Separate auxiliary compartment" means a freezer compartment of a freezer having more than one compartment that is not the first freezer compartment. Access to a separate auxiliary compartment is through a separate exterior door or doors rather than through the door or doors of another compartment.

* * * * *

2.2 Operational Conditions. The freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, (incorporated by reference; see § 430.3), section 7.2 through section 7.4.3.3 (but excluding section 7.4.3.2), except that the vertical ambient gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless the area is obstructed by shields or baffles, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height 1 foot (30.5 cm) above the unit under test. Defrost controls are to be operative and the anti-sweat heater switch is to be "on" during one test and "off" during a second test. The quick freeze option shall be switched off except as specified in section 3.1. Additional clarifications are noted in sections 2.3 through 2.5.

2.3 Conditions for Automatic Defrost Freezers. For automatic defrost freezers, the freezer compartments shall not be loaded with any frozen food packages during testing. Cylindrical metallic masses of dimensions 1.12 ± 0.25 inches (2.9 ± 0.6 cm) in diameter and height shall be attached in good thermal contact with each temperature sensor within the refrigerated compartments. All temperature measuring sensor masses shall be supported by low-thermal-conductivity supports in such a manner to ensure that there will be at least 1 inch (2.5 cm) of air space separating the thermal mass from contact with any interior surface or hardware inside the cabinet. In case of interference with hardware at the sensor locations specified in section 5.1, the sensors shall be placed at the nearest adjacent location such that there will be a 1-inch air space separating the sensor mass from the hardware.

2.4 The cabinet and its refrigerating mechanism shall be assembled and set up in accordance with the printed consumer instructions supplied with the cabinet. Set-up of the freezer shall not deviate from these instructions, unless explicitly required or allowed by this test procedure. Specific required or allowed deviations from such set-up include the following:

(a) Clearance requirements from surfaces of the product shall be as specified in section 2.5 below;

(b) The electric power supply shall be as described in HRF–1–1979 (incorporated by reference; see § 430.3) section 7.4.1;

(c) Temperature control settings for testing shall be as described in section 3 below; and

(d) The product does not need to be anchored or otherwise secured to prevent tipping during energy testing.

For cases in which set-up is not clearly defined by this test procedure, manufacturers must submit a petition for a waiver (see section 7).

2.5 The space between the back of the cabinet and the test room wall or simulated wall shall be the minimum distance in accordance with the manufacturer's instructions. If the instructions do not specify a minimum distance, the cabinet shall be located such that the rear of the cabinet touches the test room wall or simulated wall. The test room wall facing the rear of the cabinet or the simulated wall shall be flat within ¼-inch, and vertical to within 1 degree. The cabinet shall be leveled to within 1 degree of true level, and positioned with its rear wall parallel to the test chamber wall or simulated wall immediately behind the cabinet. Any simulated wall shall be solid and shall extend vertically from the floor to above the height of the cabinet and horizontally beyond both sides of the cabinet.

* * * * *

3. Test Control Settings

3.1 Model with No User Operable Temperature Control. A test shall be performed during which the compartment temperature and energy use shall be measured. A second test shall be performed with the temperature control electrically short circuited to cause the compressor to run continuously. If the model has the quick freeze option, this option must be used to bypass the temperature control.

3.2 Model with User Operable Temperature Control. Testing shall be performed in accordance with one of the following sections using the standardized temperature of 0.0 °F (−17.8 °C).

For the purposes of comparing compartment temperatures with standardized temperatures, as described in sections 3.2.1 through 3.2.3, the freezer compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable freezer compartments. Applicable compartments for these calculations may include a first freezer compartment and any number of separate auxiliary freezer compartments.

3.2.1 A first test shall be performed with all temperature controls set at their median position midway between their warmest and coldest settings. For mechanical control systems, knob detents shall be mechanically defeated if necessary to attain a median setting. For electronic control systems, the test shall be performed with all compartment temperature controls set at the average of the coldest and warmest settings—if there is no setting equal to this average, the setting closest to the average shall be used. If there are two such settings equally close to the average, the higher of these temperature control settings shall be used. If the compartment temperature measured during the first test is higher than the standardized temperature, the second test shall be conducted with the controls set at the coldest settings. If the compartment temperature measured during the first test is lower than the standardized temperature, the second test shall be conducted with the controls set at the warmest settings. If the compartment temperatures measured during these two tests bound the standardized temperature, then these test results shall be used to determine energy consumption. If the compartment temperature measured with all controls set at their coldest settings is above the standardized temperature, a third test shall be performed with all controls set at their warmest settings and the result of this test shall be used with the result of the test performed with all controls set at their coldest settings to determine energy consumption. If the compartment temperature measured with all controls set at their warmest settings is below the standardized temperature, then the result of this test alone will be used to determine energy consumption.

* * * * *

4. Test Period

* * * * *

4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is the same as the test for a unit having no defrost provisions (section 4.1.1). The second part starts when the compressor turns off at the end of a period of steady-state cycling operation just before initiation of the defrost control sequence. If the compressor does not cycle during steady-state operation between defrosts, the second part starts at a time when the compartment temperatures are within their ranges measured during steady state operation, or within 0.5 °F of the average during steady state operation for a compartment with a temperature range during steady state operation no greater than 1 °F. This control sequence may include additional compressor operation prior to energizing the defrost heater. The second part terminates when the compressor turns on the second time after the defrost control sequence or 4 hours after the defrost heater is energized, whichever occurs first.

4.1.2.2 Variable Defrost Control. If the model being tested has a variable defrost control system, the test shall consist of the same two parts as the test for long-time automatic defrost (section 4.1.2.1).

* * * * *

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figure 7.2 of HRF–1–1979 (incorporated by reference; see § 430.3) and shall be accurate to within ±0.5 °F (0.3 °C).

If the interior arrangements of the cabinet do not conform with those shown in Figure 7.2 of HRF–1–1979, the product may be tested by relocating the temperature sensors from the locations specified in the Figures by no more than 2 inches to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 430.62(d). For those products equipped with a cabinet that does not conform with Figure 7.2 and cannot be tested in the manner described above, the manufacturer must

obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product.

* * * * *

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken during one or more complete compressor cycles. One compressor cycle is one complete motor "on" and one complete motor "off" period. For long-time automatic defrost models, compartment temperature shall be that measured in the first part of the test period specified in section 4.1.2.1. For models equipped with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.1.2.2.

5.1.2.1 The number of complete compressor cycles over which the measured temperatures in a compartment are to be averaged to determine compartment temperature shall be equal to the number of minutes between measured temperature readings rounded up to the next whole minute or a number of complete compressor cycles over a time period exceeding 1 hour. One of the compressor cycles shall be the last complete compressor cycle during the test period before start of the defrost control sequence for products with automatic defrost.

5.1.2.2 If no compressor cycling occurs, the compartment temperature shall be the average of the measured temperatures taken during the last 32 minutes of the test period.

5.1.2.3 If incomplete compressor cycling occurs (less than one compressor cycle), the compartment temperature shall be the average of all readings taken during the last 3 hours of the last complete compressor "on" period.

* * * * *

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times (12/CT),$$

Where:

ET and 1440 are defined in section 5.2.1.1 and EP1, EP2, T1, T2, and 12 are defined in section 5.2.1.2;

$$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$$

Where:

CT_L = least or shortest time between defrosts in hours rounded to the nearest tenth of an hour (greater than or equal to 6 hours but less than or equal to 12 hours);

CT_M = maximum time between defrosts in hours rounded to the nearest tenth of an hour (greater than CT_L but not more than 96 hours);

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20.

For variable defrost models with no values for CT_L and CT_M in the algorithm, the default values of 12 and 84 shall be used, respectively.

* * * * *

6. Calculation of Derived Results From Test Measurements

* * * * *

6.2 Average Per Cycle Energy Consumption. For the purposes of calculating per-cycle energy consumption, as described in this section, the freezer compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable freezer compartments. Applicable compartments for these calculations may include a first freezer compartment and any number of separate auxiliary freezer compartments.

* * * * *

7. Test Procedure Waivers

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a freezer, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product. Such instances could, for example, include situations where the test set-up for a particular freezer basic model is not clearly defined by the provisions of section 2. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

9. In § 430.62, revise paragraph (a)(4)(xii) to read as follows:

§ 430.62 Submission of data.

(a) * * *

(4) * * *

(xii) Refrigerators, refrigerator-freezers, and freezers, the annual energy use in kWh/yr, total adjusted volume in ft^3, whether the product has variable defrost control (in which case, manufacturers must also report the values, if any, of CT_L and CT_M (see for example Appendix A section 5.2.1.3) used in the calculation of energy consumption), whether the product has variable anti-sweat heater control, and whether testing has been conducted with modifications to the standard temperature sensor locations specified by the figures referenced in section 5.1 of Appendices A1, B1, A, and B.

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H.R. 3714/P.L. 111–166

Daniel Pearl Freedom of the Press Act of 2009 (May 17, 2010; 124 Stat. 1186)

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